

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



C.P. (IB) 3776 MB 2019

Under section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF

Pooja Clothing Private Limited

83, Vishal Industrial Estate, Bhandup Village Road, Bhandup (W), Mumbai 400078.

... Financial Creditors

V/s.

Gini & Jony Limited

A-610, Citipoint, Next to Kohinoor Continental, Andheri-Kurla Road, Andheri (E), Mumbai 400059.

... Corporate Debtors

Order delivered on :- 06.09.2024

Coram:

Hon'ble Shri Kuldeep Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Operational Creditor : Adv. Aniruth Purusothaman

For the Corporate Debtor : Adv. A J Rizvi

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by Pooja Clothing Private Limited (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Gini & Jony Limited (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment 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 payment of a sum of Rs. 76,38,073/-.

The submissions by the Financial Creditor:-

2. The Corporate Debtor is Manufacturing and dealing in Readymade Garments & Accessories for kids through its outlets all over India and allots manufacturing activities to suitable parties.
3. The Operational Creditor is in business of the Manufacturing Garments.
4. The Operational Creditor and Corporate Debtor entered in an arrangement of sourcing orders through Memorandum of Understanding dated 4th November, 2017 and as per the arrangement, it was decided that the Corporate Debtor will provide patterns, measurement, embroidery, print designs, samples and tech packs to the Operational Creditor for better understanding of production of garments.



It was agreed that the Corporate Debtor would raise Purchase order and as per the said Purchase Order, Operational Creditor was supposed to proceed with the orders.

6. The Operational Creditor regularly manufactured garments and supplied after required inspection and clearance and to the satisfaction of the Corporate Debtor as per the various purchase order issued and raised invoices.
7. The Operational Creditor, pursuant to various purchase orders, has supplied goods after required inspection and clearance and to the satisfaction of the Corporate Debtor and raised invoices totaling to Rs. 1,28,85,507/- (Rupees One Crore Twenty Eight Lakhs Eighty Five thousand Five hundred and Seven Only) from 16th February, 2018 to 16th November, 2018 and raised debit notes and issued credit notes and received on account payment, all three combined totaling to Rs. 52, 47,434/- (Rupees Fifty Two lakhs Forty Seven Thousand Four hundred and Thirty Four only.) leaving outstanding amount of Rs. 76,38,073/- (Rupees Seventy Six Lakh Thirty Eight thousand Seventy Three only.)
8. The Corporate Debtor had made the last payment on 11th January, 2019 for a sum of Rs. 5,00,000/- (Rupees Five Lakhs only). Thereafter, the Operational Creditor persistently followed up for the outstanding payments with the Corporate Debtor number of times via telephonic calls, personal visits and e-mails but the Corporate Debtor was reluctant in complying with their mail for releasing the outstanding payment.
9. Thereafter, the Operational Creditor, agonized with Corporate Debtor's reluctance toward payment of outstanding dues, filed a



police Complaint dated 3rd June, 2019 against Corporate Debtor for cheating, criminal intimidation and committing criminal breach of trust.

10. The Operational Creditor served demand notice dated 4th September on Corporate Debtor vide Speed post dated 6th September, 2019 demanding the payment of outstanding dues of Rs. 76,38,073/- (Rupees Seventy-Six Lakh Thirty-Eight Thousand Seventy-Three only) along with interest amounting to Rs. 22,31,533/- (Rupees Twenty-Two Lakhs Thirty-One Thousand Five hundred and thirty-three Only) and GST thereon Rs. 4,01,676/- (Rupees Four Lakh one thousand Six Hundred Seventy-Six Only.) totalling to Rs. 1,02,71,282/- (Rupees One Crore Two Lakh Seventy-One Thousand Two Hundred Eighty-Two Only)
11. The Demand notice dated 4th September, 2019, sent vide Speed post-dated 6th September, 2019, was received by the Corporate Debtor on 9th September, 2019.
12. There was neither any Notice of Dispute raised by the Corporate Debtor nor any credit was received from the Corporate Debtor within 10 days from the date of receipt of the Notice on 9th September, 2019 and even thereafter till date.
13. The Operational Creditor received a Letter dated 21 September, 2019, which is referred as reply by the Corporate Debtor to the Demand Notice dated 4th September, 2019, falsely stated to be received by the Corporate Debtor on 11th September, 2019. In fact, the said Demand Notice was received by the Corporate Debtor on 9th September, 2019 as per the tracking report of speed post. Also, it is pertinent to note that the Corporate Debtor actually sent the reply



on 23rd September, 2019 which is not within the statutory timeline of 10 days to reply and it is evident from the tracking report of the Speed Post through which reply was sent. Thus, the Corporate Debtor with mala-fide intention stated in its Letter that they received the Demand Notice only on 11th September, 2019 so as to bring the reply within time limit as per Section 8(2) of The Insolvency & Bankruptcy Code, 2016 to the said Demand Notice, which already expired on 19th September, 2019. Also the contents of the Letter are implausible and untenable.

14. The Corporate Debtor has not raised any material dispute in any of the correspondence with the Petitioner until the date of service of the Demand Notice. In fact, they have confirmed in their email correspondences to make the payment within stated time period.
15. It is also pertinent to note that as per the specifications given in the purchase order nos. SOUS- 106/108/110 AND 112 by the Corporate Debtor, the Petitioner has manufactured and made available goods to their specifications of a value of Rs. 22,14,761/- (Rupees Twenty Two Lakhs Fourteen thousand Seven hundred and Sixty One Only) but till date only 50% of the goods have been accepted and the remaining goods are lying with the Petitioner which will also result into gross amount of loss to the Petitioner, in addition to blocking of funds and interest thereon and reduction in the value of stock due to efflux of time, as the goods are manufactured specific to the requirement and specific brand of the Corporate Debtor, which cannot be sold in the open market.
16. Hence the present Company Petition.

**Reply filed by the Corporate Debtor:-**

At the outset, the Corporate Debtor denies all the allegations and certain contentions raised, levelled and contained by the Operational Creditor in Petition against Corporate Debtor.

18. The present Petition is filed by the Operational Creditor with animus possidendi to the Respondent hence not maintainable and liable to be dismissed.
19. The Corporate Debtor is a Public (Unlisted) Limited Company incorporated under the provisions of the Companies Act, 1956 in the year 1994 and inter-alia having its objects as manufacturing and dealing in Ready-made Garments & Accessories for Kids through its outlet all over India and allots manufacturing activities to suitable parties. As Mr. Prakash Lakhani was appointed as a Managing Director of the Corporate Debtor in the year 1994 and since then along with other Directors are running the business affairs of the Corporate Debtor.
20. According to the Operational Creditor, MoU was signed between both the parties dated 04.11.2017 but according to the facts of the case and as per Annexure-II, Exhibit H of the Company Petition, it can be seen that it bears no signature of the Corporate Debtor under MoU. Therefore, the provisions of the Indian Contract Act, 1872 are not applicable and the terms and conditions, as stated, do not show the true and correct picture.
21. The Corporate Debtor states that it had replied to the Demand Notice dated 21.09.2019 stating existence of dispute before Bhandup Police Station between both the parties and in fact, it is entitled to recover a



compensation from Operational Creditor amounting to Rs. 2,14,09,532/-, as per the detailed statement given therein dated 17.07.2019.

22. It is stated that interest charged under the MSME Act, 2006 amounting to Rs. 22,31,533/- for delay in payment outstanding is not payable. The Corporate Debtor states that there is no interest clause mentioned under the Tax invoice and further that the Operational Creditor was not registered at the time of business transaction as per Annexure-II, Exhibit-G of the Petition. Therefore, the interest along with GST @ 18% interest wrongly claimed.
23. It is stated that the Operational Creditor has not complied with the terms and conditions as mentioned under the purchase order due to which the Corporate Debtor has suffered losses.
24. It is further stated there is existence of dispute between parties on record and on this ground, the petition is liable to be dismissed.
25. The Operational Creditor filed rejoinder denying each and every facts mentioned in reply filed by the Corporate Debtor.

FINDINGS

26. We have heard the Counsel for the parties and have gone through the records.
27. During the course of the arguments, Ld. Counsel for the Operational Creditor has pointed out that the Operational Creditor supplied goods to the Corporate Debtor vide various invoices issued between 02.04.2018 and 11.01.2019 and after adjusting some payments made by the Corporate Debtor, a sum of Rs. 76,38,073/- was outstanding



at the time of filing the Petition. The Counsel for the Operational Creditor has further pointed out that even if the amount of interest of Rs. 22,31,533/- is not taken into consideration, the claimed amount is still more than the threshold limit of Rs. 1 lakh which was applicable as per Section 4 of the IB Code, 2016 at the time of the filing of the present Petition.

28. Counsel for the Operational Creditor has further referred to the balance confirmation executed by the Corporate Debtor on 09.05.2019 which has been annexed with the Petition as Exhibit-I whereby the Corporate Debtor has acknowledged its liability to pay a sum of Rs. 75,61,645/- to the Operational Creditor. The Ld. Counsel for the Operational Creditor has further pointed out that since the Corporate Debtor was not making the payments, a complaint was also lodged with the Police of P. S. Bhandup against the Corporate Debtor and subsequently to that, a demand notice dated 04.09.2011 was also issued by the Operational Creditor. The Counsel for the Petitioner has further referred to an email dated 15.02.2020 sent on behalf of the Corporate Debtor, whereby also, the Corporate Debtor sought to settle the matter through a draft settlement memo which also tantamounts to an acknowledgment of Operational debt on the part of the Corporate Debtor. The Counsel for the Operational Creditor has further argued that in the light of the aforesaid facts, it is clear that the Corporate Debtor has incurred an operational debt which it has failed to pay despite issuance of a demand notice and further that there is no pre-existing dispute between the parties and, therefore, the Petition should be admitted.
29. On the other hand, the Counsel for the Corporate Debtor has argued that there is a pre-existing dispute between the parties and on that



ground alone, the Petition is liable to be dismissed. In this regard, the Counsel for the Corporate Debtor has referred to the letter dated 17.07.2019 which was submitted with Sub-Inspector Police of P. S. Bhandup by the Corporate Debtor where in it has been mentioned that due to non-supply of goods in time by the Operational Creditor as per the purchase order, the Corporate Debtor has suffered huge losses and, therefore, the Corporate Debtor is entitled to recover a sum of Rs. 2,14,09,532/- from the Operational Creditor which includes delivery loss of Rs. 59,93,807/- and compensation of Rs. 1,58,15,572/-.

30. The Ld. Counsel for the Corporate Debtor has further argued that in the Memorandum of Understanding (MoU) also, there is a provision that goods shall not be withheld from supply by the Operational Creditor on account of delay in payments and further that the company shall purchase the goods at a discount if the manufacturer delays the supply of goods. In the light of these facts, it has been argued by the Counsel for the Corporate Debtor that since the goods were not supplied by the Operational Creditor in time, this resulted in loss of business to the Corporate Debtor, which the Corporate Debtor is entitled to recover from the Operational Creditor in accordance with the terms and conditions incorporated in the MoU.
31. The Counsel for the Corporate Debtor has further argued that there was no agreement with regard to the payment of interest between the parties and the Operational Creditor has wrongly charged the interest which is not payable at all. Moreover, the Corporate Debtor was never informed by the Operational Creditor at any point of time that it was a MSME concern. The Counsel for the Corporate Debtor has further contended that the demand notice issued by the Operational



Creditor is also bad in the eyes of law on account of the fact that the amount of interest has been wrongly added/included in the total amount claimed in the notice which renders the notice is invalid as per law and on this ground alone, the present Company Petition filed u/s 9 of the IB Code, 2016 is liable to be dismissed.

32. We have considered the aforesaid contention raised by the Counsel for the parties and have also carefully gone through the records.
33. It is not disputed that the Operational Creditor supplied goods to the Corporate Debtor on the basis of the invoices issued between 02.04.2018 and 11.01.2019. It is further not disputed that a sum of Rs. 76,38,073/- was outstanding against the aforesaid supply of goods to the Corporate Debtor. In this regard, a reference can also be made to the balance confirmation dated 09.05.2019 which is duly signed on behalf of the Corporate Debtor. The Counsel for the Corporate Debtor has argued that the said balance confirmation dated 09.05.2019 is not authentic as it is not clear as to who issued the said confirmation on behalf of the Corporate Debtor. However, the plea raised by the Counsel for the Corporate Debtor regarding the authenticity of the balance confirmation seems to be untenable considering the fact that in the reply filed on behalf of the Corporate Debtor, the correctness and the validity of the balance confirmation has not been expressly disputed.
34. The only substantive argument raised by the Counsel for the Corporate Debtor is that there is a pre-existing dispute between the parties in as much as there was delay in supply of goods on the part of the Corporate Debtor as per the purchase orders placed with the Operational Creditor. It has also been pointed out on behalf of the



Corporate Debtor that some of the goods were not accepted by the Corporate Debtor as the same were not supplied within time resulting in loss to the Corporate Debtor as by the time the festival season was over. In this regard, the Counsel for the Corporate Debtor has referred to a clause in the Memorandum of Understanding (MoU) Exhibit-H executed between the parties which provides that the goods will be purchased at a discounted price if the same are supplied beyond one week, two weeks, three weeks, as the case may be. The Counsel for the Corporate Debtor has further referred to the reply dated 17.07.2019 filed by the Corporate Debtor to the Sub-Inspector of Bhandup, Police Station wherein also it was stated that since the goods were supplied after the expiry date of the purchase orders, the Corporate Debtor was entitled to be compensated to the tune of Rs. 2.14 crores.


35. We have thoughtfully considered the aforesaid contentions raised by the Counsel for the Corporate Debtor with regard to existence of a dispute between the parties and are of the considered view that the Corporate Debtor has failed to make out a case of pre-existing dispute. In this regard, it is worth mentioning that at no point of time till a complaint was lodged with the Police by the Operational Creditor and a demand notice was sent to the Corporate Debtor for non-payment on account of supply of goods, no objection was raised on behalf of the Corporate Debtor that the goods were not supplied in time to the Corporate Debtor. It was only when a police complaint was lodged that the Corporate Debtor raised this defence for the first time which seems to be nothing but an afterthought.
36. It is further pertinent to point out that prior to the letter dated 17.07.2019, the Corporate Debtor acknowledged its liability to pay




the amount of Rs. 76,38,073/- in the balance confirmation issued on 09.05.2019. This further corroborates that fact that the defence raised in the reply is an afterthought. In this context, a further reference can also be made to the fact that even on January, 2020, an email was sent by the Corporate Debtor to the Operational Creditor along with a copy of draft of consent terms wherein again the Corporate Debtor proposed to pay some of Rs. 1.11 crores including the principle operation debt of Rs. 76,38,073/-. Had there been actually an issue in respect of late supply of goods resulting in some loss to the Corporate Debtor, the same would have been raised promptly by the Corporate Debtor. In the given circumstance, in our considered view, the plea of pre-existing dispute between the parties is nothing but a moon shine defence and is liable to be rejected.

37. So far as the question of existence of a contract with regard to payment of interest is concerned, in our considered view, this is not very material as even if the principle sum of Rs. 76,38,073/- is to be taken into consideration, the sum would be more than the threshold limits of Rs. 1 lakh which was applicable at the time of filing of the present Company Petition in the year 2019.
38. No other points have been raised. Even otherwise from the above discussion, it becomes amply clear that the Petitioner has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that there is no pre-existing dispute between the parties. Therefore, in our considered view, it is a fit case for admission u/s 9 of the Insolvency and Bankruptcy Code, 2016. The Petition is accordingly admitted in the following terms;


ORDER

- 
- a. **The above Company Petition No. (IB) -3776 (MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Gini & Jony Limited.**
- b. This Bench hereby appoints CA, Anurag Jain, Registration No: IBBI/IPA001/IP-P-01049/2017-2018/11732 as the Interim Resolution Professional email :- jainkpooja@gmail.com, address; 1401 Oriental Height, Sector-44, Plot-158 Seawoods West, Navi Mumbai - 400706, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 3 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.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)
ANKIT

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)