

**In the National Company Law Tribunal
Division Bench, Chennai**

CP/612/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

M/s. Mithesa Traders

V/s

M/s. Naachair Paper Boards Private Limited

Order delivered on: 20.12.2017

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioners/FC: Shri. Rohan Rajasekharan

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

1. Under Consideration is a Company Petition filed by Mithesa Traders (in short, '**Petitioner/Operational Creditor**') against M/s. Naachair Paper Boards Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The petitioner company engaged in trading business whereas the Respondent/Corporate Debtor is a Company registered under the Companies Act, 1956 and engaged in the business of manufacturing and dealing in all kinds of paper and boards such other related products etc.
4. Shri. Rohan Rajasekharan, the learned counsel appearing on behalf of the Petitioner/OC submitted that the Respondent/CD approached the petitioner and expressed its requirements for supply of waste paper and allied products under various specifications and accordingly, the petitioner supplied the said products from time to time under various specified invoices were raised from 29.12.2014 to 11.03.2016. It is also submitted that the goods were delivered on Credit basis against specific invoice, bill etc. given the nature of the business and as a result the petitioner has always maintained a running account for the respondent.
5. It is further submitted that the Respondent has not made any payments towards the subject debt Invoices raised from 29.12.2014 to 11.03.2016, with a view to maintain a good

relationship with the respondent, various reminders were given by the petitioner, but no payment was forth coming.

6. The petitioner/OC, sent a Demand Notice dated 27.03.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 was issued calling upon the respondent to make the payment of the outstanding due of Rs. 83,04,475/-(being Rs. 66,90,062/- towards principal and Rs. 16,14,414/- towards interest @24% p.a. Before hearing the submission both the parties had entered into a compromise and filed a joint memo dated 04.09.2017 whereby the respondent had tendered ten post-dated cheques for a total amount of Rs.83,00,000/-. In view of the compromise memo this Adjudicating Authority had ordered to close the matter vide order dated 04.09.2017.
7. Thereafter the counsel for Operational Creditor has filed an Application no. 40 of 2017, seeking to revive the company Petition in CP/548/IB/2017, submitting that the respondent has failed to make any payments to the Applicant in accordance with the compromise memo dated 04.09.2017. It is further submitted that the first cheque bearing No.521479 for a sum of Rs. 10,00,000/- and dated 02.10.2017 was presented by the applicant, the same was returned as dishonoured for the reason "Funds Insufficient". Similarly,

another cheque was returned as dishonoured for the reason “alteration require drawers”.

8. It is submitted that the respondent has intentionally disobeyed terms of compromise memo recorded by this Adjudicating Authority. The Respondent/CD does not possess sufficient funds to settle the outstanding operational debt claimed by the applicant/OC. Therefore, the Operational Creditor prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD under the provisions of the IB Code, 2016.
9. Before proceeding with the matter, it is necessary to mention herein that the Respondent has not caused appearance on three occasions vide order dated 21.11.2011, 27.11.2017, 11.12.2017 even after receiving notices in this Application. The Respondent neither gave a reply or filed any counter nor caused appearance before this Adjudicating Authority in spite of several notices. The petitioner has also placed on record proof of sending Private notices to respect in this CA 40 of 2017 duly served by S.P.A.D and e-mail. The Applicant/OC has filed an affidavit and bank statement under section 9(3)(b) and 9(3)(c) of I & B Code. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process.

10. After hearing submissions of the counsel for the petitioner and having perused the record, this Adjudicating authority is satisfied that the petitioner has clearly made out his case by establishing that the Corporate Debtor has defaulted the payment. Also, the petitioner has proved by placing overwhelming evidence viz. Invoices, Demand Notice, financial transactions, dishonoured cheques and Bank statements that default has occurred which the Corporate Debtor was responsible to pay. Therefore, we are of the opinion that the petitioner has established clearly that the amount in default committed by the corporate debtor is genuine and is supported by the documentary evidence placed before this Adjudicating authority. In the circumstances, having satisfied with the submissions put forth by the learned counsel for the petitioner, we hereby admit the instant petition.

11. Therefore, the instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

12. We appoint Shri. C.Ramasubramanian as Interim Resolution Professional (**IRP**) proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed

to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

13. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely :

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

14. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

15. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.

16. The IRP is further directed to protect and preserve the value of the property of the Corporate Debtor as a going concern as a part of its obligation imposed under section 20 of the IB Code 2016 and perform all his duties strictly in accordance with the provisions of the IB Code 2016.

17. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of

the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

18. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

19. The address details of the IRP are as follows: -

Shri. Shri. C.Ramasubramanian
Regn. No:(IBBI/IPA-002/IP-N00052/2016-2017/10096)
Srinidhi, G4 RMC Flats,
No. 1 Venkatesapuram Colony,
Vadapalani, Chennai-600026,
E-Mail: csrms@hotmail.com
Phone No. 9884068292



(S. Vijayaraghavan)
Member (Technical)

TJS



(K. Anantha Padmanabha Swamy)
Member (Judicial)