

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 1127/KB/2019

In the matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the matter of:

M/s. Swatch Group (India) Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having CIN : U74999DL2000PTC105409, and having its registered office at 4th Floor, Rectangle One Building, Plot D-4, Saket District Centre, New Delhi – 110 017.

... **Operational Creditor**

-Versus-

In the matter of:

M/s. Prime Retail India Ltd., a company incorporated under the provisions of the Companies Act, 1956, having CIN : U63090WB1990PLC048986, and having its registered office at 1/1 Camac Street (A.K.A. 8/1 Middleton Row, Kolkata – 71), 5th Floor, Shree Manjari Building Suite No. 07, Kolkata, West Bengal – 700 016.

... **Corporate Debtor**

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**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsels appeared:

1. Mr. Siddhartha Datta, Advocate]
2. Ms. Suhani Dwivedi, Advocate] For the Operational Creditor
1. Mr. Shwetank Nigam, Advocate] For the Corporate Debtor

Date of Pronouncement of Order: 27th August, 2019

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial):-

1. This is an application filed by **Swatch Group (India) Pvt. Ltd.** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (In short, I & B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short, CIRP) against the Corporate Debtor, **Prime Retail India Ltd.** claiming that a sum of **Rs. 9,53,64,236/- (Rupees Nine Crores Fifty Three Lakhs Sixty Four Thousand Two Hundred and Thirty Six only)** is the unpaid

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operational debt due from the Corporate Debtor including interest @ 18% p.a. and that despite demand, the Corporate Debtor did not pay the amount and hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.

2. The facts, in brief, as stated by the Operational Creditor, are as follows:-

a) The Operational Creditor, a Company incorporated under the Companies Act, 1956, with CIN: U74999DL2000PTC105409 supplied to the Corporate Debtor goods, being watches from time to time, in terms of the Retail Agreements executed between the Operational Creditor and the Corporate Debtor, and separate invoices were issued for each consignment of the watches. The Corporate Debtor has not made any payment to the Operational Creditor for the watches supplied by it to the Corporate Debtor since November 2018. The net value of such watches supplied is Rs. 8,69,63,284/- which remains outstanding till date. Copies of the aforesaid agreements are enclosed with the application and marked as "**Enclosure 2**" to the Demand Notice dated 21.05.2019.

b) The non-payment of the above said amount has been admitted by the Corporate Debtor in emails dated 10.12.2018, 05.01.2019 and letter dated 27.12.2018. Copies of the same are enclosed in the application as "**Enclosure 3**" to the Demand Notice dated 21.05.2019. Despite repeated reminders by the Operational Creditor

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via emails, the Corporate Debtor has failed to clear the outstanding dues. On account of the default by the Corporate Debtor in payment of outstanding amounts to the tune of **Rs. 9,53,64,236/-**, a demand notice in Form 3 along with Form 4, being the notice with which invoices demanding payment are attached, enclosing the Outstanding Statement of watches along with invoices and proof of dispatch of watches, was issued under the I & B Code, 2016 on 21.05.2019 and the same is enclosed with the Demand Notice dated 21.05.2019, as "**Enclosure 6**". Copy of the said Demand Notice along with proof of service upon the Corporate Debtor is annexed and marked as "**Annexure A**". The Corporate Debtor issued a reply to the Demand Notice on 28.05.2019, without raising any disputes with regard to the outstanding dues payable, nor was any proof of payment of such outstanding dues provided, and copy of the said reply is annexed as "**Annexure B**". As no amount has been paid by the Corporate Debtor towards the unpaid operational debt despite repeated requests and demands made by the Operational Creditor, therefore, the Operational Creditor has filed this application.

3. In support of the claim of unpaid operational debt, the Operational Creditor has submitted the following documents:-

- i) Copies of the Retail Agreements dated 22.11.2013 and 22.04.2010, executed between the Operational Creditor

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and the Corporate Debtor, annexed in the application as **"Enclosure 2"** to the Demand Notice dated 21.05.2019.

- ii) Copies of the Invoices as part of Form 4, being the notice with which invoices demanding payment are attached, enclosed with the application as **"Enclosure 6"** to the Demand Notice dated 21.05.2019.
- iii) Copies of emails dated 10.12.2018, 05.01.2019 and letter dated 27.12.2018 by the Corporate Debtor admitting the principal amount due, enclosed with the application as **"Enclosure 3"** to the Demand Notice dated 21.05.2019.
- iv) Copy of the Demand notice dated 21.05.2019 issued to the Corporate Debtor, referred to in the application as **"Annexure - A"**.
- v) Copy of the reply to the Demand Notice, sent by the Corporate Debtor dated 28.05.2019, marked as **"Annexure - B"**.
- vi) Copy of the Statement of Bank Accounts maintained by the Operational Creditor, annexed and marked as **"Annexure - D"**.

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- vii) Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of unpaid operational debt, annexed with an additional affidavit dated 22.08.2019 filed in support of the application.
4. The Corporate Debtor has failed and neglected to make payment of operational debt of **Rs. 9,53,64,236/-** to the Operational Creditor including interest, in spite of notices and reminders. Subsequently, the Operational Creditor issued a demand notice, despite receipt of which the Corporate Debtor failed to make payments towards the unpaid operational debt and so the Operational Creditor filed the instant application under Section 9 of the I & B Code for initiating Corporate Insolvency Resolution Process as against the Respondent.
5. The Applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, and produced Form 2 and written communication (annexed in the application as "**Annexure F**") from **Mr. Kamlesh Kumar Singhania**, with address at 2B, Grant Lane, 4th Floor, Wing No. 412, Kolkata – 700 012, with **Registration No. IBBI/IPA-002/IP-N00023/2016-17/10050** with e-mail id : info@avipgroup.co.in.

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6. Notice of admission was served upon the Corporate Debtor, and Ld. Counsel for the Corporate Debtor also entered appearance. However, he did not choose to file any reply affidavit and also admitted the claim.

7. This is an application filed under Section 9 of the I & B Code, 2016 for initiating CIRP as against the Corporate Debtor alleging that the Corporate Debtor, who was in receipt of certain goods, being watches provided by the Operational Creditor, had failed to make payments for the said goods received, despite demand and had committed default in payment of the unpaid operational debt to the extent of **Rs. 9,53,64,236/-** including interest @ 18% p.a. payable by the Corporate Debtor to the Operational Creditor, claiming that the amount is due on the basis of invoices raised, copies of which were produced along with the application as "**Enclosure 6**" to the Demand Notice dated 21.05.2019. The Operational Creditor has supplied watches to the Corporate Debtor in terms of the Retail Agreements dated 22.11.2013 and 22.04.2010, executed between the Operational Creditor and the Corporate Debtor, annexed in the application as "**Enclosure 2**" to the Demand Notice dated 21.05.2019. The Corporate Debtor has not made any payment to the Operational Creditor for the watches supplied by it to the Corporate Debtor since November 2018. The net value of such watches supplied is Rs. 8,69,63,284/- which remains outstanding till date in

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spite of several reminders, as reflected from the Statement of Account maintained by the Operational Creditor in respect of the Corporate Debtor. A copy of the Statement of Bank Account of the Operational Creditor is annexed with the application and referred to as “**Annexure – D**”.

8. According to the Ld. Counsel for the Operational Creditor, the requirement to be meted out to file an application of this nature by the applicant has been complied with. She has submitted that since the Corporate Debtor did not pay the operational debt due to the Operational Creditor, she has filed this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and deserves to be allowed.
9. According to the Ld. Counsel for the Applicant, the non-payment of the principal amount is admitted by the Corporate Debtor vide its emails dated 10.12.2018, 05.01.2019 and letter dated 27.12.2018, copies of which are enclosed with the application as “**Enclosure 3**” to the Demand Notice dated 21.05.2019. Subsequently, a Demand Notice dated 21.05.2019 as per Section 8(1) of the I & B Code was issued by the Operational Creditor and delivered to the Corporate Debtor, and the Corporate Debtor replied to the notice via letter dated 28.05.2019 neither raising any dispute about the outstanding dues nor produced any proof of payment towards the outstanding

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debt and no payment was made towards the unpaid operational debt. Copies of the demand notice and the said reply are annexed with the application and marked as “Annexure – A” and “Annexure – B”, respectively. To fulfill all requirements under Section 9(3), the Operational Creditor has furnished along with the application, (i) copies of the invoices demanding payment and the demand notice delivered by the operational creditor to the corporate debtor as required under Section 9(3)(a); (ii) an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt as required under Section 9(3)(b), which has been filed by way of an additional affidavit dated 22.08.2019; (iii) statement of bank account showing details of part payments made to the Operational Creditor by the Corporate Debtor towards the operational debt as required under Section 9(3)(c).

10. The Applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, Mr. Kamlesh Kumar Singhania, with address at 2B, Grant Lane, 4th Floor, Wing No. 412, Kolkata – 700 012, with **Registration No. IBBI/IPA-002/IP-N00023/2016-17/10050** with e-mail id: info@avipgroup.co.in. A reference to the Form 2 produced on the side of the applicant as “Annexure – F” proves that there are no disciplinary proceedings pending against him.

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11. Therefore, the Operational Creditor succeeds in proving that the application is complete, that there is no payment of the unpaid operational debt, also that the demand notice has been delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The applicant, here in this case, succeeds in proving that it has complied with all the requirements to be meted out for filing an application under Section 9(3) of the I & B Code, 2016 and further proves failure on side of the Corporate Debtor in clearing the debt due to the Operational Creditor, even after receiving the demand notice under Section 8(1) of the Code. Therefore, the application deserves to be allowed.
12. In view of the above-said discussion, we admit this application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 upon the following orders:-

ORDER

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Prime Retail India Ltd.** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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

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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 corporate debtor.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) **Mr. Kamlesh Kumar Singhania**, with address at 2B, Grant Lane, 4th Floor, Wing No. 412, Kolkata – 700 012, with **Registration No. IBBI/IPA-002/IP-N00023/2016-17/10050** with e-mail id: info@avipgroup.co.in is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional within One week of the date of this order.
- xiii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

- xiv) List the matter on **27.09.2019** for the filing of the progress report.
- xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Harish Chander Suri)
Member (T)

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(Jinan K.R.)
Member (J)

Signed on this, the 27th day of August, 2019.

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