

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH(Court No – II)
KOLKATA
C.P (IB) No. 1698/KB/2019

An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

J D (India) Corporation, a proprietorship concern, represented by its proprietor Pankaj Kakrania having its registered office at 14/3 Rup Chand Roy Street, 2nd Floor, Kolkata – 700 007.

...Operational Creditor

Versus

Best Bazar Retail LLP, a Limited Liability Partnership within the meaning of LLP Act, 2008 having its registered office at 90, Foreshore Road, P.S. – Shibpur, Howrah – 711 102.

...Corporate Debtor

Date of Hearing: 28.07.2022

Date of pronouncing the order: 06.09.2022

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through Video Conferencing/physical hearing)

For Operational Creditor : Ms. Rashmi Bothra, Advocate

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Pankaj Kakrania, proprietor, J D (India) Corporation (*‘Operational Creditor’*) for initiation of Corporate Insolvency Resolution Process (*‘CIRP’*) against Best Bazar Retail LLP (*‘Corporate Debtor’*).
3. The present Petition was filed on **10 October, 2019** before this Adjudicating Authority. The total amount claimed in default is Rs.6,26,309/- (Rupees Six Lac Twenty Six of Three Hundred Nine only) principal amount and interest of Rs. 46,021/- @ 18% from 13.01.2019 being the due date, i.e., the Date of default.
4. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 4.1 The Operational Creditor sold, supplied and delivered readymade garments of different specification on 12.12.2018 to the Corporate Debtor and accordingly invoices were issued for a sum of Rs.6,26,309/- (Rupees Six Lac Twenty Six Thousand Three Hundred Nine)
 - 4.2 On repeated request by the Operational Creditor, the Corporate Debtor in partial discharge of the said sum issued two account payee cheque bearing nos. 030503 dated 25.03.2019 for a sum of Rs.2,00,000/ and another cheque bearing no. 030621 dated 01.06.2019 for an amount of Rs. 2,00,000/- both cheques were drawn on ICICI Bank Ltd, Howrah Branch and both cheques were got dishonoured with remarks “Funds insufficient” and leaving outstanding amount of Rs.6,26,309/- (Rupees Six Lac Twenty Six Thousand Three Hundred Nine only) and interest of Rs. 46,021/- @ 18% from 13.01.2019 being the due date to 10.06.2019 aggregating to Rs. 6,72,330/- (Rupees Six Lac Seventy Two Thousand Three Hundred Thirty Only). The Corporate Debtor had also confirmed the aforesaid amount by way of acknowledging the confirmation of the account.

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- 4.3 On receiving no payment from the Corporate Debtor, the Operational Creditor issued a demand notice dated 10 June, 2019 under section 8 of the Code, however the same was returned to the Operational Creditor as ‘Addressee Moved/Addressee could not be located’.
- 4.4 Thereafter, the Operational Creditor sent the notice to the registered email address of the Corporate Debtor reflecting on the Master Data [page 17 of the Petition].

Analysis & Findings

5. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and perused the record.
6. In a section 9 application, the preliminary point that needs to be taken into consideration is the existence of the dispute and/or a suit or arbitration prior to the receipt of the demand notice under section 8 of the Code.¹ However, in this instant case with respect to the Pre-Existing Dispute, there are no documents.
7. Different Ld. Counsel appeared for the Corporate Debtor till 23 March, 2022. On no further appearance of the Corporate Debtor after 23 March, 2022 the matter was set ex-parte as on 24 May, 2022. Various opportunities were given to the Corporate Debtor, Court notice was delivered to the Corporate Debtor on 18 April, 2022, whereas an email was also sent from the registry on 07 April, 2022 but none appeared.
8. In view of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.
9. It is, accordingly, hereby ordered as follows:-
- a) The application bearing ***CP (IB) No. 1698/KB/2019*** filed by J D (India) Corporation, the Operational Creditor, under section 9 of the Code read

¹Mobilox Innovations (P) Limited v. Kirusa Software (P) Limited, (2018) 1 SCC 353

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with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Best Bazar Retail LLP, is *admitted*.

- b) There shall be a moratorium under section 14 of the IBC.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) *Ms. Sarika Jain*, registration number *IBBI/IPA-001/IP-P-02666/2022-2023/14071*, email: *jsarika2750@gmail.com*, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - h) The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two 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) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby 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) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.
- 10. CP (IB) No. 1698/KB/2019** to come up on **15.11.2022** for filing the periodical report.
- 11.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 06th day of September, 2022

SA [LRA]