

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 1132/MB/2023

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of The Insolvency and Bankruptcy Rule, 2016 (Application by Operational Creditor for initiation of Corporate Insolvency Resolution Process)

In the matter of

**Sangram Gade,
Proprietor of M/s Mars Overseas**

Having its address at- Flat No. 3, Shrikrishna Apartment, S. No. 1201/D/B, Opposite Fergusson College, Shirole Road, Shivaji Nagar, Pune – 411004

..... Petitioner/ Financial Creditor

Versus

Jogeshwari Breweries Private Limited

Having its address at- RS No. 286, Shinde Residency, Near Ruikar Colony, Plot No. 194, Kolhapur – 416005, Maharashtra

..... Respondent/Corporate Debtor

Order Delivered on :- 09/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Ninad Deshpande

For the Corporate Debtor : Adv. Navin Arora

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Sangram Gade, Proprietor of M/s Mars Overseas** (hereinafter called as "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Jogeshwari Breweries Private Limited** (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of IBC for resolution of an unresolved Operational Debt of Rs. 3,64,38,196/- (Rupees Three Crore, Sixty-Four Lakhs, Thirty-Eight Thousand, One-Hundred and Ninety-Six Only)

The submissions of the Operational Creditor are as follows:

2. The Operational Creditor is running the business of provision of agricultural and other goods in the name and style of M/s Mars Overseas, as its sole proprietor.
3. The Operational Creditor through his business M/s Mars Overseas has been engaged in the business of supplying various agricultural commodities, with a particular emphasis on grains and coal. Over a span of two years from 2012 to 2014, these commodities were consistently delivered to the Corporate Debtor against Purchase Orders issued by the Corporate Debtor.
4. Even though the Operational Creditor has duly issued invoices for the agricultural goods supplied, the Corporate Debtor has not fulfilled their financial obligations and has remained in default of payment for these goods. Thus, the Operational Dues remain unpaid.
5. The Corporate Debtor has not only recognized these outstanding payments on an annual basis through the confirmations of their ledger account, but they have also formally accepted their financial obligations by signing an undertaking in September 2014, thereby officially acknowledging the existence of these dues.
6. On 15th September 2023, the Operational Creditor issued a Demand Notice to the Corporate Debtor demanding an amount of Rs. 3,64,38,196/- (Rupees Three Crore, Sixty-Four Lakhs, Thirty-Eight Thousand, One-Hundred and Ninety-Six Only) representing the total unpaid dues for the agricultural goods supplied. The Corporate Debtor replied to the Demand Notice on 30.09.2023

acknowledging the outstanding dues and expressing their financial constraints which prevent them from making the payment at this time.

7. Since the issuance of the Demand Notice on 15th September 2023, the Corporate Debtor has not made any payments towards the outstanding amount. Furthermore, the Corporate Debtor has not raised any objections or disputes concerning the unpaid operational debt, thereby acknowledging the existence of debt and default.
8. In light of the above, the Operational Creditor is compelled to file the present Petition under Section 9 of the Insolvency and Bankruptcy Code and its relevant Rules, for initiation of the Corporate Insolvency Resolution Process with respect to the Corporate Debtor. Hence the Petition.

Reply filed on behalf of the Corporate Debtor

9. It is submitted that the dues are payable by the Corporate Debtor to the Operational Creditor and there is no argument about the existence of such dues. However, the default by the Corporate Debtor in the repayment of such dues is not willful. As the default in repayment is not willful, it ought not to be covered by the relevant sections of the Insolvency and Bankruptcy Code, 2016, and the Corporate Insolvency Resolution Process cannot be initiated against the Corporate Debtor.
10. It is further submitted that it has been facing financial difficulties throughout the period of having owed this debt, due to which it has not been able to repay the debts of the Operational Creditor. The Corporate Debtor has requested the Operational Creditor to provide the Corporate Debtor with some

additional time to clear the outstanding dues that are payable to the Operational Creditor.

11. It is stated that the Corporate Debtor is committed to paying back all existing debts and dues payable to the Operational Creditor and has no ulterior motives behind the delay in repayment of the said dues. The Corporate Debtor has no intentions of permanently defaulting on the dues of the Operational Creditor.
12. It is further submitted that the Corporate Debtor acknowledges the debts and dues as specified in the captioned Company Petition by the Operational Creditor. However, since the default was caused due to financial difficulties, the Corporate Debtor requests additional time to repay the dues of the Operational Creditor. The Corporate Debtor further prays that in view of the facts stated herein, the Company Petition filed by the Operational Creditor be dismissed.

Analysis and Findings:

13. We have heard the Counsel for the parties and gone through the record.
14. During the course of arguments, it has been contended by the Counsel for the Petitioner that the Operational Creditor supplied goods to the Corporate Debtor vide invoices as per the Annexure (d) which were issued between 17.10.2012 and 16.12.2013 for a total sum of Rs. 4,58,71,696/- out of which a sum of Rs. 94,33,500/- was paid by the Corporate Debtor while the remaining amount of Rs. 3,64,38,196/- have not been paid despite repeated reminders issued by the Operational Creditor. Counsel for the Operational

Creditor has further pointed out that a demand notice dated 15.09.2023 was duly served upon the Corporate Debtor and despite the receipt of the demand notice, the Corporate Debtor has failed to make payment of the outstanding dues. Counsel for the Operational Creditor has further pointed out that though the goods were supplied between 17.10.2012 and 16.12.2013 but the Corporate Debtor has been acknowledging its liability throughout by issuing confirmation of accounts of every year from 01.04.2014 till 01.04.2023. In the light of the acknowledgments made by the Corporate Debtor by virtue of issuing confirmation of accounts, the present Petition has been filed within the period of limitation. Counsel for the Operation Creditor has further contended that the Petition is well within the period of limitation and, therefore, deserves to be admitted.

15. On the other hand, no substantive arguments were raised by the Counsel for the Corporate Debtor. Even in the reply filed on behalf of the Corporate Debtor, the existence of the dues has not been denied at all. It has only been claimed in the reply that the default is not willful and, therefore, the proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 should not be initiated.
16. Having weighed the contentions raised by the Counsel for the parties, we are of the considered view that in this case the Operational Creditor has been able to establish that the Corporate Debtor has not paid the operational dues of Rs. 3,64,38,196/- against the invoices issued between 17.10.2012 and 16.12.2013. It has also been proved on record that a demand notice dated 15.09.2023 was duly served upon the Corporate Debtor and in reply dated 30.09.2023, the Corporate Debtor has admitted its liability to pay the claim amount and it has only been stated that due to financial crisis, the Corporate

Debtor was not able to pay the amount. Therefore, there is no doubt about the existence of the operational debt and its default by the Corporate Debtor. As stated above the Corporate Debtor has been acknowledging its liability from time to time by issuing balance confirmation of accounts of every year from 01.04.2014 till 01.04.2023 and this fact has also not been disputed by the Corporate Debtor in the reply filed by it. Therefore, the Petition seems to have been filed within the period of limitation.

17. As a result of above foregoing discussion, we are of the consider view that the Operational Creditor has been able to prove the existence of the operational debt and its default and further that the Petition is filed within the period of limitation. Therefore, the Petition under Section 9 of Insolvency and Bankruptcy Code deserves to be admitted and it is ordered accordingly in following terms

ORDER

- a. **The above Company Petition No. (IB) 1132 (MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Jogeshwari Breweries Private Limited.**
- b. This Bench hereby **appoints Mr. Jitendra Palande, Registration No: IBBI/IPA-003/IP-N00028/2017-2018/10188 as the Interim Resolution Professional having his address at Office No. 411, Fourth Floor, Kakade Bizz Icon, Next to E-square, Shivaji Nagar,**

Pune- 411005, Email Id:- jitendra@circles.co.in to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** 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 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 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

18. **Accordingly, this Petition is admitted.**

19. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)