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IN THE NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

COURT - II

CP (IB) 242/NCLT/AHM/2021

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Mr. Ashwinbhai Laljibhai Viradiya
Partner of M/s. Asmi Enterprise .. **Applicant/ Operational Creditor**

Versus

DNB Impex Private Limited **Respondent/ Corporate Debtor**

Order Pronounced on: 22/07/2022

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Mr. Ashwinbhai Laljibhai Viradiya
Partner of M/s. Asmi Enterprise
Registered office at
Shop No. 8
Garden Gate Apartment
Nana Varachha, Varachha Road
Surat 395 006
Gujarat State

Correspondence Address :
35/416 Asopalav Apartments
Near Telephone Exchange,
Naranpura
Ahmedabad 380 013
Gujarat State ... **Applicant/Operational Creditor**

Versus

DNB Impex Private Limited
Registered Office at
Plot No. 18/A/B/C
Block No. 205 & 219
Saheli Industrial Estate
Vill. Karanj
Tal. Mandvi
Surat 394 311
Gujarat State ... **Respondent/Corporate Debtor**

Appearance:

For Applicant : Mr. Sumit Parikh, Advocate
For the Respondent : Mr. Aalay Shah, Advocate

ORDER

1. This application is filed on 06.12.2021 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Mr. Ashwinbhai Laljibhai Viradiya, partner of Asmi Enterprise authorised by authority letter dated 20.09.2021 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP) against **DNB Impex Private Limited** (for brevity 'Corporate Debtor').

2. The applicant is a partnership firm having its registered office at Shop No. 8, Garden Gate Apartment, Nana Varachha, Road, Surat, Gujarat State, having correspondence address at 35/416, Asopalav Apartments, Near Telephone Exchange, Naranpura, Ahmedabad, Gujarat State, engaged in the business of trading and manufacturing of textiles, handloom and power looms, having PAN: AARFA1495Q.

3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 07.07.2005 duly registered

with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U17290GJ2005PTC046386, having registered office at plot no. 18/A/B/C, Block No. 205 & 219, Saheli Industrial Estate, Vill. Karanj, Tal. Mandvi, Surat 394 311, Gujarat State. The corporate debtor is engaged in the business of manufacturing and trading of textile cotton fabrics and yarn.

4. It is submitted that the applicant and the corporate debtor were involved into business transactions since 2013 and the applicant was maintaining running account of the corporate debtor. During the period from 17.02.2017 to 31.03.2017, the applicant had supplied Smoke Cloth to the corporate debtor as per the invoices and delivery challans annexed to the application worth Rs. 6,02,39,250/-. Despite several reminders the corporate debtor has not cleared the outstanding dues of Rs. 6,02,39,250/- (Rupees six crore two lacs thirty-nine thousand two hundred and fifty only). The applicant had written letter dated 17.10.2017 requesting the corporate debtor to clear the outstanding payment. Corporate debtor replied vide letter dated 20.11.2017 requesting the applicant to grant additional six months to clear the dues which was considered by the applicant vide letter dated 05.12.2017. The corporate debtor having failed to clear the

outstanding even after extended time of six months', the applicant had addressed reminder letter dated 04.07.2018 requesting the corporate debtor to release the outstanding payment. Said letter was replied by the corporate debtor vide letter dated 01.01.2019 inter alia stating that payment shall be made as soon as the financial crisis is over.

5. The applicant further submits that on not receiving any outstanding payment from the corporate debtor, statutory demand notice under Section 8 of the IB Code in Form 3 dated 22.09.2021 was issued by the applicant. Thereafter, the applicant filed present application under section 9 of the IB Code on 06.12.2021 to initiate CIRP against the corporate debtor. The applicant has filed affidavit in compliance of order issued on 29.04.2022 inter alia stating that since registered office of the corporate debtor as per master data is closed since 2019, demand notice was served at the personal address of the director Mr. Bharat J. Goyani who has admitted by affidavit having received the demand notice on 25.09.2021.

6. The corporate debtor filed affidavit in reply to the application inter alia stating that the corporate debtor from time to time placed purchase

orders with the applicant for the supply of goods as per its requirements. Due to financial crunches and on account of the downfall of market, corporate debtor was unable to pay the outstanding amount. Further, corporate debtor admits that an amount of Rs. 6,02,39,250/- is due and payable to the applicant and the same is yet to be paid. It is further submitted that demonetisation and different waves of COVID -19 resulted into unprecedented nationwide lockdown and business of the corporate debtor is very much hampered. Considering the business relation with applicant and prevailing market situation, corporate debtor may be granted some reasonable time and opportunity to repay the entire outstanding dues of the applicant.

7. As per part IV, Form 5 date of default is 18.05.2017. Even though date of default mentioned is 18.05.2017, considering acknowledgement of debt by the corporate debtor vide letters dated 01.01.2019, the application filed on 06.12.2021 is well within limitation and not barred by Law. The applicant had also relied upon the order of Hon'ble Supreme Court dated 10.01.2022 in Suo Moto writ petition (C) No. 3 of 2020 for exclusion of covid period of

15.03.2020 till 28.02.2022 for computing limitation period prescribed under any law. Therefore, the application is within limitation.

8. Registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

9. In compliance of Section 9 (3) (b) of the IB Code the applicant has filed affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt.

10. Heard submissions and perused the documents on record. It is noticed that the corporate debtor has acknowledged and admitted claim of the applicant in its letter dated 01.01.2019 addressed to the applicant. Moreover, in the affidavit in reply also the corporate debtor has admitted the debt and has shown its inability to make the payment of dues.

11. In light of the above discussion, it is established that the debt is due and payable and default has occurred. The present application is complete as per provisions of Section 9 and hence admitted, in terms of section 9 (5) of IBC, 2016.

12. The applicant/operational creditor has proposed the name of Mr. Tejas Shah to act as Interim Resolution Professional who is hereby appointed as IRP having address at B-201, Narayan Krupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahmedabad 380 015, having registration No. IBBI/IPA-001/IP-P-000089/2017-18/10185 subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP is filed in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is on record.

13. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Tejas Shah to meet the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, shall be subject to

adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

14. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

15. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Sd/-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Prepared by Vimal

Signature

Date 26-7-22

Certified to be True Copy of the Original
26/7/22
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad