

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
(C.P. NO. 16/I & BP/NCLT/MB/MAH/2017)
IN THE MATTER OF INSOLVENCY AND BANKRUPTCY CODE, 2016
SECTION 9**

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

IN THE MATTER OF

SHYAM INDOFAB PRIVATE LTD. ...OPERATIONAL CREDITOR

Versus

MIDAS TOUCH EXPORT PRIVATE LTD. ...CORPORATE DEBTOR

Petitioner Counsel : Advocate Mr. Arun Saxena

ORDER
(Heard & Pronounced on : 17.02.2017)

1. The Petitioner, operational creditor namely a company called Shyam Indofab Private Limited, for having failed to receive payments to the supplies made to the corporate debtor, i.e., Midas Touch Export Pvt. Ltd. (herein after called as Debtor Company) resulting occurrence of default in making payments, has filed this petition u/s 9 of Insolvency and Bankruptcy Code (herein after called as "Code") seeking for admission of this petition declaring moratorium on the Corporate Debtor Company, direction for public announcement of initiation of corporate insolvency process and call for the submission of claims u/s 15 and appointment of interim resolution professional as prescribed under the Code and Rules thereon.

2. The Petitioner made cloth supplies to the debtor company pursuant to purchase orders made by the debtor company, the same is reflecting in the books of accounts of the Petitioner. The value of goods supplied by operational creditor to the debtor company commencing from 12.10.2015 up

to 19.02.2016 culminates into consideration for ₹47,64,035/-, out of which, the repayment made by the debtor company to the Petitioner till 10th March, 2016 is ₹32,23,564. The Petitioner filed invoices showing supplies made by the Petitioner to the debtor company, likewise he also filed the details disclosing the debtor company repaying ₹32,23,564 until 10th March, 2016 out of total ₹47,64,035. The last payment received from corporate debtor was ₹2,26,006 through a cheque bearing number 697963, ever since no payment has come to the Petitioner except exchange of emails – the Petitioner demanding repayment and the debtor company replying the company is not doing well, hence requesting not to present cheques. This has not made any difference to the repayment that is to be done to the Petitioner. Thereafter the debtor company since 10th March, 2016 has not paid anything to the operational creditor, the debtor company has remained under obligation to repay ₹15,40,471/- as on the date of issuing demand notice and even till date. When the Petitioner on 25.10.2016 issued notice u/s. 434(1)(a) of the Companies Act, 1956 that the debtor company was due to repay ₹15,40,471/-, the debtor company replied in email saying that they received letter dated 25.10.2016 and the payments were held up due to labour problems and internal disruptions. Thereafter the Petitioner again gave another statutory notice u/s. 8 of the Code to the debtor company on 10.01.2017 (date is wrongly put as 10.01.2016) to repay the outstanding ₹15,40,471/- which he failed to repay after making payment on 10th March, 2016, in the event he does not pay within ten days of receipt of notice, the Petitioner would file case before this Tribunal under section 9 of this Code. There was no reply from the corporate debtor to the notice dated 10.01.2017.

3. The Petitioner filed invoices reflecting the supplies made by the Petitioner to the debtor company and bank statement reflecting the payments that were made by the corporate creditor and also showing that this corporate debtor has made no payment after 10.03.2016.

4. The Petitioner herein submits that he has two different accounts; one, in Bank of India and another, in IDBI. He has filed statement of accounts of the Petitioner with the Banks aforementioned showing that this debtor company has not made payments since 10.03.2016, the last payment was made in Bank in India account on 10.03.2016. to substantiate the evidence reflecting in its account, the Petitioner filed separate certificates issued by both the Banks certifying that Bank of India has no entry of payment from the debtor company after 10.03.2016, and the IDBI Bank has no entry of credit in favour of the Petitioner from the debtor company. The certificates from the Banks and statements of accounts have been filed as annexure to this Petition.

5. The corporate debtor has neither given reply to the notice dated sent by the Petitioner under section 8 of the Code nor has the corporate debtor appeared before this Bench till date.

6. Looking at the Petition filed by the operational Creditor u/s.9 of the Code, for this Bench being satisfied that the Corporate Debtor failed to discharge the liability mentioned in this Company Petition resulting occurrence of default for an amount of around ₹15 lacs, this Bench admits this Petition u/s.9 of the Code declaring moratorium for the purposes referred to in section 14 of the Code with following directions:

- (i) That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, 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 and 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) 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 20.02.2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.
- (v) That this Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.
- (vi) That this Bench hereby appoints Mr. Romesh Chander Sawhney, Chartered Accountants with registration no. IBBI/PA-001/IP-00258/2016-2017/1451 having residence cum office at Flat No.850/GH-13 Paschim Vihar, New Delhi – 110087, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.

(vii) That this Bench hereby directs the Registry of NCLT, Mumbai to communicate this order to the Petitioner i.e., operational creditor and the corporate debtor.

7. Accordingly, this Petition is admitted.

Sd/-

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

Sd/-

V. NALLASENAPATHY
Member (Technical).