

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/1340/IB//2018

Under Section 9 r/w Rule 6 of the IBC, 2016

In the matter of M/s. Sethuram Spinner Private Limited

M/s. Sri Ramajayam Spintex Private Limited

---Operational Creditor

V/s

M/s. Sethuram Spinners Private Limited

---Corporate Debtor

Order delivered on: 26.02.2019

Coram:

B.S.V. PRAKASH KUMRAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: Shri. S.A. Inbavadivu, Advocate

For the Corporate Debtor: Non-Present

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER, TECHNICAL

Matter under consideration is a Company Petition filed by M/s. Sri Ramajayam Spintex Private Limited (in short, “Operational Creditor”) against M/s. Sethuram Spinners Private Limited (in short, “Corporate Debtor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**) r/w Rule 6 of the Insolvency and Bankruptcy

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(Application of 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 Operational Creditor, a private limited company, it was incorporated with the Registrar of Chennai as No.18-23766 of 1992 under the Companies Act 1956 having its registered office at No.244, Cotton Market, Rajapalayam-626117. The Corporate Debtor Company was incorporated on 26.09.2000 under the Companies Act, 1956 with its registered office at No.26-D, Kuppusamy Raja Street, Rajapalayam-626117.
4. The learned counsel for Operational Creditor stated that they had supplied "40s Hank Yarn 26,320kgs" on various dates to the Corporate Debtor for which sales invoices were raised from 03.09.2018 to 08.09.2018 and the same have been acknowledged by the Corporate Debtor for having received the goods. The total amount of debt as on 31.05.2018 is ₹65,91,788 (Value of the goods supplied ₹50,10,200, Lorry Freight ₹15,960 and Interest @ 18% ₹15,65,628 till 31.05.2018). The default had occurred on 08.09.2016.

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5. It is further stated that on 05.07.2018, the Operational Creditor sent Demand Notice (under Section 8 Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) to the Corporate Debtor for the total unpaid debt amount of ₹50,26,160 and filed proof of service. Copy of Bank accounts maintained by the Operational Creditor is also enclosed confirming that there is no payment of the relevant unpaid operational debt by the Corporate Debtor. On 01.10.2016, the Corporate Debtor had issued a cheque drawn on Canara Bank, Rajapalayam Branch bearing No.559949 for a sum of ₹20,00,000. When the Operational Creditor presented the above cheque, it was dishonoured by the bank with the remark "**Exceeds Arrangements**" and returned it on 04.10.2016. The Operational Creditor sent legal notice under registered post to the Corporate Debtor on 24.10.2016 informing the fact of dishonour of the cheque and demanded payment within 15 days from the date of receipt of the notice.
6. In their reply notice to the criminal complaint under the Negotiable Instruments Act, 1881, dated 01.11.2016, the Corporate Debtor stated that he had neither bought any goods from Operational Creditor (Complainant) nor given any cheque to them and that the invoices and lorry receipts for the goods were falsely created. The Corporate Debtor has given a blank cheque bearing No.559949 to one P.R. Rajendraraja

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who is a relative to the Operational Creditor and not as a payment for the hank yarn. On 28.11.2016, the Operational Creditor (Complainant) approached the Hon'ble Court of the Judicial Magistrate, Rajapalayam, Virudhunagar District, Tamilnadu and filed a complaint under section 200 of CrPC for an offence u/s.138 r/w Section 142 of The Negotiable Instruments Act and the same was taken on file in C.C.No.57 to 59 of 2017 against Corporate Debtor (Accused).

7. On 13.06.2017, the Corporate Debtor filed a Criminal OP (MD) 7103 of 2017 before the Hon'ble Madurai Bench of Madras High Court (Criminal Jurisdiction). The above cases are pending for disposal.
8. In this case, the Corporate Debtor has not filed any written statement except for one occasion where the learned counsel for the Corporate Debtor appeared before this Bench on 24.01.2019 stating that he was not ready to argue the matter. The Corporate Debtor was not represented during the hearing on 18.12.2018, 24.01.2019 and 19.02.2019. The Operational Creditor has sent a Demand Notice under Section 8 of the I&BC, 2016 for which no reply has been sent by the Corporate Debtor. The Operational Creditor has filed proof of service (in page 11 of the typed set filed along with the application). The brief facts of the case have already been mentioned above. The Corporate Debtor, in his reply statement filed against the criminal action initiated under Section 138 of

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the Negotiable Instruments Act by the Complainant (in the NI Act) had stated that they neither received any such consignments nor have they directly issued any cheque to the Complainant as per the details provided in the instant petition.

9. Further, the Corporate Debtor totally denied having any contractual relationship with the Operational Creditor and that they have not given any reply to the Demand Notice issued under Section 8 of the I&BC, 2016. The Corporate Debtors shall within a period of 10 days of the receipt of the Demand Notice and copy of the invoice has to bring to the notice of the Operational Creditor the existence of any dispute, if any. The Operational Creditor has provided evidence regarding the despatch of goods which were acknowledged by the Corporate Debtor and the cheques which were dishonoured. No written statement in this petition has been filed by the Corporate Debtors.
10. Further, the Corporate Debtor has not pointed out any instances of dispute as mandated under section 8(2) of the I&BC, 2016. In a similar case, the Hon'ble NCLAT, New Delhi (in Company Appeal (AT) (Insolvency No.623 of 2018 decided on 13.11.2018 in *Sudhi Sachdev (Appellants) - vs- APPL Industries Limited (Respondents)* MANU/NL/0305/2018 has opined as follows:

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"In the present case, it is not in dispute that there is a debt payable to the Operational Creditor and default on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, cannot be held to be a dispute pending before a court of law."

11. In view of the above, this Tribunal **admits the instant Company Petition 1340/IB/2018** filed under Section 9 of the I&BC, 2016 and order commencement of Corporate Insolvency Resolution Process (CIRP) which shall ordinarily get completed within 180 days, reckoning from the date of this order is passed.
12. Since the Petitioner/Operational Creditor has not recommended the name for Insolvency Resolution Professional (TRP), we appoint Mr. M. Ramaswamy as IRP from the list provided by the IBBI dated 25.12.2018. On the appointment, the IRP is directed to submit the consent in Form-2 within three days of issue of this order. The IRP is directed to take charge of the Corporate Debtors' 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 of 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 CIRP for the purpose referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following namely,

- (i) *the institution of suits or continuation of pending suits or proceedings against the Corporate Debtors including execution of any judgement, decree or order in any court of law, Tribunal, Arbitration panel or other authority;*
- (ii) *Transferring, encumbering, alienating or disposing of by the Corporate Debtors any of its assets or any legal right or beneficial interest therein;*
- (iii) *any action to foreclose, recover or enforce any security interest created by the Corporate Debtors in respect of its property including any action under the Securitization and Reconstruction or Financial Assets and Enforcement of Security Interest Act 2002 (54 of 2002);*
- (iv) *the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the Corporate Debtors;*

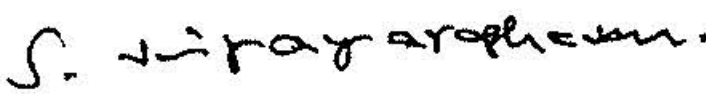
14. The supply of essential goods or services of the Corporate Debtors shall not be terminated or suspended or interrupted during the moratorium period. The provisions of sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government;


15. The IRP so appointed 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 Debtors are directed to extend all assistance and co-operation to the IRP as stipulated under section 19 and for discharging his functions under section 20 of the I&B Code;

16. The Operational Creditor as well as the Registry is directed to send the copy of this order to IRP on his appointment so that he could take charge of the Corporate Debtors' assets etc. and make compliance with this order as per the provisions of the I&B Code, 2016; and
17. The Registry is also directed to communicate this order to the Operational Creditor and Corporate Debtor and to the IRP for obtaining consent letter in Form-2.
18. The address details of the IRP as follows:

Mr. M. Ramaswamy .
Reg. No. IBBI/IPA-001/IP-P01432/2018-2019/12238
E-Mail: ramsattirupur@gmail.com
Mobile No: 9843330765


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


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

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