

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

C.P. (I.B) No. 668/MB/2023

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

In the matter of

RK Packaging, proprietorship concern of Mr. Rahul Karthik Thadathiparambil

Having its address at H. No. 263 ½, near Highten Industrial Estate, Satiwali, Vasai, Palghar – 401208, Maharashtra, India

... Operational Creditor

Vs

Aditus Mart Private Limited

Shop No 1, Ground Floor, Shatrunjay Heights, Amrutvani Road, Near Narayana School, Bhayander West, Thane - 401101, Maharashtra, India

... Corporate Debtor

Order Dated: 01.07.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances: Physical/ VC

For the Petitioner: Adv Pulkit Tyagi (VC)

For the Respondent: Counsel for the Respondent

ORDER

1. This Company Petition is filed by RK Packaging, proprietorship concern of Mr. Rahul Karthik Thadathiparambil (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against Aditus Mart Private Limited (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of Rs.1,16,00,017/- along with interest at 18% p.a. from 30.10.2019.

Brief Facts :-

2. It is submitted that the Operational Creditor i.e. RK Packaging, proprietorship concern of Mr. Rahul Karthik Thadathiparambil is engaged in the business of trading of incense sticks and related products. The Corporate Debtor issued several purchase orders upon the Operational Creditor for supply of goods. Subsequently, the Operational Creditor supplied goods to the Corporate debtor and the Corporate debtor issued several Purchase orders upon the Operational Creditor for supply of goods.
3. It is further submitted that the goods supplied by the Operational Creditor to the Corporate debtor were duly delivered and accepted without any dispute and demur by the Corporate Debtor.
4. It is submitted that the Operational Creditor supplied total goods worth Rs. 13,71,79,527/- to the Corporate Debtor. However, the Corporate Debtor made a part payment of Rs. 12,55,79,510/- and the balance of Rs. 1,16,00,017/- remains outstanding. The same is

reflected from the confirmation of accounts which the Corporate Debtor has signed and stamped the same is annexed as “Exhibit G” to the Company Petition.

5. The Operational Creditor sent several reminders to the Corporate Debtor, however despite assurances the Corporate Debtor did not cleared its dues. Therefore, the Operational Creditor on 11.03.2023 served demand notice upon the Corporate Debtor, demanding Rs. 1,16,00,017/-.
6. Thereafter, the Corporate debtor vide email dated 21.04.2023 for the first time denied the amount claimed in the demand notice dated 11.03.2023 and raised the issue with respect to quality of goods. Hence this Petition.

Reply of Respondent

7. The Corporate Debtor had filed their Affidavit in Reply and has denied each and every statement, contention and allegation made by the Petitioner.
8. It is submitted that the Operational Creditor has claimed an amount of Rs. 1,16,00,017/- along with interest at the rate of 18% p.a. however, there was no agreement between the Operational Creditor and Corporate Debtor to claim interest on the outstanding amount. Moreover, the invoice issued by the Operational Creditor also does not specify the levy of interest on the amount claimed.
9. It is further submitted that the Operational Creditor based on the Purchase order dated 03.04.2019, started supplying goods and issued several invoices, however, the Corporate Debtor realised that the goods supplied were of inferior quality. Pursuant to above, the Corporate Debtor asked the Operational Creditor for the return of

goods of sub-standard quality however the Operational Creditor did not pay any heed to the request of the Corporate Debtor. In addition the Corporate debtor discovered that the amount claimed by the Operational Creditor in several invoices were miscalculated, thereby denied the claim of the Operational Creditor of Rs. 1,16,00,017/-.

10. It is submitted that the Demand Notice dated 11.03.2023 sent by the Operational Creditor is frivolous and to seek monetary gains from the Corporate Debtor under the grab of the code.
11. Therefore, the Petition deserves to be dismissed.

Findings

12. We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
13. The petition reveals that the Corporate Debtor issued purchase order dated 06.04.2019, 28.05.2019, 01.06.2019, 03.06.2019, 04.07.2019, 06.08.2019, 10.09.2019, 16.09.2019, 12.10.2019 and 02.11.2019 to the Operational Creditor. Pursuant to above Purchase orders the Operational Creditor issued several invoices dating from 25th April 2019 to 30th September 2019, totalling to Rs. 13,71,79,527/- out of which the Corporate debtor has paid an amount of Rs. 12,55,79,510/- with remaining balance of Rs. 1,16,00,017/-.
14. The contention of the Corporate debtor is that the Operational Creditor has claimed an amount of Rs. 1,16,00,017/- which inclusive of interest at the rate of 18% p.a. in the absence of any agreement between the Operational Creditor and the Corporate Debtor.

15. After perusal of the facts and circumstances of the case and the documents placed on record, this bench has observed that the Respondent vide confirmation of Accounts dated 31.01.2023 annexed as "*Exhibit G*" to the Company Petition has confirmed an outstanding balance of Rs. 1,16,00,017/-. Therefore, has admitted and acknowledged the outstanding debt arising as per the invoices raised by the Petitioner. Further this bench observes the Petitioner pursuant to the above confirmation, issued a demand notice dated 11.03.2023 under Section 8 of IBC seeking payment of debt due. It is for the first time in response to the said demand notice that the Respondent vide its Reply dated 21.04.2023 has raised a defense of low quality of goods. This bench observes that the said email in response to the Demand notice also not replied within the statutory period of 10 days and the Respondent over the period of time has made part payment of Rs. 12,55,79,510/- to the Petitioner, therefore, raising the contention of the supply of inferior quality of goods by the Petitioner at the belated stage is a moon shine defence.
16. With respect to the contention of the Respondent that the Petitioner has claimed an amount which is inclusive of an interest at the rate of 18% p.a. without any agreement. This Bench has observed that the contention of the Respondent is false and incorrect as the Petitioner while claiming the amount of Rs. 1,16,00,017/- in Part IV of the company Petition has included only the invoice amount and the interest at the rate of 18% p.a. has not been charged. Therefore, the amount of Rs. 1,16,00,017/- claimed by the Operational Creditor is the amount exclusive of interest. The same has been acknowledged by the Respondent vide confirmation of Accounts dated 31.01.2023. Therefore, there is no pre-existing dispute between the parties. Further, the Petition was filed on 03.05.2023,

hence with in limitation and also above the threshold limit in terms of the Code.

17. An affidavit under Section 9(3)(b) of the IBC, 2016 has been filed by the Operational Creditor stating that no notice was given by the Corporate Debtor in relation to any dispute in respect of the said outstanding operational debt.
18. Therefore, after considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” which was due & payable and there is a “**default**” committed by the Corporate Debtor.
19. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
20. The Operational Creditor has proposed the Resolution Professional in Part III of the Company Petition.
21. Accordingly, the above Company Petition is ‘**admitted**’ with the following:

ORDER

- a. The above Company Petition No. 668/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Aditus Mart Private Limited**.
- b. **Mr. Manoj Kumar Mishra**, having registration No. IBBI/IPA-001/IP-P01152/2018-2019/11902, having email Id- manojkmishra95@gmail.com, having address Premises No. 13 and 14, 2nd Floor, 84/85, Ghogha Street, Janmabhoomi Marg, Fort, Mumbai, Maharashtra, 400001 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.2,00,000/- 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.

Accordingly, CP 668 of 2023 is **admitted**.

SD/-
Madhu Sinha
Member (Technical)
/Abhay/

SD/-
Reeta Kohli
Member (Judicial)