

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP No. 310/(IB)-MB-V/2020

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

In the matter of

Alpa Sandeep Jain

Sole Prop: NAKODA GOLD

Office at 14, Bhaskar Lane, 1st Floor, Room No. 25,
Hargovind Desai Wadi, Bhuleshwar, Mumbai –
400002.

... Petitioner/Operational Creditor

V/s

M/s. Adgaonkar Saraf Private Limited

Viraj Corner, Canada Corner, Sharanpur Road,
Nashik, MH-422002.

... Respondent/Corporate Debtor

Order Reserved on: 20.12.2022

Order Pronounced on: 31.01.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner : Mr. Kiran Jain, Advocate

For the Corporate Debtor : None.

Per: *Kuldip Kumar Kareer, Member (Judicial)*

ORDER

1. This Company Petition is filed by **Alpa Sandeep Jain, Sole Proprietor of Nakoda Gold** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **M/s. Adgaonkar Saraf Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default on 30.11.2019 to the extent of Rs. 4,89,721.11/- along with further interest of 18% per annum from December 2019 till payment or realisation. This Petition has been filed by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "**Code**") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The computation of amount in default are as follows:

Sr. No.	Invoice No.	Invoice Date	Due Date	Amount Due	Default No of days	Interest @18%
1.	3	16/3/18	15/04/18	81,859.00	594	23,979.08
2.	5	16/3/18	15/04/18	2,16,079.00	594	63,296.34
3	49/2018	31/7/18	31/08/18	16,996.00	579	4,852.94
4	62/2018	03/9/18	02/10/18	68,392.00	423	14,266.75
			TOTAL	3,83,326.00		1,06,395.11

3. The Petition reveals that the Petitioner is a proprietor concern engaged in the business of manufacturing and wholesaler of gold-plated jewellery and items, for their clients. The Corporate Debtor had offered to purchase Gold-Plated jewellery and items from the Petitioner and the Petitioner had supplied the requisite goods by raising the invoices from the period of March 2018 to September 2018. The Petitioner delivered the goods to the Corporate Debtor and the same had been duly received and accepted by

the Corporate Debtor without any demur or objections. The invoices raised by the Petitioner, provided a credit period of 30 (thirty) days to make payment towards the invoice, failing which the Petitioner would be charged an interest of 18% p.a. from the date the amount became due till payment and/or realization.

4. The Corporate Debtor failed to make the payment of the outstanding dues amounting to Rs. 3,83,326/- towards the 4 (four) invoices bearing no. 2, no. 5, no. 49/2018 and no. 62/2018 dated 16.03.2018, 16.03.2018, 31.07.2018 and 03.09.2018 respectively, even after the Petitioner gave repeated reminders.
5. Thereafter, the Corporate Debtor issued two post-dated cheques bearing no. 9940 of Rs. 1,00,000/- dated 27.04.2019 and bearing no. 9941 of Rs. 83,325/- dated 29.04.2018, which were returned dishonoured vide Bank Memo dated 02.07.2019. Even after this, the Petitioner followed up repeatedly with the Corporate Debtor but no payment was received.
6. Pursuant to above, the Petitioner issued a legal notice dated 24.07.2019, calling upon the Corporate Debtor to clear the outstanding dues. Further, on 05.12.2019, a Demand Notice was issued in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with copies of the defaulted invoices for payment of outstanding dues. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed an affidavit, as required under Section 9(3)(b) of the Code, stating that there was no reply from the Corporate Debtor.
7. From the above circumstances it is established beyond doubt that the Petitioner had supplied the goods against invoices and the same had been duly received and accepted by the Corporate Debtor without any demur or objections, but he had not made payments. Further, the Corporate Debtor had failed to appear despite service of notice and personal notice

dated 01.02.2020 and 26.08.2022 and therefore, was proceeded against ex-parte.

8. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of Operational Debt to the tune of Rs. 4,89,721.11/- giving a cause of action to the Petitioner to invoke the provisions of Section 9 of the Code. Hence, owing to the inability of the Corporate Debtor to pay its dues, therefore we are of the considered view that this Petition deserves to be admitted. It is ordered accordingly in following terms:

ORDER

- a. The above Company Petition No. 310/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Adgaonkar Saraf Private Limited.**
- b. **Mr. Viral Vora**, having registration No. IBBI/IPA-001/IP-P-02703/2022-2023/14141, having email Id- ipviral.vora@gmail.com, having Mobile Number- 9619716363, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP 310 of 2020 is **admitted**.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)