

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
C.P 600/I&BP/NCLT/MAH/2017

Under Section 9 of IBC, 2016

In the matter of

D. Chhaganlal & Co.
218-A, Panchratna, Opera House
Mumbai – 400 004. ... Petitioner

Say India Jewellers Pvt Ltd.
Unit No.701, Block No.1
SEEPZ, SEEPZ SEZ
Andheri (E)
Mumbai – 400 096 ... Corporate Debtor

Order delivered on 01.08.2017

Coram:

Hon'ble B. S.V. Prakash Kumar, Member (Judicial)
Hon'ble V. Nallasenapathy, Member (Technical)

Counsel for Petitioner: Shilpa Kapil, Advocate.
Counsel for Corporate Debtor: None Present.

Per V Nallasenapathy, Member (Technical)

ORDER

1. The Applicant herein has filed a Petition for winding up under Section 433 of the Companies Act, 1956 against the Corporate Debtor before the Hon'ble High Court of Bombay and the same was numbered as Company Petition No. 1058/2015. The said Company Petition was transferred to this Tribunal for adjudication under section 9 of Insolvency and Bankruptcy Code, 2016 (the Code) and renumbered as TCP No.600/2017.

2. The Operational Creditor namely, D. Chhaganlal & Co., filed Form No. 5 as required under Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, on 10-04-2017, stating that the Corporate Debtor, namely Say India Jewellers Pvt Ltd. has defaulted on 17.06.2015 in making the repayment of Rs.67,39,287/- along with interest @ 18% per annum.

3. The Operational Creditor states that Corporate Debtor purchased diamonds and invoices were raised from 08.06.2012 to 19.12.2012, after taking into account the part payment to the extent of Rs. 2,99,425/-, still a sum of Rs. 67,39,287/- is due and payable by the Corporate Debtor. The Operational Creditor issued a winding up notice on 17.06.2015 under Section 433, 434 and 439 of the Companies Act, 1956 demanding a sum of Rs. 67,39,287/- together with interest @ 18% per annum. The Operational Creditor says that the Corporate Debtor has not made the payment despite receiving the statutory notice, hence filed the winding up petition before the Hon'ble High Court, Bombay on 29.07.2015. The Operational Creditor filed the Form 5 stating that the Corporate Debtor defaulted in making the payment of Rs. 67,39,287/-, which was due on 17.06.2015. The Operational Creditor has filed the bank certificate dated 14.06.2017 issued by Bank of Baroda, Bandra-Kurla Complex, Mumbai as required under Section 9(3)(c) of the Code. The Applicant was directed to give notice to the Corporate Debtor intimating the next date of hearing, accordingly, the Applicant informed the Respondent and filed affidavit of service. However, the Respondent failed to appear.

4. This Bench having satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 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 01.08.2017 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.
 - v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.


5. Accordingly, this Petition is admitted.

6. This Bench makes a reference to the Insolvency and Bankruptcy Board of India (IBBI) for the recommendation of Insolvency Professional for appointment as Interim Resolution Professional.

7. The Registry is directed to forward a copy of this order to IBBI and post this matter after receipt of reply from IBBI for the appointment of IRP.

8. The Registry is hereby directed to communicate this order to both the parties.


V. NALLASENAPATHY
Member (Technical)


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