

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

C.P. No. 1673/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of

M. S. Enterprise
A Sole Proprietorship Concern
Through its Proprietor
Mr. Ram Murlidhar Verliani
63, Silver Industrial Estate -2, Opp.
HOF, Nr. Nova Petrochemicals,
Moraiya, Changodar, Ahmedabad

....Petitioner

v/s.

Oren Kitchen Appliances Private Limited.
Unit No. 106, Sector -1, Vasai Taluka Ind.
Estate, Ltd., Gourai Pada, Vasai (East),
Mumbai - 401209

....Respondent

Order delivered on: 19.06.2018

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Advocate Kunal Kanungo i/b Advocate
S. Venkateshwara

For the Respondent: None Present.

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by M. S. Enterprise (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Oren Kitchen Appliances Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 09.09.2017 in making payment to the extent of Rs. 24,53,432/- with interest @18% p.a. by invoking the provisions of Sections 8 and 9 of I & B



Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

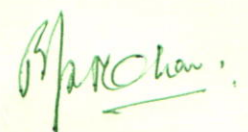
2. The Petitioner is engaged in the business of trading of wood polish and wood paint. As per the instructions of Corporate Debtor, the Petitioner supplied goods and raised several invoices for Rs. 15,83,767/- and the Petitioner claimed interest @18% p.a. on the said amount which works out to Rs. 24,53,432/-.

3. The Petitioner states that the Respondent had issued cheques in discharge of its debts but they were dishonored and a criminal complaint being Criminal Inquiry No. 133/2015 was initiated before the Ld. Magistrate, Ahmedabad District Court under Section 406, 420, 504, 506(2) and 294(B) of the IPC for cheating and criminal breach of trust wherein the Ld. Magistrate vide its order dated 31.07.2015 has issued process against the Respondent company and the said complaint is pending for adjudication.

4. Further, a Demand Notice dated 09.09.2017 under section 8 of the Code was sent by the Petitioner, the same was served on the Corporate Debtor on 11.09.2017 for which the Corporate Debtor did not reply. Accordingly, the Petitioner filed affidavit U/s 9(3)(b) of the Code along with the petition stating the fact that there is no notice given by the Corporate Debtor relating to dispute of unpaid operational debt. The Petitioner filed Certificate issued by Kotak Mahindra Bank as required under Section 9(3)(c) of the Code.

5. A sum of Rs.24,53,432/- was demanded in the demand notice which is inclusive of interest at the rate of 18% p.a. as stated in the invoices. In the Form-5, the rate of interest was wrongly mentioned as 24% instead of 18%, however, the learned Counsel for the Petitioner submits that the amount claimed as interest to the extent of Rs.8,69,756/- is the interest calculated at the rate of 18% only and accordingly a modified Form-5 was filed alongwith an affidavit by the Petitioner.

6. The petition was posted for hearing on 21.03.2018, 02.04.2018 and 16.04.2018 wherein nobody appeared on behalf of the Corporate Debtor. The petitioner was permitted to take substituted service and accordingly notice was published in 'Free Press Journal' and 'Nav-Shakti' on 21.04.2018. Subsequently, also



there was no representation on behalf of the Corporate Debtor for the subsequent hearings.

7. The above discussions clearly show that there is debt, and default on the side of the Corporate Debtor.

8. The Petitioner has mentioned Mr. CS Arvind Gaudana, Reg. No. IBBI/IPA-002/IP-N00283/2017-18/10841, having address at 307, Ashirwad Paras, Corporate Road, Satellite, Ahmedabad 380015, Gujarat as Interim Resolution Professional.

9. This Bench having satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

i) 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.

ii) 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.

iii) 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.

iv) That the order of moratorium shall have effect from 19.06.2018 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.

v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

vi) Mr. CS Arvind Gaudana, Reg. No. IBBI/IPA-002/IP-N00283/2017-18/10841, having address at 307, Ashirwad Paras, Corporate Road, Satellite, Ahmedabad 380015, Gujarat, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.

11. The Registry is hereby directed to communicate this order to both the parties.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Bhaskar Pantula Mohan
Member (Judicial)