

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT - II**

**C.P. (IB)- 3490 (MB)/ 2019**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**BSH Household Appliances**

**Manufacturing Private Limited,**

Having its Registered office at: Arena House, 2<sup>nd</sup> Floor Main Building, Plot No. 103, Road No. 12, MIDC, Andheri (East), Mumbai- 400 093 (Maharashtra)

.....Operational Creditor

Vs

**D J Appliances Private Limited,**

(CIN No.: U74900MH2008PTC183082)

Having its Registered Office at: 611, Reliance Business Centre, Opp Heera Panna Mall, Anandnagar, Oshiwara, Andheri (West), Mumbai – 400 053 (Maharashtra).

.....Corporate Debtor

**Order delivered on:- 24.04.2023**

*Coram:*

**Hon'ble Member (Technical)**

**Shri Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**Shri Kuldip Kumar Kareer**

*Appearances:*

For the Operational Creditor

For the Corporate Debtor

: Mr. Ameya Mahajan, Advocate

: Mr. Yahya Batatawala, Advocate

## ORDER

*Per: Shyam Babu Gautam, Member Technical*

1. This Company Petition is filed by *BSH Household Appliances Manufacturing Private Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *D J Appliances Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an aggregate sum of **Rs.1,21,14,600/-** (Rupees One Crore Twenty-One Lakhs Fourteen Thousand Six Hundred Only) together with interest at the rate of 18% per annum upto the date of actual realization of the outstanding operational debt.
3. The Operational Creditor is engaged in the business of sale and supply of electrical appliances and the Corporate Debtor is engaged in the business of selling household and electronic goods. The Corporate Debtor expressed their interest in becoming the dealer of the Operational Creditor in order to sell the goods manufactured by the Operational Creditor at their outlets situated across the country. For this purpose, the

Corporate Debtor had approached the Operational Creditor from time to time for the purchase of various appliances of different specifications and quantity manufactured by the Operational Creditor as and when required by the Corporate Debtor. The Operational Creditor supplied the said goods and raised invoices against the sale after the Corporate Debtor received the goods without any protest.

4. Since the Corporate Debtor has regular business dealings with the Operational Creditor, the latter maintained a running credit account in their books of accounts and adjusted all the payments made by the Corporate Debtor against the available due invoices as and when paid and updated the balance outstanding amount in due course of business. Accordingly, the Operational Creditor raised **125 invoices** amounting to **Rs. 1,29,21,619/-** only out of which an amount of **Rs. 1,21,14,600/-** only remains outstanding after adjusting part payments made by the Corporate Debtor totaling to **Rs. 8,07,019/-** only. The Operational Creditor submits that the invoices expressly stipulated an interest of 18% per annum would be charged if the outstanding invoice amounts are not paid by the due date. Copies of the invoices raised have been duly attached to this Petition.
5. Subsequently, since no payments were made by the Corporate Debtor, the Operational Creditor issued a **Demand Notice dated 29<sup>th</sup> May 2019** demanding the payment of the entire outstanding amount along with the interest. As the Corporate Debtor failed to issue any Reply to the Demand Notice, the

Operational Creditor filed the present **Petition on 24<sup>th</sup> September 2019.**

6. The Corporate Debtor filed a **Reply to this Petition dated 9<sup>th</sup> March 2022** stating that they have been incurring continuous losses since the last 3-4 years and could not meet their payment obligations due to lack of funds. Consequently, the Corporate Debtor expressly admits the default in meeting their payment obligations and submit that they are unable to meet their commitments at present.

### **FINDINGS**

7. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. It is evident from the Ledger records annexed to this Petition that an aggregate operational debt of **Rs.1,21,14,600/-** exists and remains unpaid till date. It is noted that there is no pre-existing dispute between the parties. In fact, the Corporate Debtor states that they are unable to make any further payments and admit their liability in clear terms. It is also noted that the invoices due and outstanding were raised between 30<sup>th</sup> November 2017 and 29<sup>th</sup> March 2018 and since this Petition was filed on 24<sup>th</sup> September 2019, the debt is not barred by limitation.
8. The Operational Creditor has thus successfully demonstrated and proved the debt and default in this case. The Corporate Debtor admits the default and submits that there is no pre-existing dispute. We, therefore, conclude that this Petition

satisfies all the necessary requirements for admission under Section 9 of the Code.

9. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

### **ORDER**

- a. **The above Company Petition No. (IB)- 3490 (MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **D J Appliances Private Limited**.
- b. This Bench hereby appoints **Mr. Hitesh Kothari**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00324/2017-2018/10929 as the Interim Resolution Professional having e-mail ID: [hiteshkotharics@gmail.com](mailto:hiteshkotharics@gmail.com) and having phone no. 9702246060 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; 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 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.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**

Anusha  
24.04.2023