



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 72/MB/2024

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

M/s. Sawant Cafe

**Through its Proprietor Mr. Ajay
Sawant**

Having its registered office at Prabodhan
Krida Bhavan Suddharth Nagar,
Goregaon (West), Mumbai- 400104

..... Petitioner/ Operational Creditor

Versus

M/s Trig Guardforce Limited

Having its registered office at D/3-6,
Ground Floor, Sitladevi CHSL, Opp.
Indian Oil Nagar, D. N. Nagar, Andheri
(West), Mumbai- 400053

..... Respondent/ Corporate Debtor

Order Delivered on :- 28/11/2024



Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Aniruth Purusothaman
a/w Adv. Rakesh Gupta

For the Corporate Debtor : Adv. Vidit Divya Kumat

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition has been filed by M/s. Sawant Café through proprietor Mr. Ajay Sawant (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Trig Guardforce Limited (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making repayment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) on the ground that the Corporate Debtor has failed to make repayment of a sum of Rs. 1,03,49,072.26/-.

The submissions by the Operational Creditor:

2. It is submitted by the Operational Creditor that it is engaged in providing food transportation services. The Operational Creditor is a



company incorporated on 15.09.1997 under the Companies Act, 1956.

3. The Corporate Debtor was a purchaser of goods from the Operational Creditor in view of which invoices were raised by the Operational Creditor from time to time during the period of 2016 to 2023.
4. An agreement dated 01.04.2016 executed between Operational Creditor and Corporate Debtor for purchasing of genuine fooding. Copy of the agreement has been annexed with the Petition.
5. The Corporate Debtor also acknowledged its debt for an amount of Rs. 1,59,18,265.80 as on December 2018 vide letter dated 05.01.2019 and the same has been annexed with the Petition.
6. The Corporate Debtor paid the lumpsum amount on several occasion and cleared certain invoices, but 41 other invoices remained unpaid and the same is payable by the Corporate Debtor for an aggregate amount of Rs. 1,03,49,072/- and the ledger balance in the books of the Operational Creditor shows an outstanding balance of the said amount. The details of the 41 invoices raised are mentioned hereunder:

Invoice No.	Date of Invoice	Outstanding Amount
17	09-Apr-16	132430.00
18	09-May-18	134820.00



19	02-Jun-16	132431.00
20	02-Jun-16	132431.00
21	02-Jun-16	132431.00
22	05-Jun-16	132431.00
25	05-Jul-16	132430.00
18-Mar-17	24	956623.00
26-Mar-17	23	1000000.00
03-Oct-17	11	587869.60
16-Dec-17	12	26743.80
01-Jun-18	29	3054467.88
27-Jul-18	20	252495.98
11-Aug-18	21	1696120.00
25-Sep-18	22	210000.00
25-Sep-18	23	210000.00
26-Sep-18	24	210000.00



26-Sep-18	18	210000.00
21-Jan-19	25	52500.00
16-Mar-19	26	50400.00
31-Mar-19	27	394537.00
03-Jan-22	1	45000.00
17-Nov-22	7	13200.00
26-Nov-22	8	23701.00
01-Dec-22	9	13200.00
24-Dec-22	10	13200.00
05-Jan-23	11	129000.00
08-Jan-23	12	13200.00
19-Jan-23	13	13200.00
11-Feb-23	14	34999.00
19-Feb-23	15	13200.00
17-Mar-23	16	83400.00



06-Apr-23	9	16799.00
15-Apr-23	10	16621.00
30-Apr-23	11	4300.00
17-May-23	12	10891.00
25-Jun-23	13	11120.00
25-Jul-23	14	14070.00
15-Aug-23	15	15470.00
20-Sep-23	16	11670.00
10-Oct-23	17	11670.00
Amount Outstanding		1,03,49,072.26

7. The aforesaid invoices for an amount of Rs. 1,03,49,072/- were payable by the Corporate Debtor as on 10.10.2023 to the Operational Creditor. The last payment was made by the Corporate Debtor for an amount of Rs. 1,00,000/- on 29.08.2023 and the same was adjusted against the previous invoices. Thereafter, no payment has been made by the Corporate Debtor to the Operational Creditor.
8. It is submitted that the Operational Creditor sent a reminder notice dated 13.10.2023 for an outstanding amount of Rs. 1,03,49,072/- to



the Corporate Debtor but no reply was received to the said notice.

9. A statutory demand notice dated 31.10.2023, under Section 8 of the Code was issued by the Operational Creditor calling upon the Corporate Debtor to repay the unpaid Operational Debt which was received by the Corporate Debtor on 02.11.2023. However, the Corporate Debtor failed to respond even to the said demand notice. Copy of the demand notice along with acknowledged receipt is annexed with the Petition.
10. Since the last invoice was raised on 10.10.2023 and the same was due in 15 days. Hence the date of default is 25.10.2023.
11. This Tribunal vide order dated 27.09.2024 directed the Operational Creditor to file statement of account and the same has been furnished by the Operational Creditor via additional affidavit dated 22.10.2024.
12. No reply was filed on behalf of the Respondent and the right to file reply on behalf of the Respondent was forfeited vide order dated 13.06.2024.

Analysis and Findings:-

13. We have heard the Counsel for the parties and have gone through the record and the written submissions submitted on behalf of the Corporate Debtor.
14. During the course of the arguments, Counsel for the Petitioner has argued that the Corporate Debtor has failed to make payment of as



much as 41 invoices produced on record as Exhibit (H) which were issued between 09.04.2016 to 10.10.2023. The total amount of the said invoices comes to Rs. 1,03,49,072/-. Counsel for the Petitioner has further referred to the accounts statement produced on record as Annexure (B) by way of an additional affidavit dated 04.06.2024 which also proves that a sum of Rs. 1,03,49,072/- is outstanding on account of principal amount of the invoices. Counsel for the Petitioner has further contended that since no reply has been filed nor the factum of due amount has been controverted by the Respondent, the factum of existence of operational debt and its default stands proved on record and, therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted.

15. On the other hand, in the written submissions filed on behalf of the Corporate Debtor through Adv. Avinash R. Khanolkar. Counsel for the Corporate Debtor has contended that due to the fact that the business of the Corporate Debtor was affected in the post-Covid 19 period, the due amount could not be paid as the Corporate Debtor suffered irreversible losses and was incapacitated from paying the outstanding dues of the Operational Creditor. In the written submissions also, it has been admitted that a sum of Rs. 1,03,49,072/- was outstanding in due for payment.
16. Having considered the contentions raised by the Counsel for the parties, we are of the considered that the factum of existence of operational debt of Rs. 1,03,49,072/- stands established on record which has not been paid by the Corporate Debtor despite issuance of the demand notice which is annexed in the Petition as Exhibit (K) dated 31.10.2023. It is further evident from the statement of account



which is annexed as Annexure (B) in the additional affidavit dated 04.06.2024 filed by the Operational Creditor that the Corporate Debtor has been making payments from time to time, as depicted in the said statement. It is well settled that any part payment made amounts to acknowledgment of debt and it extends the period of limitation by another three years. Therefore, taking into consideration the part payments made by the Corporate Debtor, as shown in the statement of account, the Petition must be held to have been filed within the period of limitation. Thus, the factum of existence of operational debt and its default stands proved on record. It has also been proved that Petition has been filed within the period of limitation. Accordingly, in our considered, it is fit case for admission under Section 9 of the Insolvency and Bankruptcy Code, 2016. It is ordered accordingly:-

ORDER

- a. **The above Company Petition No. (IB) 72(MB)/2024 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Trig Guardforce Limited.**
- b. This Bench hereby appoints **Renascence Insolvency Resolution Professionals Private Limited, Registration No. IBBI/IPE-0093/IPA-1/2022-23/50034** as the Interim Resolution Professional having his address at 101, Kanakia Atrium 2, Cross Road A, Chakala MIDC Andheri East Mumbai Mumbai City MH 400093, Email Id:-



caamith.gupta@]gmail. com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 3,00,000/- Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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 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.



- e. 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.
- f. 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.
- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. 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.



- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
 - k. The name of the Respondent nos. 2 and 3 shall stand deleted from the array of parties.
17. **Accordingly, this Petition is admitted.**
18. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)