

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**C.P. (IB) No. 3644/NCLT/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Kiwi International**

...Operational Creditor / Applicant

V/s

**Alaska Creations Private Limited**

...Corporate Debtor / Respondent

**Order Dated: 11<sup>th</sup> September 2019**

**Coram:** Hon'ble Member (Judicial): Mr V. P. Singh  
Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Applicant:** Advocate U. L. Shah

**For the Respondent:** None present

*Per: V. P. Singh, Member (Judicial)*

**ORDER**

1. This is an application filed on 25.09.2018, being CP 3644(IB)/MB/2018 filed by **Kiwi International**, the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Alaska Creations Private Limited**, the corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of ₹97,10,749/- (Rupees Ninety Seven Lakh Ten Thousand Seven Hundred and Forty Nine Only) including interest @ 18% p.a. as on 08.08.2018. The Application is filed by Mr. Dhiraj Devichand Jain, the Partner of the Operational Creditor duly authorised to file this Application vide Authority Letter dated 05.09.2018.
3. The Applicant submits that it supplied footwears from 28.04.2016 to 12.06.2017 as per the oral purchase orders by the Corporate Debtor. The invoices for the materials supplied from 28.04.2016 to 12.06.2017 are annexed to the Application.
4. The Applicant has also annexed Certificates of Export dated 07.12.2016, 17.01.2017, 27.07.2017 and 02.10.2017 along with shipping and transport documents reflecting the signature of the authorised signatory along with rubber stamp of the Corporate Debtor which prove the business transaction entered into between the Applicant and the Corporate Debtor.

5. Further, the Applicant submits that it was maintaining a running account with the Corporate Debtor, which is proved by Ledger Account of the Corporate Debtor, maintained by the Applicant reflects the same.
6. The Applicant submits that despite being satisfied with the goods, the Corporate Debtor has failed to pay the due amount under the invoices. The copies of the reminder emails dated 04.11.2016, 03.03.2017, 22.03.2017, 02.04.2017 and 24.03.2018 sent by the Applicant to the Corporate Debtor are annexed to the Application.
7. The Applicant submits that the Application has been filed within the period of limitation, as the date of last payment made by the Corporate Debtor is 05.06.2017. Copy of the Ledger Statement of the Corporate Debtor maintained by the Applicant reflects payment of ₹7,00,000/- on 05.06.2017, which is annexed to the Application.
8. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide Order dated 15.11.2018. The applicant filed its affidavit of service of the Court Notice dated 01.01.2019 on 01.01.2019. Thereafter, the Counsel for Corporate Debtor appeared on 09.04.2019 and on the same day respective Counsels for both the parties submitted that there is possibility of settling the matter. Further, on 30.04.2019 the respective Counsels for both the parties submitted that the matter had been settled and they will file consent terms. However, subsequently no consent terms were filed, and the Corporate Debtor also failed to appear before this Bench after that.
9. The Application is complete and has been filed in the proper form 5 as prescribed under Adjudicating Authority Rules. Copy of the Demand Notice dated 09.08.2018 along with the postal track report dated 19.09.2018, reflecting the due receipt of the Notice by the Corporate Debtor is filed by the operational creditor. The applicant has also filed Affidavit in compliance of section 9(3)(b) of the Code dated 21.09.2018, stating that the Applicant has not received any payment or notice of dispute from the Corporate Debtor after service of demand notice.
10. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I & B Code, 2016. The Corporate Debtor has not raised any dispute in

respect of the quality of goods supplied by the operational creditor.

11. The Applicant has proposed the name of Mrs Preeti Vimal Agrawal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P 00655/2017-2018/11144] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given her declaration that no disciplinary proceedings are pending against her.
12. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has been established. The application is complete.
13. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

#### **ORDER**

This Application filed under Section 9 of I&B Code, 2016, presented by **Kiwi International**, Operational Creditor / Applicant against **Alaska Creations Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 Financial 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Mrs Preeti Vimal Agrawal**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P 00655/2017-2018/11144]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**  
**RAJESH SHARMA**  
Member (Technical)

**Sd/-**  
**V. P. SINGH**  
Member (Judicial)

11<sup>th</sup> September 2019