

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

T.C.P. No. 618/I&BP/2017

Under Section 9 of IB Code, 2016.

In the matter of

The Fine Jewellery (India) Ltd.
G-6, Gem & Jewellery Complex 1,
Seepz – Sez, MIDC, Andheri (E),
Mumbai – 400 096

..... Petitioner

v/s.

Nascent Jewellery Pvt. Ltd.
6, Vaibhav Janki Kutir,
Juhu Church Road,
Juhu, Mumbai – 400 049.

..... Corporate Debtor

Judgement delivered on: *14th September 2017*

Coram:

Hon'ble Mr. M.K. Shrawat, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member, (Technical)

For the Petitioner: Mr. S.J. Khera, Adv. a/w Mr. Jignesh H., GM
For the Respondent: Sushama Yadav, Adv.

Per: Ravikumar Duraisamy, Member (T)

ORDER

This Petition has been transferred from Hon'ble High Court of Judicature at Bombay consequent upon the notification issued by the Ministry of Corporate Affairs, dated 07.12.2016. The said Petition was filed under Section 433(3) of the Companies Act, 1956. Subsequent to transfer of this petition from the Hon'ble High Court of Bombay this case was listed on 21.04.2017. The Registry was also directed on 14.06.2017 to issue notice to the Petitioner for necessary compliance

as prescribed under the IBC 14.06.2017 and the case was listed for hearing on 22.06.2017. On the day the Ld. Counsel for the Petitioner was present and submitted that a huge amount of debt is in stake and due to non-availability of the Petitioner who was travelling abroad, the requisite Form could not be filed on or before 14.06.2017 and sought permission to submit Form 5 under the provisions of IBC. The request of the Petitioner was considered positively and the Petitioner was allowed to file Form 5 on or before 27.06.2017 and the case was listed for hearing on 30.06.2017. On 13th July 2017 the Petitioner confirmed that a notice of demand and requisite form have been served on 05.07.2017 on the Corporate Debtor/Respondent Company. Advocate for the Respondent Company also undertook to file Vakalatnama. The matter was adjourned to 24.07.2017. Again, when the matter was listed on 24.7.2017 Ld. Counsel from both the sides were present. The Ld. Counsel for Respondent sought time to file its reply. The Bench sought a clarification from the Respondent as to under which provision the time can be extended to the Corporate Debtor and the matter was adjourned to 26.07.2017.

2. This is a Petition filed under section 9 of IBC 2016 by the Operational Creditor namely Fine Jewellery (India) Ltd. against the Corporate Debtor namely Nascent Jewellery Pvt. Ltd. The Operational Creditor filed Form No. 5 dated 20.06.2017 claiming an amount of Rs.6,10,92,761/-. The Operational Creditor has submitted necessary proof to substantiate its claim like invoices, Bank statement issued by Bank of India, Seepz Br., ING Vysya Bank, Andheri (E) Branch, and State Bank of India, SEZ Branch, Mumbai.

3. The Consul for the Petitioner has also submitted affidavit of service of Form 5 on the Corporate Debtor vide e-mail dated 08.07.2017 and the said e-mail was also delivered to the Directors of the Corporate Debtor namely Mr. Anant Prabhudesai and Mr. Ariez Rustam Tata. In response to the delivery of Form No. 5, the Corporate Debtor was represented through its Counsel.

4. The Respondent Company/The Corporate Debtor vide its reply dated 26.07.2017 refuted the claim of the Operational Creditor and stated that there is no cause of action in the present Petition and this Hon'ble Court has no jurisdiction to try and entertain the present suit on the alleged faults and misleading grounds and therefore this so called Operational Creditor's relief for ad-interim relief be rejected. The Respondent Company also stated that due to non-transfer of brand 'Nirvana', they have suffered a huge loss and same needed to be rectified from the Petitioner Company and thus they do not owe any money to the Petitioner Company. However, the Respondent company in its subsequent submission also submitted that as per their books of accounts, the Petitioner is entitled to claim only Rs.1,34,25,806/- being only legitimate and lawful amount due and liable to be paid by the Respondent company. He further submitted that the Respondent reserves their liberty to file the detailed reply to the winding up petition and or the application under section 9 of the IBC 2016.

5. The Petitioner Company has also produced a Memorandum of Understanding dated 29.11.2012 entered amongst (1) Nascent Jewellery India Pvt. Ltd., (2) Fine Jewellery (India) Ltd., and (3) Cogent Jewellery Pvt. Ltd. as **First Part** and (1) Spectrum Jewellery Ltd., (2) Brightest Circle Jewellery Ltd., and (3) Gitanjali Gems Ltd. as **Second Part**.

6. The submission of respondent that he has incurred huge loss due to non-transfer of brand "Nirvana", the respondent failed to submit any proof to substantiate the claim. Moreover, the same is not relevant to examine in IBC cases by the Adjudicating Authority.

7. The Bench perused the entire records and satisfied that a debt amounting to Rs.6,10,92,761/- as claimed by the Petitioner company and supporting documents such as invoices, banks statements and satisfied that the Petitioner company/Operational Creditor is entitled to file its claim under Section 9 of IBC 2016. Accordingly, we admit the TCP 618/2017. The Petitioner Company has also submitted Form 2

proposing Mr. Jitendrakumar Rambaran Yadav as IRP, the same was submitted to NCLT on 26.07.2017. We have also perused Form 2 and satisfied that the IRP has a valid certificate of Registration No. IBBI/IPA-003/IP-N00022/2016-2017/10169) issued by the Insolvency and Bankruptcy Board of India. He has also confirmed that no disciplinary proceedings are pending against him. Therefore, we are inclined to appoint Mr. Jitendrakumar Rambaran Yadav as an IRP.

8. This Bench having satisfied with the Application 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 Securitisation 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 today 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) That this Bench hereby appoints Mr. Jitendrakumar Rambaran Yadav, as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code, Rules, Regulations framed thereof.

8. Accordingly this petition is admitted.

Sd/-

Ravikumar Duraisamy
Member (Technical)

Sd/-

M.K. Shrawat
Member (Judicial)