

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

CP 1981 (IB)/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of

Yogesh Wrapper Agency

...Operational Creditor/ Applicant

v/s

New Empire Textile Processor Private

Limited

...Corporate Debtor

Order Dated 26.08.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Applicant: Adv. Namrata Shenoy

For the Respondent: Adv. Atul Mehta.

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 1981/2019 filed by **Yogesh Wrapper Agency**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **New Empire Textile Processor Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). The application is filed on 06.05.2019.
2. This application is filed by Mrs Gayatri Devi Pareek, Sole Proprietor of the applicant.
3. The Applicant had supplied goods namely cloth wrapper to the Corporate Debtor and raised invoices dated 17.06.2017, 26.07.2017, 24.08.2017, 14.09.2017, 24.10.2017, 06.11.2017, 28.12.2017, 08.02.2018, 19.02.2018, 27.03.2018, 07.05.2018, 02.07.2018, 10.08.2018, 29.10.2018 and 14.11.2018. all the said invoices are annexed to the application. As per the payment terms

mentioned on the invoice, payment was to be made within 30 days and an interest of 24% per annum is to be charged upon payment received after due date. For the said invoices, an amount of ₹40,42,916/- is due and payable by the Corporate Debtor.

4. The Applicant sent a letter dated 01.03.2019 demanding payment of ₹40,42,916 against the aforesaid invoices and also demanded issue of post-dated cheques as agreed between them.
5. The Applicant sent a demand notice under section 8 of I&B Code dated 03.04.2019 demanding payment of ₹48,63,456/- including interest as per the terms of the invoices.
6. The Applicant has filed an affidavit dated 30.04.2019 stating therein that it has not received any reply to the Demand Notice from the Corporate Debtor raising dispute or payment.
7. The Applicant has also tendered the Auditors Report of the Corporate Debtor for the year ending on 31.03.2018 wherein the name of the Applicant appears in the list of Sundry Creditors for an amount of ₹35,17,679/-
8. The Director of the Corporate Debtor, Mr Atul Mehta has filed his appearance on behalf of the Corporate Debtor but chose not to file an objection against the admission of the Application.
9. On perusal of the documents submitted by the Applicant, it is clear that goods were supplied to the Corporate Debtor and invoices were duly raised upon the Corporate Debtor. The Corporate Debtor has not paid the amount against the said invoices as the same is reflected in the Independent Auditor's report for the year ending on 31.03.2018.
10. The debt amounting to ₹35,17,679/- is admittedly due and payable by the Corporate Debtor to the Applicant. The outstanding amount that is admittedly in default is more than ₹1,00,000/-.
11. The application filed by the operational creditor is on proper form 5, as prescribed under the Adjudicating Authority Rules and application is complete.
12. The Applicant has proposed the name of Mr Kailash T Shah, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00267/2016-17/10511] as **Interim**

Resolution Professional, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that against him.

13. The Application under Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form No 5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 9 of I&B Code, 2016, filed by **Yogesh Wrapper Agency**, against **New Empire Textile Processor Private Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any activity under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr Kailash T Shah, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00267/2016-17/10511] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

26th August 2019