

THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 239/Chd/Hry/2021

Under Section 60(5) & 9 of
Insolvency and Bankruptcy Code,
2016.

In the matter of:

Reem Tanners Private Limited

with its registered office at
Industrial Growth Center Lassipora,
Pulwama, Kashmir (J & K)-192301, India
CIN No.:U19111JK2007PTC002806

...Applicant-Operational Creditor

Vs.

Drish Shoes Limited

with its registered office at
village Rajpurateh, Nalagarh, District- Solan
CIN No.U45202HP1987PLC007337

...Respondent-Corporate Debtor

Judgement delivered on: 12.05.2022

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Petitioner-Operational Creditor : Ms. Swati Saluja, Advocate
For the respondent-Corporate Debtor : 1.Mr. Ajay Bhagwati, Advocate
2.Mr.G.S. Sarin, Practising
Company Secretary

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Reem Tanners Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its

Managing Director, Sameer Azad with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Drish Shoes Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, Drish Shoes Limited, is a Company incorporated on 09.03.1987 under the provisions of Companies Act, 1956 with CIN No. U45202HP1987PLC007337 with its registered office at Vill. Rajpura Tehsil Nalagarh, District Solan, Himachal Pradesh. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with main petition and marked as Annexure-II (A).

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for supply of goods in the shape of wet blue and various invoices were raised which were duly received and acknowledged. (Annexure II(D))

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 2,46,87,688.59 and the default occurred on 02.05.2020. Copy of ledger account of Corporate Debtor, for the Financial Year 2020-21 & 2021-22 as maintained in the books of petitioner is attached with the main petition and marked as Annexure II(F). Copy of bank statement for the period from 05.08.2021 to 31.08.2021 is also attached with the main petition and marked as Annexure 3. Copy of the invoices raised in favour of Corporate Debtor and bill wise summary of outstanding dues and interest calculation is attached with the main petition and marked as Annexure II(D) and II(E) respectively.

5. A demand notice in Form 3 & 4 dated 11.08.2021 is stated to be served on the Corporate Debtor along with postal receipts, tracking report and email dated 26.08.2021. (Annexure - I)

6. Accordingly, order dated 25.11.2021, notice of this petition issued to the corporate debtor to show cause as why this petition be not admitted. Mr. G.S. Sarin, Practising Company Secretary who was present, accepted notice and filed his Memo of Appearance and reply on behalf of corporate debtor.

7. It is submitted by the respondent-corporate debtor in its reply vide Diary No. 01063/3 dated 01.02.2022 that the company is in not in a position to pay-out any amount to any of its creditors as it is facing imminent losses in its business. The Corporate Debtor has expressed its inability to pay its outstanding debt.

8. The respondent-corporate debtor has submitted that corporate debtor is in financial distress and would be greatly aided by corporate restructuring and presently corporate debtor is a running concern.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 11.08.2021 was properly served. The demand notice was received as per tracking report annexed as Annexure 1 of the main petition. In view of the same, it is held that the demand notice has been duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is pleaded by respondent-corporate debtor, that it is unable to pay its outstanding debts and seeking acceptance of present petition in the interest of all stakeholders. It is also pleaded that there is no dispute of unpaid operational debt pending between the parties in

any court of law or any other authority. The same has been inferred from the affidavit in terms of Section 9(3)(b) of the Code, 2016. The affidavit is attached with the main petition. It implies that there is no pre-existing dispute in relation to the debt claimed as per Part IV of Form 5.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice dated 11.08.2021 in Form 3 attached as Annexure 1 was duly served on the corporate debtor through speed post. Therefore, the period of limitation would begin from the date of default mentioned in Part IV, Form V i.e. 02.05.2020. This application was filed on 24.08.2021 vide Diary No. 01063. Therefore, this Adjudicating Authority finds that this application was filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,46,87,688.59. The operational creditor has supplied goods to the corporate debtor and raised invoices attached as Annexure II(D). Ledger accounts maintained by the operational creditor have been attached at Annexure II(F). Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore as per the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020 by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the abovementioned facts that the liability of the corporate debtor is undisputed and admitted. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by petitioner is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Drish Shoes Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 action under the Securitization and Reconstruction of Operational 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 the possession of the corporate debtor.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process 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.

19. In the present matter IA No. 281/2022, has been filed under Section 60(5) of the Code, 2016 for substitution of the proposed IRP Mr. Ashok Kumar Jain with Mr. Pradeep Kumar Kabra. It is submitted by learned counsel for the applicant that no objection from Mr. Ashok Kumar Jain has been taken and has been placed on record as Annexure-1 and written consent alongwith affidavit and IBBI Registration Certificate of Mr. Pradeep Kumar Kabra (proposed IRP) have placed on record as Annexure A-2. Mr. Pradeep Kumar Kabra, newly proposed IRP is substituted in place of Mr. Ashok Kumar Jain keeping in view, the facts and circumstances mentioned in the application as Mr. Ashok Kumar Jain, earlier proposed IRP is having some health issues, IA No. 281/2022 is allowed vide order Dated 13.04.2022.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pradeep Kumar Kabra and there is nothing adverse against him. In view of the above, we appoint Mr. Pradeep Kumar Kabra, Registration No. IBBI/IPA-001/IP-P01104/2017-18-11790, E-mail:

ippradeepkabra@gmail.com, Mobile No. 9374081166 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Pradeep Kumar Kabra shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his

profession and as an Insolvency Professional with high standards of ethics and moral;

- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene

first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

21. The petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

22. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

May 12, 2022
HM/ASH