

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

18. C.P.(IB)-3270(MB)/2019

CORAM: SHRI. H.V. SUBBA RAO, MEMBER (J)
SHRI SHYAM BABU GAUTAM, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **09.05.2022**

NAME OF THE PARTIES: Puja Enterprises

V/s

Topiam Properties Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Petitioner/OC, Mr. Yahya Batatawala and counsel for the Corporate Debtor/Respondent, Mr. Naved Chawdhary are present through virtual hearing.

C.P. 3270/2019

Heard both sides. The amount claimed in the above Company Petition is hardly of Rs. 3,78,060/-. The Counsel appearing for the Corporate Debtor filed formal reply and agreed to settle the matter. Therefore, the matter was listed on board from time to time for completing the settlement. Today also the counsel appearing for the Corporate Debtor is making the same representation of settlement. Therefore, there is no point in keeping the above Company Petition pending any longer since the Corporate Debtor is admitting the “debt” and “default” in this case.

Accordingly, the above Company Petition is allowed. Detailed order will follow.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)
//Rajeev//

Sd/-
H.V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3270/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Puja Enterprises

Having registered office at: Soham

Puja Co-op. Hsg. Society Ltd.

Flat No.502, Plot No.29/1/2, Sector-

20C Airoli, Navi Mumbai- 400708

.....Operational Creditor

Vs.

**M/s. Topaim Properties Private
Limited.**

(CIN: U45200MH1994PTC083044)

Registered office at: Ground Floor,
Rajpipla, Opp. Standard Chartered
Bank, Linking Road, Santacruz
(West), Mumbai- 400054

.....Corporate Debtor

Order delivered on: 09.05.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

For the Petitioner: Mr. Yahya Batatawala, Adv.

For the Respondent: Mr. Naved Chawdhary, Adv.

Per: Shri H.V. Subba Rao, Member (Judicial)

The above Company Petition is filed by M/s. Puja Enterprises hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against M/s. Topaim Properties Private Limited called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 3,78,060.50/-.

The brief facts of the Petition are as under:

1. On the request of the Corporate Debtor the Operational Creditor had supplied the Polyester Resin and Fibermat, Clear Epoxy with Hardner from time and thereafter the Invoices had been raised by the Operational Creditor.
2. That the Operational Creditor had requested several times to make the payment of outstanding operational dept. The Corporate Debtor had several times committed to pay, but till date not made any payment for the outstanding amount.
3. That the Operational Creditor had issued Demand Notice dated 15th July 2019 for unpaid operational debt to the Corporate Debtor under section 8 of IBC Act, 2016. Till date.
4. M/s. Topaim Properties Private Limited (Corporate Debtor) had periodically requested Operational Creditor and thereupon the operational creditor had supplied the goods to the Company. Thereafter the Operational Creditor had raised the invoices towards the goods sold, the details of working of invoices raised and are due and outstanding for payment.

The brief facts of the reply filed by Corporate Debtor are as follows;

5. Mr. Jagdish Bhagwandas Ahuja the authorised signatory of the Corporate Debtor have read the contents of the captioned Company Petition (hereinafter referred to as “said Petition”) filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”). Also said that the authorised signatory is well conversed with the facts of the case and hence depose the same. At the very outset, I deny in toto, each and every allegation, contention, statement and /or insinuation contained in the said Petition shall be deemed to have been admitted by or on behalf of the Corporate Debtor, save and except such contentions which are specifically and expressly admitted. State that mere non-traverse of any of the contention, statement, averment and/or insinuation therein should not be treated as admissions and are denied in toto and the Operational Creditor is put to the strict proof thereof.
6. That the Affidavit in Reply for the limited purpose of opposing the reliefs as claimed in the said Petition on the various grounds as more particularly set out hereinafter. Also further reserve the right to file a detailed Additional/further Affidavit in Reply in future as and when required.
7. That the facts/details of subject transaction as disclosed by the Operational Creditor in the said Petition are incomplete and incorrect and hence, denied by the Corporate Debtor. That the true and correct facts pertaining to the subject transaction is summarized as follows:
 - I. That the Operational Creditor used to supply Resin and Fiber Mat. Fiber is used to reinforce marble slabs by sticking the same on back of the marble slabs using Resin. Resin is also used to coat top of the marble slabs for repairing micro holes, cracks etc. Initially the goods

supplied by them were in good quality and therefore, the Corporate Debtor had started placing their order for the aforesaid goods with the Operational Creditor only as and when required. However, suddenly, the goods supplied by Operational Creditor were not of good quality. Pertinently, in some of the consignments supplied by them, the Resin was not of proper quality and it turned into Get within 7 days of the supply which was intimated by the Corporate Debtor to the Operational Creditor. Corporate Debtor was informed by Operational Creditor that they will pick it up and return it to the manufacturer, who will replace it and in turn the supplier will replace it to us. Further, Operational Creditor requested us that in the meantime the Corporate Debtor can place raise their order for further materials. After seeing the assurances of the Operational Creditor, the corporate Debtor placed new order and also were making payment and Operational Creditor.

- II. As the Operational Creditor failed to replace the defective goods and also failed to adjust the payment made by the Corporate Debtor towards the defective goods, the Corporate Debtor started following up with Operational Creditor, the Operational Creditor all of a sudden stopped sending material and started demanding to clear their dues over phone calls which was objected by the Corporate Debtor.
- III. Furthermore, the Corporate Debtor called upon the personnel of the Operational Creditor to visit its office so that both the parties can reconcile their accounts.

However, no positive response has ever received by the Corporate Debtor.

- IV. That the Operational Creditor has suppressed the aforesaid facts from this Hon'ble Bench and therefore, they are accountable for *Suppresio Veri and Suggestio Falsi*. That the replacement of some of the goods is still pending and the amount which was paid towards the said defective goods is also not adjusted.
8. Apart from the above, the Corporate Debtor also raised various issues with regard to the maintainability of the petition and the reason for not sending reply in response to the demand notice etc. and thus prayed for dismissal of the above Company Petition.

FINDINGS

1. Even though the Corporate Debtor has filed detailed reply raising various issues, for defence sake, the Ld. Counsel appearing for the Corporate Debtor Mr. Naved Chawdhary on 02.05.2022 mentioned before this Bench that the Operational Creditor has rejected their offer of Rs. 4,00,000/- towards full and final settlement against the claim of Rs. 3,78,060/- and both the counsels on the same day agreed before the Bench that they would settle the matter before the next date of hearing. Believing the said representation the matter was adjourned from 02.05.2022 to 09.05.2022 that is today. Today also the counsel appearing for the Corporate Debtor is making the same representation of settlement without showing colour of money to the Operational Creditor. Therefore, it is very clear from the conduct of the Corporate Debtor that the Corporate Debtor is protracting the litigation and all the pleas raised by the Corporate Debtor in the main Company Petition without

sending reply in response to the Demand Notice issued by the Operational Creditor are bogus and liable to be outrightly rejected in view of their subsequent conduct in avoiding payment of Rs. 4 lacs after assurance for settlement of Rs. 4 lacs.

2. Under these circumstances, this Bench is left with no option except to admit the above Company Petition. Accordingly, the above Company Petition is admitted by passing the following;

ORDER

- a. The above Company Petition No. (IB) 3270(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Topaim Properties Private Limited.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Shailesh Bhalchandran Desai** (ip10362.desai@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00183/2017-18/10362 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- a. The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- b. 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.

- c. 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.
- d. 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.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- f. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- g. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all

documents in their possession and furnish every information in their knowledge to the IRP/RP.

- h. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- i. Accordingly, this Petition is admitted.
- j. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

SD/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**