

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 852/I&BP/NCLT/MAH/2017**

Coram: B. S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

Mrs. Heena Prakash Desai
Sole Proprietrix
Aesthetique Solutions
20, Bella Vista
S. V. Road, Bandra (West)
Mumbai – 400 050.

... Applicant/ Operational Creditor

Best Deal TV Private Limited
Shop No. G-13,
Rehab Building, 1-A, CTS No.330
W. E. Highway
Shankarwadi, Jogeshwari (East)
Mumbai – 400 060.

... Corporate Debtor

Counsel for Applicant/ Operational Creditor: Ms. Rubina Khan,
Advocate

Counsel for Corporate Debtor: None Present.

ORDER

(Heard and pronounced on 05.05.2017)

Per V. Nallasenapathy, Member (Technical)

1. This is an Insolvency and Bankruptcy Petition filed by the Operational Creditor who had entered into a Vendor Agreement on 20.3.2015 with the Corporate Debtor alleging that the Corporate Debtor has defaulted in making payment of Rs.1,28,75,390 and hence invoking the provisions of the IB Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

2. The Vendor Agreement dated 20.3.2015 provides that the Operational Creditor will promote, advertise, market and sell its products bearing the trade mark ALCHEMANE through the digital commerce platform of the Corporate Debtor. The Corporate Debtor will receive orders and collect payment from the customers on behalf of the Operational Creditor in respect of the products of the Operational Creditor sold through the Corporate Debtor's digital commerce platform. Accordingly, the Operational Creditor regularly delivered the ordered quantity of products to the Corporate Debtor's notified warehouse on consignment basis and the Corporate Debtor used to sell those products on behalf of the Operational Creditor through the Digital Commerce platform of Corporate Debtor. The Vendor Agreement provides that for the products delivered to the customers between 1st and 31st of the given month the payment collected by the Corporate Debtor on behalf of the Operational Creditor has to be paid to the Operational Creditor on 15th of the following month net of service charges for platform fees as agreed in the Deal Note on 15th of the following month.

3. The Operational Creditors further states that, in terms of the Agreement, the Operational Creditor need not raise any invoice on the Corporate Debtor but a ledger transaction sheet was to be periodically circulated recording the product sold by the Corporate Debtor, the price at which the products has been sold, the commission charged by the Corporate Debtor. The Corporate Debtor used to circulate and share the ledger statement with the Operational Creditor giving the details of products sold, price of products and adjustment of amount received from the sale of product. The Corporate Debtor used to raise separate invoice on the Operational Creditor with respect to the commission charged by the Corporate Debtor on the sale of the products. The Operational Creditor states that the Corporate Debtor has made payment till 24.11.2015 but thereafter defaulted to make payment for the products sold by the Corporate Debtor despite receiving payments from the customers on behalf of the Operational Creditor. The Operational Creditor

states that a sum of Rs.1,28,75,390 is defaulted as on 1.12.2016 and the Operational Creditor further states that the Corporate Debtor is liable to pay interest @ 18% per annum from 1.12.2016 till the realisation.

4. The Operational Creditor had issued the statutory notice to the Corporate Debtor on 3.4.2017, demanding a sum of Rs.1,28,75,390 together with interest @ 18% per annum from 2.12.2016 till realisation. The Corporate Debtor in its reply dated 3.4.2017 acknowledged the demand notice of the Operational Creditor and stated that they have to pay the pending amount and their company is going through huge financial stress which adversely impacted their business. It is clear from the reply of the Corporate Debtor that neither the payment was made nor any dispute was raised by the Corporate Debtor.

5. This Petition clearly reveals that there is a debt as defined in Section 3(11) of I&B Code 2016, also there is default in this case within the meaning of Section 3(12) of I&B Code, 2016 and the corporate debtor having named the Interim Resolution Professional with his consent, there being no disciplinary proceedings against him, this Bench hereby admits this petition filed under Section 9 of I & B Code, 2016, declaring moratorium with consequential directions as mentioned below:

- (a) 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.

- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 05.05.2017 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.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Rajendra Karanmal Bhuta, (Registration No. IP 00078), 1207, Yogi Paradise, Yogi Nagar, Borivali (West), Mumbai – 400 092, email: rkbhuta@gmail.com as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

6. Accordingly, this Petition is admitted.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)