IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) 662/MB/C-IV/2021
Under section 9 of the I&B Code, 2016
In the matter of
Casabella Trading Private Limited
[U74999MH2015PTC267824]
…Operational Creditor
v/s.
Sachika Trading Private Limited
[U99999MH1973PLC016649]
…Corporate Debtor

Order Delivered on: 03.10.2022

Coram:

Shri Manoj Kumar Dubey	Shri Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Manoj Kumar Mishra, Advocate.
For the Respondent(s)	:	Mr. Santosh Kumar, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Casabella Trading Private Limited ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sachika Trading Private Limited ("the Corporate Debtor"). The Operational Creditor claiming a sum of Rs.7,94,00,127/- inclusive of interest

@18% p.a. which is said to be amount in default. The date of default is 08.06.2017. The Petition is filed on 30.06.2021.

2. The Corporate Debtor is a private limited Company incorporated on 18.02.2011 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U51109MH2011PTC213791. Its registered office is at E-203, Kailash Industrial Complex, Veer Savarkar Marg, Park Site, Vikhroli (W), Mumbai.

<u>THE CASE OF THE OPERATIONAL CREDITOR</u>

1. The Application is filed by Ms. Meena Rajkumar Agarwal, authorized by the Operational Creditor vide Board Resolution dated 27.05.2021.

2. The Operational Creditor is engaged in the business of supply of fabrics and the Corporate Debtor is engaged in the business of wholesale of garments and other clothing products.

3. The Operational Creditor/Petitioner submits that the Corporate Debtor/Respondent approached them for purchase of fabrics of various descriptions. On 02.04.2017, the Corporate Debtor issued purchase order in favour of the Operational Creditor for purchase of various items.

4. In response to the purchase order, the Operational Creditor/Petitioner supplied the materials from 20.04.2017 to 29.05.2017 to the Corporate Debtor, in respect of which various invoices have been issued by the Operational Creditor. The details of invoices are reproduced hereinunder: -

Invoice No. & Date of Invoice	**Amount outstanding (Rs.)**
CTPL/2017-18/63 20.04.2017	15,96,234
CTPL/2017-18/64 20.04.2017	36,21,097

CTPL/2017-18/67 21.04.2017	34,66,619
CTPL/2017-18/69 22.04.2017	34,84,720
CTPL/2017-18/70 23.04.2017	25,82,914
CTPL/2017-18/72 24.04.2017	22,50,227
CTPL/2017-18/77 28.04.2017	37,31,339
CTPL/2017-18/84 05.05.2017	28,58,916
CTPL/2017-18/87 09.05.2017	37,40,687
CTPL/2017-18/91 15.05.2017	29,60,859
CTPL/2017-18/97 20.05.2017	17,79,295
CTPL/2017-18/98 22.05.2017	34,53,321
CTPL/2017-18/102 26.05.2017	30,46,386
CTPL/2017-18/107 29.05.2017	27,17,745
TOTAL	**4,45,09,548**

5. The opening Balance of the Operational Creditor as on 01.04.2017 was Rs.54,94,487/- and a total sale of Rs.8,07,28,576/- was made from 03.04.2017 till 29.05.2017. Out of the total amount i.e. Rs.8,62,23,063/- (Opening + Sales) an amount of Rs.1,79,66,339/- has been paid by the Corporate Debtor and a credit note amounting to Rs.2,24,47,176/- towards quality adjustment was given to the Corporate Debtor.

6. The Operational Creditor/Petitioner submits that quality of the material was never objected by the Corporate Debtor. The materials were supplied with the 'payment terms' of 10 days as mentioned in the purchase order issued by the

Corporate Debtor. The last payment made by the Corporate Debtor on 31.03.2019 for an amount of Rs.38,54,214/-. The Operational Creditor further submits that the Corporate Debtor stopped making payment after that. Despite various reminders and meetings, the Corporate Debtor failed to repay the outstanding dues.

7. The Operational Creditor/Petitioner issued Demand Notice u/s 8 of the Code in Form-3 on 09.06.2021 demanding for repayment of outstanding dues aggregating to an extent of Rs. 7,94,00,127/- inclusive of interest @18% p.a. Despite receipt of the said Demand Notice, the Corporate Debtor neither replied to the notice nor repaid the outstanding dues.

8. The Operational Creditor/Petitioner filed affidavit u/s 9(3)(b) stating that there is no notice of dispute has been received by them as per provisions of the code.

REPLY BY THE CORPORATE DEBTOR

9. The Corporate Debtor filed its reply and opposed the admission of the Corporate Debtor in Corporate Insolvency Resolution Process.

10. The Corporate Debtor in its reply admitted that they had purchased the various fabric products from the Operational Creditor for an amount of Rs.8,07,28,576/- or in fact there is no denial of the fact that the supply was made and the terms of payment was 10 days. The Corporate Debtor further admits that amount claimed in the Petition was confirmed by them on 25.03.2020. The Corporate Debtor states that after 25.03.2020, in view of lockdown, they have started facing unusual problems from the side of its debtor to whom the materials have been sold. Various debtors of the Company back tracked from payment to the Company against which the Company had a huge receivable. They further submit that they are in the process of filing recovery Petition against their debtors in order to recover its dues.

11. It states that till the time Petition of the Corporate Debtor against its debtors gets disposed, the Petition under CIRP shall not serve any purpose. Therefore, this is holistic and bonafide submission that in order to ensure survival of the Corporate Debtor its operational and employees, it is a dire necessity to give time to the Corporate Debtor.

12. Further, the Corporate Debtor requests from this Hon'ble Adjudicating Authority to not trigger the vicious circle of admitting the Petitions, which will further lead to thrusting another 10 companies to go into Corporate Insolvency Resolution Process. CIRP process is not the way for healthy companies which want to do its business.

FINDINGS

13. We have prudently gone through the pleadings available on record. The Petitioner has supplied the products as requested by the Corporate Debtor and raised several invoices. The Petitioner issued Demand Notice on 09.06.2021 demanding for repayment of outstanding dues. Despite receipt of said Demand Notice, the Corporate Debtor failed to repay the dues. The Corporate Debtor in its reply have admitted the liability as well default where they are requesting from this Hon'ble Adjudicating Authority to not trigger the vicious circle of admitting the Petitions, which will further lead to thrusting another 10 companies to go into Corporate Insolvency Resolution Process. On perusal of records of records, it is seen that that the Petition was filed on 20.07.2021 and the Corporate Debtor confirms the balance outstanding as on 25.03.2020 is Rs.4,58,09,548/-, thus the Petition squarely falls within the period of limitation i.e. 3 years as per Sec. 18 of Limitation Act, 1963.

14. The Petitioner alongwith Petition also filed undated Balance Confirmation Letter duly signed by the Corporate Debtor wherein they themselves confirm the outstanding balance in their books of accounts as on 25.03.2020 is Rs.4,58,09,548/-. In view of the aforesaid averments, this Bench is of the

considered view that there is a clear debt and default and this petition deserves to be admitted.

15. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

16. The Operational Creditor has proposed the name of Mr. Rakesh Kumar Relan hsving Registration Number – IBBI/IPA-001/IP-P02009/2020-2021/13119 as Interim Resolution Professional (IRP) in the matter and his consent has also been taken and annexed to the petition.

ORDER

(a) The petition bearing **CP (IB) 662/MB/C-IV/2021** filed by Ms. Meena Rajkumar Agarwal for Casabella Trading Private Limited, [CIN- U74999MH2015PTC267824] the Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sachika Trading Private Limited [CIN- U99999MH1973PLC016649], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium,-

(i) 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;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Rakesh Kumar Relan, Registration No. - IBBI/IPA-001/IP-P02009/2020-2021/13119; Email: rakeshkrelan@gmail.com; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard by IBBI. The IRP shall carry out functions as contemplated by Sections

15,17,18,19,20,21 of the IBC. The IRP/RP shall file periodical progress reports with this Adjudicating Authority.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. All the officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP, within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) as advance with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and Email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/- Sd/-

Manoj Kumar Dubey
Member (Technical)
03.10.2022

Kishore Vemulapalli
Member (Judicial)