BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-3398/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s Shriji Diamonds,

Having registered address at

S-606, School Block, Shakarpur,

New Delhi-110092 ...Operational Creditor/Applicant

Versus

M/s Badri Sarraf Jewels Pvt. Limited
Regd. Office:
A-70, Lajpat Nagar-II,
New Delhi-110024

...Corporate Debtor/Respondent

Delivered on 20.05.2022

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Appearances:

Operational Creditor : Adv. Narender Pal Singh and Harshita Aggarwal

Corporate Debtor:

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-3398/ND/2019 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s Shriji Diamonds is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of the Corporate Debtor viz., M/s Badri Sarraf Jewels Private Limited**,** declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

   a. It is the case of the Operational Creditor that the Corporate Debtor approached the Operational Creditor and from time to time placed various orders for the purpose of purchase of variety of jewellery items for their business needs and requirements. The Operational Creditor had been dealing with Corporate Debtor since the year 2013 and only after checking the purchased jewellery and being completely satisfied, the Corporate Debtor made payments to the Operational Creditor in discharge of their liability towards the jewellery items purchased by them.

b. It is submitted that the total value of the goods supplied by the Operational Creditor from February 2013 to 2018 was Rs. 52,91,222.48/- for which the operational creditor raised the invoices from time to time. It is stated that towards invoices raised by the Operational Creditor, a balance payment of Rs. 26,89,715.18/- is still unpaid and outstanding by the Corporate Debtor which it is liable to pay in full and final to Operational Creditor.

c. It is further submitted that Demand notice was sent to corporate debtor on 20.09.2019, however, the Corporate Debtor neither replied to the said notice nor pay the due amount. It is stated that last invoice raised by Operational Creditor upon Corporate Debtor was on 30.10.2018 and the last payment of Rs. 48,019.00/- from Corporate Debtor was also received on 30.10.2018. The date from which debt fall due is 30.10.2018 as the corporate debtor stopped making any payment after the said date. Hence, the present petition has been filed for initiation of CIRP of corporate debtor.

3. The Corporate Debtor has been provided with several opportunities for appearance. After being satisfied that the Corporate Debtor is not

interested in pursuing the present petition, this Adjudicating Authority vide order dated 10.11.2021 set Corporate Debtor ex-parte, the relevant extract of the order dated 10.11.2021 is as follows:

> "*Counsel for the Operational Creditor is present. Counsel for the Corporate Debtor. During the last hearing on 06.07.2021, it was made clear that if the Corporate Debtor is not present on the next date of hearing, the matter will be decided in absence of Corporate Debtor. Accordingly, this Tribunal proceeds ex-parte as regards Corporate Debtor is concerned for all future proceedings in this matter.*"

4. The Operational Creditor during arguments reiterated all the facts and further submitted that copies of various invoices raised to the Corporate Debtor have already been annexed as Annexure-B (Colly.) with the Application u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') which bear signatures of the director Mr. Manu Kesarwani, confirming that the delivery was taken in good order and condition. The Operational Creditor relied on Patin Koticha V/s VFC Industries Pvt. Ltd., 2008 (2) BomCR 155], [Punjab Pen House V/s Samrat Bi-Cycle Limited, AIR (1992) Delhi 1]. In these judgments it was held that the invoices contain proper terms and conditions which amount to execution of contract between the parties. The Operational Creditor further placed its reliance on judgment of Mobilox Innovations

Private Limited V/s Kirusa Software Private Limited, Civil Appeal No.9405 of 2017 dated 21.09.2017. It was held by Hon'ble Supreme Court that once the operational creditor has satisfied that there is supply of goods and services, there is default in payment on the part of corporate debtor and there is no pre-existing dispute raised by the Corporate Debtor, therefore, the present petition may be admitted in view of the above facts and circumstances

5. We have perused the Pleadings and arguments advanced by both the parties. It is clear from the pleadings that the Operational Creditor has supplied the goods to the Corporate Debtor as evident from invoices annexed, furthermore, there is no reply to the statutory notice by the Corporate Debtor in order to bring pre-existing dispute in the light. Also there is an amount outstanding which corporate debtor has defaulted in payment which is evident from the ledger account. It is also pertinent to mention that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affair on 24th March, 2020 and the amount defaulted by the Corporate Debtor and filing of the petition was much before that, since any notification issued by the Government are generally Prospective in nature unless specifically expressed, hence the notification is not applicable to the present case. Hence, this

authority is inclined to initiate the CIR Process of Corporate Debtor, therefore, the captioned petition is **admitted**.

6. The Applicant has not proposed any insolvency resolution professional despite given ample time to propose the name of Insolvency Professional. Therefore, this Adjudicating Authority, hereby, appoints Insolvency Professional namely, **Mr. Rajesh Kumar Goel** having registration no. IBBI/IPA-001/IP-P01810/2019-20/12761 (Email ID- rajesh.goel@mrgoel.com) as Interim Resolution Professional from the list provided by IBBI. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

7. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
    a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.

9. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016. The Operational Creditor is directed to immediately pay an amount

of Rs.2,00,000/- to IRP for performing the duties as per the relevant provisions of the Code and relevant regulations.

10. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.

11. The Registry is directed to serve a copy of this order on Registrar of Companies, Delhi & Haryana for appropriately updating the status of Corporate Debtor on M/O Corporate Affairs website for information of general public. The RoC as aforesaid shall then file a compliance report in this regard with this Adjudicating Authority.

12. The order is pronounced by this Adjudicating Authority in virtual Hearing.

-Sd-

(Bachu Venkat Balaram Das)
Member (Judicial)

-Sd-

(Narender Kumar Bhola)
Member (Technical)