

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

CP (IB) 3937/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Silver Broom India

A-751/2, M.I.D.C. T.T.C., Khairne, Navi
Mumbai-400710

...Applicant

v/s.

La Villa Cafe Private Limited

Flat No. 502, 5th Floor, Kapadia Apartment,
Swastik Chambers CHS Ltd, A/39, S V
Road, Vile Parle (West), Mumbai 400056

... Corporate Debtor

Order pronounced on:16.07.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Rupesh Sohoni, Advocate a/w Ms. Devika Khurana, Advocate.

For the Respondent: Mr. Harsh Pandey, Advocate i/b AVS Legal

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Mrs. Shobita Sunil Kumar, Sole Proprietor of Silver Broom India (hereinafter called "Petitioner") against La Villa Cafe Private Limited (hereinafter called "Corporate Debtor") under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with rule 5 and 6 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 ("Rules") for initiation of Corporate Insolvency Resolution Process (CIRP) alleging that the Corporate Debtor defaulted in making payment to the extent of Rs. 16,19,898/-.
2. The Petition reveals that the Petitioner provided housekeeping services and management services to the Corporate Debtor. The services were provided to the Corporate Debtor on their oral request. The Petitioner raised invoices on the Corporate Debtor and a sum of Rs. 16,19,898/- is receivable from the Corporate Debtor for the invoices raised in 2017 and 2018. The list of invoices were annexed to the Petition in exhibit J (Page 641) of the Petition.

3. The Petitioner requested the Corporate Debtor to make the payment through Emails and the same were annexed to the Petition. Since the payments are not forthcoming the Petitioner issued demand notice on 31.07.2019 in Form 3, under section 8(1) of the Code requiring the Corporate Debtor to make the payment of defaulted due of Rs. 16,19,898/-. The Corporate Debtor has not responded to the notice despite receipt of the same and the Petitioner filed an affidavit under Section 9(3)(b) of the Code stating that the Petitioner neither received any payments nor raised any disputes regarding the outstanding amount.
4. The Corporate Debtor filed reply to the Petition and raised the following contentions:
 - a. The Petition suffers from various infirmities and defects and hence the Petition has to be dismissed.
 - b. Form 5 filed by the Petitioner is materially incorrect rendering the Petition incomplete.
 - c. The Petitioner is not entitled to claim any interest.
 - d. The name of the Corporate Debtor has been wrongly mentioned as Silver Boom India at part 2 of Form 5 (page 3) hence the Petition is not maintainable.
 - e. The Petition has been filed in the name of the sole proprietary concern which has no existence like a company. The sole

proprietary concern can act only through an individual and not in its own name. Hence the petition has to be dismissed.

- f. The claim of the Petitioner is disputed. Hence this petition under Section 9 is not maintainable.
- g. The quality of staff provided for housekeeping and administrative services by the Petitioner is not good and was also irregular. The Corporate Debtor required more number of staff on Friday, Saturday and Sunday of a week but the Petitioner never provided required staff on these days which created a lot of problem to the business of the Corporate Debtor.
- h. Housekeeping staff provided by the Petitioner misbehaved in the establishment in drunken state and used to fight with the chefs and other workers of the Corporate Debtor which necessitated the Corporate Debtor to take help of police to overcome the nuisance created by the staff provided by the Petitioner. The Housekeeping staff also tried to lodge false complaint against the Corporate Debtor at Santa Cruz and Ville Parle police stations and tried to falsely frame the Corporate Debtor which was duly communicated to the Petitioner and subsequently the service of Petitioner was terminated by the Corporate Debtor.
- i. The Corporate Debtor never received any invoice from the Petitioner and the acknowledgement made on the invoices are

by a person named Swapnil is bogus, forged and fabricated and has no such employee with the Corporate Debtor.

- j. The Corporate Debtor, without prejudice, tried to settle and close the matter by offering a cheque for Rs, 7,38,759/- but the Petitioner never accepted the payment.
- k. The Corporate Debtor is not liable to pay the Petitioner.

5. This Bench on hearing the Counsel on either side and ongoing through the pleadings, the followings are the observations of this Bench:

- a. The mere fact that the name of the Corporate Debtor wrongly mentioned in Form 5 will not wipe out the liability of the Corporate Debtor.
- b. Since no interest is claimed by the Petitioner, the contention of the Corporate Debtor that the Petitioner is not entitled to charge interest does not have any relevance.
- c. The Petition has been signed by Ms. Shobita Sunil Kumar, the sole proprietor of Silver Broom India and hence the Petition is in order.
- d. We have seen that the Petitioner has sent Email giving details of the amount due and subsequently demand notice under the Code but the Petitioner neither made the payment nor denied the liability nor raised any disputes regarding the quality of personnel provided by the Petitioner to the Corporate Debtor.

- e. The issues relating to quality of service/ quality of personnel were raised for the first time in the reply to the Petition.
- f. Even though the Corporate Debtor stated that some of the staffs provided by the Petitioner have misbehaved in the business premises of the Corporate Debtor, which was claimed as informed to the Petitioner is also not supported by anything in writing.
- g. The Corporate Debtor has not shown any material to show that there are disputes as provided under Section 5 (6) of the Code.
- h. These disputes were raised for the first time in the reply and hence the so called disputes raised by the Corporate Debtor are rejected as non-existent.
- i. The Corporate Debtor itself stated that they have offered to settle the dues for Rs. 7,38,759/-

6. This being the case, this Bench is of the view that the Corporate Debtor is liable to pay the claimed amount in the demand notice/ Petition and the Corporate Debtor defaulted in making payment of the same.

7. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Code, admits this petition 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 judgement, decree or other in any court of law; 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 16.07.20 till the completion of the CIRP 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 CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr.Kairav Anil Triwedi, 23A, 5th Floor, Jyoti Bldg, Barquatali Dargah Marg, Wadala East,Mumbai-400037; having Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332 as Interim Resolution Professional to carry the functions as mentioned under the Code.

8. Accordingly, this Petition is admitted.

9. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

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V. Nallasenapathy
Member (Technical)

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Suchitra Kanuparthi
Member (Judicial)