

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No. 1976/I&BP/2018

Under section 9 of the IBC, 2016

In the matter of

Shanaya Fashions
Shop No. 7, The Mistry Park, 77,
Bhulabhai Desai Road, Breach Candy,
Mumbai-400026

....Applicant

v/s.

Worldstar Fabric LLP
Todi Estate, 1st Floor, B-Wing, Sunmil
Compound, Lower Parel-W,
Mumbai-400013

....Respondent

Order delivered on: 28.08.2018

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Anil D'souza, Advocate

For the Respondent: Mr. Chandrakant Mhadeshwar, Advocate

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Shanaya Fashions (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Worldstar Fabric LLP (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 05.03.2018 in making payment to the extent of Rs. 2,56,30,190/- on various invoices raised by it, by invoking the provisions of Sections 9 of I & B Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Petitioner is involved in Manufacture of wearing apparel. Pursuant to the order placed by the Corporate Debtor, the Petitioner has supplied and delivered certain goods from 01.01.2018 to 05.03.2018 and raised 24 invoices for Rs. 2,59,30,190/-. The invoices are payable within 7 days of date of invoice.

3. The Petitioner issued Demand Notice to the Corporate Debtor on 09.05.2018 claiming a sum of Rs. 2,59,30,190/- till the date of realization. The Corporate Debtor replied to the Demand Notice on 11.05.2018 stating that the customers of the Corporate Debtor who had purchased goods defaulted in making payments and hence they are resorting to legal proceedings against them. In this circumstance the Corporate Debtor requested the Petitioner during the difficult times of the Corporate Debtor and request not to initiate any legal proceedings as contemplated in the Demand Notice. The reply is very clear which amounts to clear admission of the liability and apart from that no dispute of whatever nature was raised. The Petitioner filed the Affidavit as required under Section 9(3)(b) of the Code.

4. The Ld. Counsel appearing on behalf of the Corporate Debtor raised three issues in the reply filed by him. In the first issue it was submitted that the Corporate Debtor is facing financial difficulties due to various problems, but that cannot be a defense in I&B Petition. The second issue raised by him is that the goods are defective / substandard/ difference in quality, however there was neither any whisper in reply to the Demand notice nor the Corporate Debtor had raised any such issues after the supply of the goods and before the receipt of Demand notice. Hence this dispute raised by the Corporate Debtor is a flimsy one raised only for the sake of raising an issue. The third issue is short supply of the fabrics ordered by the Corporate Debtor, the same cannot be taken as a dispute since already there is a due of more than Rs. 2.5 crores and the Corporate Debtor cannot expect the Petitioner to supply goods without making payment for the goods already supplied. In view of this, all the issues raised by the Corporate Debtor fails. The Petitioner has proved the debt and default and the Petition deserves to be admitted.

5. One Mr. Shyam Sundar Kasere, residing at B 402, La Chappelle CHS, Evershine nagar, Near Ryan International School, Malad West, Mumbai- 400064 having Registration No. IBBI/IPA-001/IP-P00594/2017-2018/11064 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

6. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

- (a) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- (d) That the order of moratorium shall have effect from 28.08.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Shyam Sundar Kasere, residing at B 402, La Chappelle CHS, Evershine nagar, Near Ryan International School, Malad West, Mumbai- 400064 having Registration No. IBBI/IPA-001/IP-P00594/2017-2018/11064 as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.

8. The Registry is hereby directed to communicate this order to both the parties.

SD/ -

V. NALLASENAPATHY
Member (Technical)

SD/ -

BHASKARA PANTULA MOHAN
Member (Judicial)