IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.678/MB-IV/2022

Under Section 9 of the IBC, 2016

In the matter of

Sigma Supply Chain Solution Pvt. Ltd.
[CIN: U60231DL2007PTC170276]

…Operational Creditor

v/s.

Sahara Q Shop Unique Products Range Limited.
[CIN: U74999MH2011PLC218870]

…Corporate Debtor

Order Delivered on: 06.12.2023.

Coram:

Ms. Anu Jagmohan Singh Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:	Mr. Nausher Kohli a/w Ms. Drishti Gudhaka i/b Dhruve Liladhar & Co., Ld. Counsel.
For the Corporate Debtor:	Mr. Sandeep Bajaj a/w Ms. Ambrin Khan i/b Victoriam Legalis, Advocates & Associates, Ld. Counsel.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Sigma Supply Chain Solution Pvt. Ltd ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Sahara Q Shop Unique Products Range Limited., the Corporate Debtor.

   1.1. The Company Petition is filed on 28.12.2021 claiming that an amount of Rs. 4,75,90,468.16/- (Principal Rs. 2,19,49,432/- plus Interest @ 18 % of Rs.2,58,41,036/-) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 23.03.2017.

Submissions of the Operational Creditor

2. The Corporate Debtor entered into Service Agreements with the Operational Creditor for handling, storage, maintenance, administration, distribution and arrangement of goods of the Corporate Debtor warehouse at different places in India ("Services") on the terms as recorded in the said Service Agreement.

   2.1. Pursuant to the execution of the said Service Agreement from the year 2012 to 2017, the Operational Creditor provided services to the Corporate Debtor and from time to time issued invoices. In respect of the said Invoices issued by the Operational Creditor, the Corporate Debtor made ad-hoc payments to the Operational Creditor from time to time.

   2.2. The Operational Creditor has addressed various emails to the Corporate Debtor enclosing statements of outstanding amounts due and payable by the

Corporate Debtor. The Corporate Debtor neither disputed nor denied the same.

2.3. The Invoices as set out in the Application of an aggregate amount of Rs 2,19,49,432/- are unpaid. The Corporate Debtor has inter alia acknowledged its debt vide their letter dated 22nd April, 2015 and email dated 25 April, 2015. The Corporate Debtor had by their advocates addressed an email dated 22nd September 2016, with malafide intent to avoid making payments to the Operational Creditor purported to make false and baseless allegation that goods worth Rs 2,65,00,000/- were illegally sold by the Operational Creditor. Pertinently, no legal proceedings were initiated by the Corporate Debtor against the Operational Creditor against such false and baseless allegations. The Corporate Debtor thereafter made last ad-hoc payment of Rs 10,000/- on 23rd March 2017. The Operational Creditor has maintained a mutual and running ledger of the Corporate Debtor in its book of accounts maintained in the usual and ordinary course of business. The Corporate Debtor intentionally failed and to make the payment due to the Operational Creditor under the Invoices.

2.4. The Operational Creditor was therefore constrained to issue a Demand Notice under section 8 of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, dated 25th February 2020, to the Corporate Debtor demanding the payment of Rs. 4,02,73,186/- (Rupees Four Crores Two Lakhs Seventy-Three Thousand One Hundred and Eighty-Six only) which included the interest up to the date of the Demand Notice. The Corporate Debtor, by their letter dated 7th March 2020 purported to deny their liability and with malafide intent to show that the disputes allegedly existed between the parties made false and baseless allegation that goods worth Rs 2,65,00,000/- were illegally sold by the Operational Creditor.

Submissions of the Corporate Debtor

3. The Corporate Debtor in its reply states that there are false statements made by the Operational Creditor that Ad-hoc payment of Rs. 10,000/- was made by the Corporate Debtor.

   3.1. The present application filed by the Operational Creditor is barred by limitation, stating that the alleged cause of action first arose in the year 2013, the Operational Creditor has filed the present application in the year 2021. Thus, the present petition is time barred and liable to be dismissed.

   3.2. The Operational Creditor has maliciously clubbed the claims arising out of 7 service Agreements to cross the threshold limit of Rs. 1 Crore in compliance with the provisions of Section 4 of the Code. There is a pre-existing dispute between the parties.

   3.3. The Code is not a substitute to a recovery forum. The present petition is untenable in the eyes of law and the same is liable to be dismissed.

Findings

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.
   4.1. As per the material on record this Bench finds that, the Operational Creditor has placed on record a letter dated 22.04.2015 and email correspondence dated 07.03.2016 which clearly shows admission of liability on the part of

Corporate Debtor. The extract of the letter dated 22.04.2015 and email correspondence dated 07.03.2016 is reproduced below:

i. Letter dated 22.04.2015. The relevant extract is reproduced below:

> *"It has been the constant endeavour of Sahara Q Shop Unique Products Range Limited, thereinafter referred to as "the company" to pay service charges to its vendors timely. However, due to the ongoing unprecedented precarious situation owing to the present litigation pending at the Hon'ble Supreme Court of India, the entire Sahara group is facing financial challenges in meeting their financial commitments timely across India and Sahara Q Shop Unique Products Range Limited is no exception in such condition."*
>
> ***"Indeed, the Company in an effort to discharge its liabilities towards payment of your payable outstanding to the tune of Rs. 1.76 Cr One Crores & Seventy-Six lacs) (approx) as on February 2015 has paid a sum of Rs. 15 lacs (Fifteen Lacs) In January 2015 and Rs. 11 Lacs (Eleven Lacs] on 23.04.2015 but you have intentionally neglected and failed to allow the movement of the Company's stock for sale and further resorted to the means of extortion by illegally holding our-stocks-and-documents at ransom in lieu of your outstanding dues. Please note that your act of exercising lien over the stocks kept therein is illegal, mischievous and contrary to the***

terms of the agreement and law. It is highly arbitrary and illegal on your part to withhold the Inventory worth 10 Crores, collectively at five warehouses, as against the outstanding of Rs. 1.76 Cr. (One Cr. Seventy-six lac) only, which is nothing but a sheer case of criminal breach of trust."

"Despite the fact that the stock lying at our various warehouses has worth more than what is actually due towards you, the Company has taken this initiative to pay of its debts and discharge its liability towards you. It is stated that in the event of failure to do so the Company shall incur huge losses which in all fairness, the Company shall be constrained to debit to your accounts to that extent."

ii. Email Correspondence dated 07.03.2016. The relevant extract is reproduced below:

"There is a dire need of conducting the physical Inventory (PI) for assessing the quantity stock value of Sahara's product as on date, which are lying at your warehouse in Kolkata in order to sale for the realization of capital. Certainly, as concurred by Mr. Romie Dutt (CEO) also, the amount to be so realised will be utilised ***towards the clearance of the dues of the vendor with you being on the priority****."*

This bench notes that the contents of the emails cited supra are enough to establish admission of liability by the Corporate Debtor. Moreover, the Corporate Debtor has also paid amount of Rs. 15 lakhs in January 2015 and Rs. 11 Lakhs on 23.04.2015 towards outstanding dues.This bench further observes that, the pre-existing dispute raised by the Corporate Debtor is just a way to escape paying of the legitimate dues owed to the Operational Creditor. Various payments were received by the Corporate Debtor which are reflected in the ledger account maintained by the Operational Creditor even after alleging that goods worth Rs. 2.65 Crores were misappropriated by the Operational Creditor. Further the Corporate Debtor has placed no evidence on record to support his defence. In that view of the matter, this bench is of the considered view that plea raised by the Corporate Debtor has no substance.

4.2. This bench also notes that vide order dated 27.03.2023 this bench directed the Corporate Debtor to produce its books of accounts and treatment of the amount claimed to have been misappropriated by the Operational Creditor. The Corporate Debtor produced a single page accounting treatment that reflected an entry dated in June 2016 in which the Corporate Debtor had claimed that the alleged misappropriation happened in September, 2016. This bench noticed that the earlier ledger produced by the Corporate Debtor reflected an entry made on 30.06.2016. Accordingly, this bench vide order dated 23.06.2023 directed the Corporate Debtor to clarify the confusion in the accounts maintained by the Corporate Debtor to which the Corporate Debtor produced a detailed ledger from the period June 2012 to September 2016. The ledger maintained by the Corporate Debtor did not contain any of the entries. Due to this discrepancy this bench vide order dated 07.07.2023 asked the Corporate Debtor to clarify the discrepancy and to demonstrate the corresponding credit entry to the debit entry of the Operational Creditor's account. The Corporate Debtor filed an affidavit dated 19.07.2023 stating that the earlier screenshot placed on record vide affidavit dated 21.06.2023 must be ignored and the new ledger produced in affidavit dated 05.07.2023 must be considered. This clearly raises a doubt on the veracity of the accounts maintained by the Corporate Debtor. It also reflects that no reliance can be placed on the different ledger copies produced by the Corporate Debtor, which appear manipulated. This Bench observes that the Corporate Debtor has expressly admitted its outstanding liability of 1.75 Cr in 2015. Subsequently, as an afterthought the issue of misappropriation was raised on the said amount which was an admitted transaction liability.

4.3. Further, the contention raised by the Corporate Debtor that the present petition is barred by limitation. After going through the material on record, there are multiple instances of admission of outstanding dues by the Corporate Debtor till 2016. On 15.12.2017, Company Petition No. 1378 of 2017 was filed against the Corporate Debtor by Mr. Gurumoorthi and same was admitted. Accordingly, moratorium was implemented therefore barring the Operational Creditor from filing the present Company Petition. The said order challenged before the Hon'ble NCLAT, which was dismissed. However, the said Company Petition No. 1378 of 2017 at a later stage came to be withdrawn as same was settled on 26.10.2021. The Operational Creditor in view of the Moratorium was estopped from filing the present captioned petition. The present Petition was filed on 28.12.2021 and therefore within limitation.

5. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period.

6. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

7. The petition bearing CP (IB) No.678/MB-IV/2022 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Sigma Supply Chain Solution Pvt. Ltd ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Sahara Q Shop Unique Products Range Limited., the Corporate Debtor is **Admitted.**

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 Operational 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

a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

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. The bench hereby appoints **Mr. Udaykumar Bhaskar Bhat**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P01425/2018-2019/12234** Email: **udaybhat2805@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and 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. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

VII. 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. 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.

VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

IX. 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.

X. 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/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

06.12.2023.