

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

CP (IB) No.1224/NCLT/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

Adonis Mobitrade Private Limited

[CIN: U52100HR2015PTC054512]

...Operational Creditor /

v/s.

Shop CJ Network Private Limited

[CIN: U72900MH2008PTC186380]

...Corporate Debtor

Order Delivered on: 19.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Ms. Harsh Kesharia, Advocate.

For the Respondent : Ms. Ayesha Alwaria, Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Adonis Mobitrade Private Limited, ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Shop CJ Network Private Limited ("the Corporate Debtor"), [CIN: U72900MH2008PTC186380].

2. The Corporate Debtor is a Company incorporated on 01.09.2008 under the Companies Act, 1956, as a Private Company Limited by Shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U72900MH2008PTC186380. Its registered office is at first floor, Empire Complex 414-Senapati Bapat Marg, Lower Parel, Mumbai, Maharashtra-400013. Therefore, this Bench has Jurisdiction to deal with the present petition.
3. The present Petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.91,89,867/- (Rupees ninety-one lakh eighty-nine thousand eight hundred sixty-seven only). The Date of Default is 20.10.2017.
4. The case of the Operational Creditor is as under:
 - a) The Corporate Debtor issued the Purchase Orders to the Operational Creditor for supply of Mobile Phones. The details of the Purchase order are as follows:

Sr. No	Purchase Order No.	Date
1.	20170811627954	11.08.2017
2.	20170811627956	11.08.2017
3.	20170811627957	11.08.2017
4.	20170812629305	12.08.2017
5.	20170831664328	31.08.2017
6.	20170831664329	31.08.2017
7.	20170831664330	31.08.2017
8.	20170831664332	31.08.2017
9.	20170831664333	31.08.2017

10.	20170831664410	31.08.2017
11.	20170831664414	31.08.2017
12.	20170831664421	31.08.2017
13.	20170831664425	31.08.2017
14.	20170913700452	13.09.2017

b) Pursuant to the said Purchase Orders, the Operational Creditor raised Invoices to the Corporate Debtor. The details of the invoices are as follows;

Sr. No.	Date of Invoice	Invoice No.	Amount in Rupees
1.	26.09.2017	AMPL/17-18/112	18,48,498.00
2.	20.09.2017	AMPL/17-18/111	73,67,530.00
3.	19.09.2017	AMPL/17-18/110	67,52,592.00
4.	02.09.2017	AMPL/17-18/109	79,09,300.00
5.	31.08.2017	AMPL/17-18/108	79,48,500.00
6.	31.08.2017	AMPL/17-18/107	49,65,600.00
7.	16.08.2017	AMPL/17-18/103	82,59,844.00
8.	14.08.2017	AMPL/17-18/102	1,07,90,080.00
Total			5,58,41,944

c) However, the Corporate Debtor failed to make payment of Rs.91,89,867/- (Rupees ninety-one lakh eighty-nine thousand eight hundred sixty-seven only).

5. The case of the Corporate Debtor is as under:

a) The Operational Creditor and its sister concern namely M/s Taraash Overseas Private Limited are engaged in the business of inter alia,

manufacturing and/or importing and/or distributing goods and other related services in India. The Director of the Petitioner and its sister concern are one and the same i.e. Mr. Manish Verma. Mr. Tarun Verma & Mr. Sanjiv Singh are the other Directors of the Operational Creditor and were employees of the Parent Company of the Corporate Debtor namely, Television home Shopping Network Limited (formerly known as TV 18 Home Shopping Pvt Ltd).

- b) The Corporate Debtor started its transactions with the Operational Creditor's sister concern from August, 2016 who would supply mobile handsets to the Corporate Debtor which the Corporate Debtor would subsequently sell on its web portal. Thereafter, the Corporate Debtor entered into Sale Agreement dated 23.11.2016 recording the terms of the sale and transactions between them. The Corporate Debtor's first transaction between the Corporate Debtor and the sister concern took place on 02.11.2017. The total amount of Rs.38,06,05,759.18 (Rupees thirty-eight crore six lakh five thousand seven hundred fifty-nine and eighteen paise only) was paid by the Corporate Debtor to the sister concern in respect of the above transaction.
- c) The Corporate Debtor found various goods not appropriate and found several defects during the existence of the transactions. As per the provisions of the Sale Agreement, the Corporate Debtor is well within its right to return the goods to the Operational Creditor's sister concern, however, the Corporate Debtor could not return the goods if the same did not meet the quality standards or were defective but also the right to return was an encompassing right to return any goods which were unsold.

- d) Upon the instructions of the Operational Creditor's sister concern, the goods were directly returned to the original vendor of the products. As the goods were returned as per instructions of the Operational Creditor's Sister Concern under the Sale Agreement and raised 3 Credit Invoices dated 13.04.2018 for a total amount of Rs.39,84,764/- (Rupees thirty-nine lakh eighty-four thousand seven hundred sixty-four only), 18.04.2018 for a total amount of Rs.7,76,446/- (Rupees seven lakh seventy-six lakh four hundred forty-six only) and 19.4.2018 for a total amount of Rs.76,863/- (Rupees seventy-six lakh eight hundred sixty-three only) upon the sister concern totalling to an amount of Rs.48,38,291/- (Rupees forty-eight lakh thirty-eight thousand two hundred ninety-one only).
- e) The Parent Company of the Corporate Debtor also engaged the Operational Creditor's Sister Concern for similar purchase and Sale Transactions as well as engaged the Sister Concern for Sourcing, Warehousing & Distribution of the Products. However, the Parent Company also met the same fate of incurring losses as the Corporate Debtor, since the Sister Concern distributed the goods and did not repay the Parent Company and its Franchises towards the distribution of goods as reconciled between the parties. Vide email dated 17.11.2017 sent by the Auditor of the Operational Creditor's sister concern requested to the Parent Company of the Corporate Debtor to provide the balance confirmation of Rs.71,56,818/- (Rupees seventy-one lakh fifty-six thousand eight hundred eighteen only) to the reconciliation statement attached along with the said email.
- f) The Director of the Operational Creditor's Sister Concern, the Corporate Debtor and Operational Creditor entered into a 'Vendor Enlistment

Agreement' dated 13.02.2017 with the Operational Creditor. As per the term of the said Vendors Enlistment Agreement took place on 17.10.2017 and the last transaction took place on 10.02.2017 between the Corporate Debtor and the Operational Creditor as per the terms of the Vendors Enlistment Agreement. The total amount paid by the Corporate Debtor to the Operational Creditor in accordance with the abovementioned transactions is Rs.4,66,39,392/- (Rupees four crore sixty-six lakh thirty-nine thousand three hundred ninety-two only).

- g) In pursuant to the said Vendors Enlistment Agreement, the Corporate Debtor raised Purchase Orders from 11.08.2017 to 13.09.2017. The Operational Creditor raised invoices between the period from 14.08.2017 to 26.09.2017 with respect to the goods supplied by the Operational Creditor to the Corporate Debtor with respect to the above-mentioned Purchase Order.
- h) According to the documents, the Sister Concern has to pay amount of Rs.48,38,291/- (Rupees forty-eight lakh thirty-eight thousand two hundred ninety-one only) to the Corporate Debtor on account of return of goods and Rs.71,56,818/- (Rupees seventy-one lakh fifty-six thousand eight hundred eighteen only) to the Parent Company totalling to an amount of Rs.1,19,95,109/- (Rupees one crore nineteen lakh ninety-five thousand one hundred nine only) which is the principal amount due and payable excluding the interest. It was always understood between all the four entities that the amount due and payable amongst them shall be settled eventually via Group Reconciliation as there were various dues payable amongst the said 4 entities.
- i) The Operational Creditor has sent the Demand Notice dated 30.01.2019 in utter abuse of the process of law under the IBC to extort money from

the Corporate Debtor despite there being larger claim due and payable to the Corporate Debtor and the Parent Company and in furtherance to its unethical, and wrongful claim, has also filed the instant section 9 Petition wrongfully to recover the same. Further, the total amount as per the Operational Creditor's claim which is alleged to be due from the Corporate Debtor to the Operational Creditor is less than the total amount due and payable by the Operational Creditor's Sister concern to the Corporate Debtor and the Parent Company as the total amount payable by the sister concern is Rs.1,19,95,109/- (Rupees one crore nineteen lakh ninety-five thousand one hundred nine only) which is the principal amount due excluding interest.

6. The invoices have been placed at pp 38-48 of the Petition. The Purchase Orders have been placed at pp 23-37 of the Petition. The last date of Invoice issued by the Operational Creditor is 26.09.2017.
7. The Operational Creditor issued a Demand Notice in Form 3 dated 30.01.2019 to the Corporate Debtor claiming total outstanding of Rs.91,89,867/- (Rupees ninety-one lakh eighty-nine thousand eight hundred sixty-seven only) which is at pp 10-22 of the Petition in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.
8. The Operational Creditor has filed the Affidavit of no dispute under section 9(3)(b) of the Code which is at pp 87-89 of the Petition. The Operational Creditor has filed Ledger Account which is at pp 49-52 of the Petition.

Findings:

9. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.

10. It is observed that the Corporate Debtor has contended about the traction between the Sister Concern and the Parent Company. However, there is no any concern about the transaction between Sister Concern with the liability of the Corporate Debtor. It is seen from the records that the Corporate Debtor is liable to pay the debt amount which is due and payable to the Operational Creditor.
11. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of Rupees One Lakh stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
12. The Operational Creditor has not proposed the name of Interim Resolution Professional (IRP) in the matter.
13. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP(IB) 1224/MB-IV/2019 filed by Adonis Mobitrade Private Limited, the Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Shop CJ Network Private Limited [CIN: U72900MH2008PTC186380], the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for

liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Sanjay Shrivastava, registration No. IBBI/IPA-001/IP-P01528/2018-19/13037, Email: casanjayshrivastava@gmail.com, is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email

immediately, and in any case, not later than two days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Kishore Vemulapalli
Member (Judicial)

19.01.2022

Sd/-

Rajesh Sharma
Member (Technical)