

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 3970/I&B/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Ekmart Trading Private Limited

C-6, Ground Floor Mahalakshmi SRA CHS
Ltd. Pandurang Budhkar Marg Worli,
Mumbai-400013.

.... Petitioner

V/s.

Altrarex Traders Private Limited

S-106, Fantasia Plot No. 47 Sec 30A,
Vashi, Navi Mumbai Thane-400703.

.... Corporate Debtor

Order delivered on: 28.11.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Ms. Madhavi Nalhari Adv. a/w
Mr. Rahul Punjabi Adv.

For the Corporate Debtor: Mr. Kunal Kanungo Adv. a/w
Ms. Tanushree Sagani Adv.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company petition is filed by Ekmart Trading Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Altrarex Traders Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of Rs.49,20,29,299/- 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 petition reveals that the Petitioner and the Corporate Debtor entered into a trading agreement dated 20.08.2019 in which the Petitioner agreed to supply gold bars and jewellery to the Corporate Debtor. The

Petitioner supplied the goods from 06.09.2019 to 18.09.2019 to the extent of Rs.48,20,28,307/- and raised tax invoices cum challan nos. 53 to 64, along with deal tickets and authority letters to lift the material were raised by the Petitioner from time to time.

3. The Corporate Debtor issued the cheque no. 181326 on 21.09.2019 for Rs.18,07,93,911/- towards the outstanding dues but the cheque was returned with the remark "funds insufficient" when presented for payment. The copy of the return memo is enclosed to the petition. Subsequently the Corporate Debtor has made a payment of Rs.1,30,00,000/- and finally the balance payable by the Corporate Debtor is Rs.48,20,28,307/- as per the ledger enclosed to the petition at page no.62.

4. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of dues, on 10.10.2019, the Petitioner issued Demand Notice, under Section 8 of the Code, demanding a sum of Rs.48,70,94,047/-. However, there was no reply from the Corporate Debtor for the Demand Notice.

5. The Corporate Debtor has filed reply to the petition by merely saying that there is a deficiency in quality and quantity and there are antecedent disputes and also quoted judgement of the Hon'ble Supreme Court in the "*Mobilox innovations (p) Ltd v. Kirusa software (P) Ltd.*" MANU /SC/1196/2017 and submits that there is a pre-existing dispute. However, the Corporate Debtor has not produced any document showing that there is an existence of dispute as provided under Section 5(6) of the Code and the Petitioner contended that it is only a bald allegation and in fact there is no dispute. The Corporate Debtor has not shown us dispute of any kind as pleaded in the reply to the petition. In view of this, the reliance of the corporate debtor on the judgement cited supra is of no avail. Hence, the petition deserves admission.

6. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of

law; 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.

- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 28.11.2019 till the completion of the CIRP 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.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Hemant Sharma, residing at 2/263, Subhash Nagar, New Delhi-110027; having Registration No. IBBI/IPA-002/IP-N0015/2016-17/10019; having email id hemant78sharma@yahoo.com as Interim Resolution Professional to carry the functions as mentioned under the Code.

7. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)