

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-1164(ND)2019

IN THE MATTER OF:

**M/s. Punjabi Accessoriezz Pvt Ltd.
D/615, Neelkanth Business Park
Nathani Road, Vidya Vihar (west)
Mumbai-400086, Maharashtra**

...Operational Creditor

VERSUS

**M/s Kredo Beauty Pvt. Ltd.
Flat No. 105, F/F
South Ex Plaza-II
Plot No. 209, Masjid Moth
New Delhi - 110049**

... Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 16.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Sameer Tripathi, Advocate

For the Respondent : Mr. Abhishek Puri, Mr. V Siddharth & Mr. Mohan
Gambhir, Advocates



(IB)-1164(ND)2019 Punjabi Accessoriezz Pvt Ltd.
vs M/s. Kredo Beauty Pvt. Ltd

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JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Punjabi Accessoriezz Pvt. Ltd. through its authorized Representative Mr. Kashyap Punjabi (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Kredo Beauty Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Punjabi Accessoriezz Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U7499MH2007PTC170640, having its registered office at D/615, Neelkanth Business Park, Nathani Road, Vidya Vihar (West) Mumbai.

3. The Corporate Debtor namely, M/s. Kredo Beauty Pvt. Ltd. is a Company incorporated on 02.08.2017 under the provisions of Companies Act, 2013 with CIN No. U74999DL2017PTC321649, having its registered Office at Flat No. 105, F/F South Ex Plaza- II, Plot No. 209, Masjid Moth New Delhi-110049.



4. The Authorized Share Capital of the Respondent Company is Rs.5,00,000 and its Paid up Share Capital is Rs.1,00,000 as per the Master Data of the Company annexed.

5. It is submitted by the Operational Creditor that it is engaged in the business of Trading of beauty products and accessories. It is added by the Operational Creditor that Corporate Debtor is also in the business of buying and selling of beauty products.

6. It is submitted by the Operational Creditor that Corporate Debtor had issued a purchase order bearing No. LDE/Sep-18/1 dated 18.09.2018 for supply of Mask Beauty Products.

7. It is stated by the Operational Creditor that on receiving the aforesaid purchase order, the Operational Creditor issued a Proforma invoice No. PRO/02/09, which was accepted by the Corporate Debtor.

8. It is submitted by the Operational Creditor that on receiving the Proforma invoice, the Corporate Debtor requested to make certain changes to the same and Corporate Debtor had requested to include the terms regarding payment within 30 days. The same was duly accepted by the Operational Creditor.

9. It is submitted by the Operational Creditor that on 20.10.2018 goods were delivered to the Corporate Debtor's warehouse and delivery of



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goods was duly acknowledged by the Corporate Debtor. It is added by the Operational Creditor that the Corporate Debtor vide an email dated 20.10.2018 informed the Operational Creditor that they were accepting the delivery without the invoice.

10. It is submitted by the Operational Creditor that it had sent the revised proforma invoice vide its email dated 21.09.2018 to the Corporate Debtor, which had duly acknowledged the receipt of material against invoice vide its email dated 26.10.2018.

11. It is further submitted by the Operational Creditor that in the email dated 26.10.2018, the Corporate Debtor had also pointed out certain damages/shortage in the goods supplied. It is added against which a Debit Note was issued by the Corporate Debtor. It is further submitted by the Operational Creditor that it had accepted the claims regarding damage/shortage of the Corporate Debtor and it had issued a Credit Note against the invoice issued to the Corporate Debtor.

12. It is submitted by the Operational Creditor that the Corporate Debtor vide its email dated 24.01.2019 expressed its inability to clear the dues immediately but at the same time, committed to clear all the pending payments as soon as possible. The contents of the email dated 24.01.2019 are reproduced overleaf :



“As discussed with you, due to severe funds issue at our end, we will not be able to clear the dues pertaining to Leaders Brand Shipment immediately. We need some more time.

We request your mind cooperation and support in this regard and trust us we are committed to clear all the pending payments as soon as possible.

As requested by you, I will arrange the concall with Mr. Aman as well. We also request you to take back the goods from us as we are unable to launch the brand in Offline stores currently and may take some more time for us considering the operational viability with the costs required to put in to drive the sales initially.”

13. It is added by the Operational Creditor that the aforesaid request made by the Corporate Debtor was denied vide its email dated 24.01.2019.

14. It is stated by the Operational Creditor that the total liability of the Corporate Debtor comes to Rs.22,91,324, for which it had sent a Demand Notice dated 20.02.2019, under Section 8 of IBC 2016 vide Speed Post at the Registered Office of the Corporate Debtor. It is further submitted by the Operational Creditor that the Corporate Debtor had replied to the Demand Notice vide its Letter dated 04.03.2019. The same has been averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016. Further, the Operational Creditor has annexed the certificate issued by HDFC Bank, dated 01.03.2019 in compliance of Section 9(3)(c) of IBC 2016.

15. That the Corporate Debtor has filed its reply on 12.07.2019 and submitted that the Operational Creditor has suppressed material facts in its Petition. It is submitted by the Corporate Debtor that it had entered into an agreement to distribute the cosmetics and beauty products of "Leaders" Brand supplied by the Operational Creditor. That the Corporate Debtor has mentioned about a Company namely, M/s Sheer Retail Private Limited, which is a Group Company of the Corporate Debtor. It is added by the Corporate Debtor that it was agreed between the Parties that the goods would be supplied to the Corporate Debtor whenever the order would be placed on M/s Sheer Retail Pvt. Ltd. The Corporate Debtor has also annexed the No-objection Certificate dated 05.09.2019 for distribution by M/s Sheer Retail Pvt. Ltd.

16. It is further submitted by the Corporate Debtor that it was agreed between the Parties that goods supplied by the Operational Creditor would be returned to it if the Corporate Debtor was not able to effect onward sale of the goods. It is further added that the Corporate Debtor and its Group Company M/s Sheer Retail Private Limited had made substantial effort in marketing of the goods supplied by the Operational Creditor. However, they were unable to find the end consumers for the goods.



17. It is stated by the Corporate Debtor that it was willing to return the goods on multiple occasions, however, the Operational Creditor has refused to accept the goods.

18. It is submitted by the Corporate Debtor that Operational Creditor owes Rs.13 Lacs to M/s Sheer Retail Pvt. Ltd. and the last payment received by its Group Company was on 05.06.2019. It is further submitted by the Corporate Debtor that M/s Sheer Retail Pvt. Ltd had issued a Notice dated 05.06.2019 under Section 8 of IBC 2016.

19. In response to the said allegations, it is submitted by the Operational Creditor that the demand raised by M/s Sheer Retail Pvt. Ltd. has arisen from a different set of transaction and it has no bearing on the supplies made by the Operational Creditor to the Corporate Debtor.

20. After hearing submissions of both the Parties, this Bench is of the view that the Corporate Debtor had clearly acknowledged its liability in its Email dated 24.01.2019 to the Corporate Debtor annexed by the Operational Creditor. Further, the pleas raised by the Corporate Debtor do not merit consideration as M/s Sheer Retail Pvt. Ltd. is a separate legal entity and the existence of dispute, if any, between M/s Sheer Retail Pvt. Ltd and the Operational Creditor cannot be treated as pre-existence of dispute between the Operational Creditor and the Corporate Debtor.



Therefore, we are inclined to initiate the CIR Process against the Corporate Debtor.

21. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoice, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

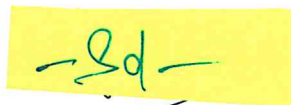
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate 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 Financial 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 the possession of the corporate debtor.”



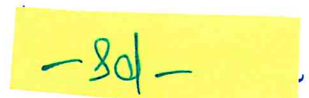
22. The Operational Creditor has not proposed any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Mr. Ravi Bansal as an IRP, Registration No. IBBI/IPA-001/IP-P00162/2017-18/10331 (Email: ravibansalca@yahoo.com) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this Order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

23. The Operation Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

24. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)