

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH- BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web based video-conferencing platform)

CP (IB) No.207/BB/2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

More Retail Private Limited

(Formerly Known as More Retail Limited)

Registered Office: Skyline Icon,

86/92,5th Floor, near Mittal Industries Estate,

Andheri-Kurla Road, Andheri (East)

Mumbai-400059

... Petitioner/Operational Creditor

Versus

ZN Tech Solutions Private Limited

(Formerly Known as ZN Retail Private Limited)

Registered Office : 3rd Floor,Site No.409,

BBMP Katha No.4041/409,

4th Main Road,Hosur Sarjapur Road Layout,

Sector-II,Bangalore,KA 560102

Also, at:-

2078,24th Main, I Sector,

HSR Layout,Bangalore-560102

... Respondent/Corporate Debtor

Order delivered on: 24.08.2023

Coram:

1. Hon'ble Justice (Retd) T Krishnavalli, Member (Judicial)

2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner

: Mr.Ashwin R.A

Ms.Nidhi Kalyani

For the Respondent

: Dr.J.Somashekar

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 16.09.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016,

CP (IB) No.207/BB/2022

by More Retail Private Limited, formerly known as More Retail Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. ZN Tech Solutions Private Limited, formerly known as ZN Retail Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 1,35,29,193/- (Rupees One Crore Thirty Five Lakhs Twenty Nine Thousand One Hundred and Ninety Three) as on 31.10.2018 which includes the outstanding amount due and the interest at the rate of 18% per annum on the outstanding amount.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:

1. The Operational Creditor was engaged in the business of Retail trade for the purpose of selling consumer products and allied incidental services through its retail outlets throughout the country. The Corporate Debtor is a company registered under the Companies Act, 1956, and is engaged in the trading and marketing, distributing and selling consumer products and allied services through E- commerce platform in India.

2. It is submitted that the Operational Creditor and the Corporate Debtor have entered in to an Agreement dated 28.12.2015 based on the Corporate Debtor's representation to the Operational Creditor that it has E- commerce platform under the domain name ZOPNOW'sZOPNOW.COM website and they are desirous of purchasing consumer products from Operational Creditor and to operate from the store in an earmarked space to be provided by Operational Creditor in their stores.

3. It is further submitted that by virtue of the agreement dated 28.12.2015, the Corporate Debtor was aggregating orders from the customers through its website and servicing the orders by purchasing the products from retail stores of operational creditor. For this arrangement the operational creditor had allotted certain demarcated space to corporate debtor in its retail stores in different cities on Pan India basis. The billing for the products

belonging to operational creditor were to be raised from their point of sales at the specified stores and the corporate debtor were under an obligation to make payments for the product purchased by them from the Operational Creditor.

4. Since August 2018, the Corporate Debtor has failed to make the payments for the products purchases by them at the stores belonging to the operational creditor. Even after making demands and constant follows ups, the corporate debtor without clearing the earlier debts, had continued to make purchases in the month of September and October 2018 by giving false assurances to the Operational Creditor.

5. In the interim, the corporate debtor contacted operational creditor for a settlement. There were meetings between the senior management of both parties in January 2022 and during the meetings, the management of corporate debtor continued to make promises and gave assurances of the payment to the operational creditor. However, due to the poor financial status of the corporate debtor, they failed to make good of their assurances and failed to honour the assurances by making the payment. It is pertinent to mention that even in 2018 when the Operational creditor had issued notice to corporate debtor for payment, the corporate debtor failed to make payment due to the losses incurred by the company.

6. It is submitted that the total amount of debt is Rs.1,35,29,193/- which includes a sum of Rs.87,00,446/- which is the principal outstanding amount due under the agreement dated 28.12.2015 and invoices as on 31.10.2018 plus interest of Rs.48,28,747/- at the rate of 18% per annum on the outstanding amounts due calculated from 31.10.2018 to 30.11.2021.

7. It is submitted that the Operational Creditor issued demand notice on 16.02.2022, claiming Rs.1,35,29,193/-. Upon receipt of the Demand Notice the Corporate Debtor acknowledged the demand notice on 16.02.2022. The Corporate Debtor has defaulted to clear the dues of the Operational Creditor due to poor

financial status of the corporate debtor and hence the present petition.

3. The Counsel for the corporate debtor in his objection has stated as follows:

1. The application filed by the operational creditor is barred by limitation. It is submitted that as per Sl.No.02 of Part-IV of the application, the date of default is 31.10.2018. But this application is filed on 13.09.2022 which is beyond the period of limitation and hence the application is barred by limitation.

2. The applicant has claimed Rs.1,35,29,193/- which includes interest of Rs. 87,00,446/- and Rs. 48,28,747 towards interest at the rate of 18 per cent, calculated from 31.10.2018 till 30.11.2021.

3. The application is filed under section 9 of the code, the said section does not permit levying of interest on the due amount from the corporate debtor. Further, the agreement dated 28.12.2015 executed between the two parties does not spell anything about interest and hence the operational creditor has suppressed the material facts.

4. As per clause 5 of the agreement between the two parties, the period of agreement is twelve months. The operational creditor has claimed the amount which is not for the agreement period. Hence, there was no contract between the operational creditor and the corporate debtor as far as the instant claim and its period is concerned.

5. The operational creditor has issued a notice dated 05.11.2018 to the corporate debtor demanding Rs.87,00,446/- outstanding as on 31.10.2018 with 18% interest within seven days of the receipt of the said notice. In response to this notice, the corporate debtor in his reply to notice dated 16.11.2018 has brought to the notice of the operational creditor that "we are in receipt of your notice, the details mentioned in same are not correct and hence we don't agree with the same."

6. The operational creditor in the notice dated 24.02.2020 have brought to the notice of the operational creditor that "the said amount depicts the sales value of products purchased by you from MRL under the agreement/business arrangement and you are legally bound to pay the same to us"

7. The operational creditor issued one more demand notice dated 16.02.2022 demanding Rs. 1,35,29,193 to be paid within ten days of the receipt of this notice. In response to this demand notice, the corporate debtor vide their mail reply dated 21.02.2022 has requested the operational creditor to provide

(a) sale details from beginning (from 28.12.2015 to the date in excel format electronically) for reconciliation

(b) goods receipt acknowledgement.

As per our request over mail, the operational creditor has provided the information from the ledger statement for the entire period. The details are as under:

Particulars	Amount in Rupees
Sales(01 st May,2015 to 31 Oct,2018	72,56,66,700
Less Collections from 25 th May, 2015 to 30 th Nov 2018	-66,98,23,773
Less:Payment adjustment against invoices	-4,63,28,455
Outstanding as per receivable	95,14,471

Add:GST Mismatch debit note raised by MRPL	1,82,600
Total outstanding	96,97,071
Less.Adjustment & Provision for bill payments	9,96,625
Total outstanding	87,00,446

Based on the informations provided by the operational creditor, the corporate debtor was not able to reconcile the business transactions between the two parties since the information was provided in excel format electronically as requested by the Corporate Debtor was not required by the CD and the information's were missing in the excel data. Further, the Corporate Debtor insisted for the order wise data in excel formal for reconciliation. Moreover, as per the books of account maintained in the office of CD and the bank statement, the CD has already paid to the operational creditor to the tune of Rs.50,23,56,269/- from 05.04.2016 to 04.07.2018. Having paid such huge amount to Operational Creditor, the CD has in no way avoided payment of legally payables dues if any, to the operational creditor subject to details to be

provided by the Operational Creditor as required for reconciling the business. It is further stated that the agreement dated 28.12.2005 executed between the two parties is not related to Karnataka State but the transactions shown by the Operational Creditor are related to Karnataka. Further, the credit period allowed as per old agreement was only ten days but the creditor allowed more than 10 days by violating the terms and conditions of old agreement.

4. The Petitioner filed rejoinder vide diary no 2837 dated 31.05.2023 regarding limitation they have stated as under:

Although the default arose in 31.10.2018, when the Corporate Debtor failed to make its payment, yet the operational creditor has been demanding from the corporate debtor for clearance of the default amount. This is clearly evidenced by the notice dated 05.11.2018 produced as Annexure – F alongwith the main application and email communications dated 20.11.2018 and 03.12.2018 and copies of emails dated 20.11.2018 and 03.12.2018 are produced herewith as Document No.1 and 2. Further again the demand was made on 24.02.2020 which is produced as Annexure-H along with main application. It is pertinent to note that cause of action to file the above application is continuing as the demands were made time and again for the reasons that the corporate debtor have been giving assurances that the payment shall be cleared. Subsequent cause of action arose on 24.02.2020 when the notice was issued to the corporate debtor referring to earlier demands. It was mentioned in the affidavit dated 25.01.2023 that there was no dispute of outstanding payment between Operational Creditor and the Corporate Debtor.

5. The matter was reserved for orders and in compliance to the order dated 13.04.2023 ,Form D was filed separately through memo vide diary no 2838 dated 31.05.2023 showing the date of default is taken on record.
6. We have considered the pleadings and material available on record. The Primary issue for consideration is limitation. On perusal of the documents produced it is seen that the notice was issued on 05.11.2018 to the corporate debtor, accordingly reply notice was issued on 16.11.2018 through email. Further, it is observed that the

operational creditor has stated to have issued a notice on 24.02.2020. On this basis, it is claimed by the petitioner that there was a continuing Cause of Action. However, limitation is not extended by issuing of notice, but there has to be an acknowledgement regarding which nothing has been explained. Therefore, the application which was filed on 16.09.2022, is beyond the limitation period of 3 years; since the Date of Default is on 31.10.2018. Accordingly, this Tribunal is of the considered opinion that the application is barred by limitation since the date of filing the application is beyond the limitation. The other issue for consideration is whether the minimum threshold for filing Petition under section 9 is met or not. In this connection, it is pertinent to refer to the recent orders of Hon'ble NCLT Mumbai Bench, in the matter of *Timex Bond Industries Pvt. Ltd. Vs. Deist Industries Pvt. Ltd.* order dated 10.08.2023 in C.P.No.2952/IBC/MB/2019 observed that "*However, it is settled proposition of law as laid down by Hon'ble NCLAT in various authoritative pronouncements that an Operational Creditor is not entitled for interest in the absence of any written contract between the parties. It is important to observe here that there is no stipulation for payment of interest on the invoices in case of any delay in making payment by the Corporate Debtor.*"

7. It is observed by this Tribunal that as per Part IV of Form No.5 the Amount in default mentioned was Rs. 1,35,29,193/- as on 31.10.2018 and payable along with running interest at the rate of 18% p.a on the outstanding amounts due calculated from 31,10.2018 to 30.11.2021. It is discussed above that the total amount claimed by the Operational Creditor includes the interest at the rate of 18% per annum which is admitted by the petitioner in their application. The date of default as per Form- V of the application is 31.10.2018.
8. In view of the facts and circumstances and in light of the judgment of Hon'ble NCLT stated supra this Tribunal is of the considered opinion that since there is no written agreements for payment of interest is expressed in the agreement which is made between the parties. Further, noted that the petitioner is solely for the purpose of meeting the requirement of section 4 of the Code, claimed that interest which is not

provided in the Agreement between the two parties. Accordingly, the threshold limit stipulated under section 4 of the Code is not met.

9. Accordingly, this Tribunal holds that this Petition is not a fit case for admission. The limitation period and threshold limit stipulated u/s 4 of the code is not met. Therefore, the instant petition **CP (IB) No. 207/BB/2022** is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised. No order as to costs.

-Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd/-

**(T.KRISHNAVALLI)
MEMBER (JUDICIAL)**