

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

CP (IB) 2484 /MB/2018

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

Span Fibre India Private Limited

...Applicant/ Operational Creditor

V/s

Vedik Cotton Limited.

...Corporate Debtor

Order delivered on: 09.03.2021

Coram:

Hon'ble Member (Judicial) : Mr. H.P. Chaturvedi

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

**For the Operational Creditor : Mr. M.S. Bhardwaj i/b MSB Legal,
Advocates**

For the Corporate Debtor : None Present

Per: RAVIKUMAR DURAISAMY, MEMBER

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) in Form No.5 by the Applicant Span Fibre India Private Limited (Operational Creditor) to initiate Corporate Insolvency Resolution Process (CIRP) under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Vedik Cotton Limited (Corporate Debtor) to claim an Operational Debt of ₹70,76,944/- as on 31.03.2016 along with a further interest of Rs. 5,08,424 @ 17% p.a. as on 14.02.2017 and 15.02.2017.
2. The Petitioner submits that vide a Memorandum of Understanding dated 01.06.2005, it was agreed that the Operational Creditor had agreed to make payments on behalf of Corporate Debtor to Reliance Industries Ltd. for purchase of goods. The Corporate Debtor had agreed to pay the amount within 20 days and interest rate of 14% p.a. and at further interest rate of 17% p.a. for the period delayed.
3. The Petitioner further submits that vide Agreement dated 01.07.2009, the Operational Creditor was the Del Credere Agent of Reliance Industries Limited vide Agreement. Based on the said

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Agreement, the Petitioner supplied materials for sale of Polyester Staple Fibre on regular basis. On instructions of the Corporate Debtor, the Operational Creditor would make payments to Reliance Industries for purchase of the materials and the said goods were delivered in the factory of the Corporate Debtor.

4. The Petitioner submits that the Corporate Debtor maintained a running ledger account of the transactions with the Operational Creditor. As per the said ledger, the Corporate Debtor was liable to pay a sum of Rs. 70,76,944 as on 31.03.2016. The said sum due and payable was confirmed by the Corporate Debtor vide letter dated 30.08.2016 sent to the Operational Creditor admitting that a sum of Rs. 70,76,944/- reflecting as credit balance was payable to the Operational Creditor. The details of Computation of Default is given below :-

Particulars	Amount
Amount Receivable as on 31.03.2016	70,76,944
Add :- Interest at 17% p.a.	5,08,424

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Total amount in Default as on 14.02.2017/15.02.2017	75,85,368
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5. The unpaid amount shown in the ledger account of the Corporate Debtor appearing in the books of Operational Creditor has been produced to corroborate the amount claimed by the Petitioner in this petition.
6. The Operational Creditor sent a Demand Notice dated 30.04.2018 in Form 3 and Form 4 for claiming the aforesaid amount. The Petitioner had also sent Legal Notice by Speed Post dated 19.04.2017 wherein it was sought to notice to the Corporate Debtor about the repayment of outstanding amount. However, nothing fructified. The Corporate Debtor neither made the payment nor replied to the notice.
7. The Indian Overseas Bank issued Certificate dated 15.06.2018 to the effect that no payments has been received from the Corporate Debtor against the goods supplied.

8. The Corporate Debtor has neither replied to the Demand Notice nor to this petition filed by the Operational Creditor despite being given ample number of opportunities. It is evident that the Corporate Debtor has nothing to say in its defence and the claim of the Operational Creditor is self-speaking in terms of its genuineness.
9. The Petitioner stated that the impugned Petition is filed within the period of limitation as the first pending unpaid invoice fell due immediately after being drawn up.

No Submissions by the Corporate Debtor:-

10. The Corporate Debtor has neither replied to the Demand Notice sent to it u/s 8 of the I&B Code nor filed an affidavit in reply to this Petition. The Corporate Debtor has never appeared in this matter despite being served with intimations of dates of hearing by the Petitioner. The Petitioner has filed Affidavit of service dated 25.01.2021 wherein the date of hearing of the matter was intimated to the Directors of the Company.

Findings:-

11. Upon perusal of the documents it is observed that despite of providing various opportunities to the Corporate Debtor it has

neither filed a reply to the demand notice issued under Section 8 of IBC nor reply to the Petition filed under Section 9 of IBC, 2016. From the records it is also noted that the matter was listed on various dates.

12. The claim of the Operational Creditor is amounting to Rs 70,76,944/- (Rupees Seventy Lakh Seventy Six Thousand Nine Hundred and Forty Four Only) plus interest amounting to Rs. 5,08,424/- (Rupees Five Lakh Eight Thousand Four Hundred and Twenty Four Only) total amounting to Rs. 75,85,368/- (Rupees Seventy Lakh Eighty Five Thousand Three Hundred and Sixty Eight Only).
13. As regards the facts of the present case are concerned, after hearing the submissions made and perusing the documents produced on record, it is observed that the debt in question is not challenged by the Corporate Debtor in view of the evidences that corroborate to the existence of the Petitioner's claim.
14. Neither any reply nor any submissions were placed on record from the side of the Respondent despite being granted sufficient opportunity.

15. The ledger account of the Corporate Debtor maintained by the Operational Creditor annexed in the Petition is evident of the fact that the Corporate Debtor is liable to pay and is only stalling the payments. The Corporate Debtor never denied the said liability under consideration.
16. It has also been observed that the notice sent under Section 8 (2) of the Code it is noted that the Corporate Debtor has received the same but has not paid the amount of unpaid dues. Further, if the Debtor wanted to place on record evidence of 'Dispute' then it could have raised the objection within 10 days as prescribed under section 8 (2) of the Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt.
17. Since the Corporate Debtor has neither rebutted the claim of the Operational Creditor to the demand notice or to the instant Petition, it has also not appeared before this Adjudicating Authority. Therefore, we have no other option but to initiate CIRP proceedings against the Corporate Debtor and to appoint the IRP to conduct CIRP proceedings. Accordingly, this Adjudicating Authority initiates CIRP proceedings against the Corporate Debtor.

17. The Operational Creditor has proposed the name of **Mr.Dakshesh Choksi**, Registration No. IBBI/IPA-01/IP-P00718/2017-2018/11300, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

18. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

19. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP(IB)-2484/MB/2018** filed by **Span Fibre India Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Vedik Cotton Limited [CIN: U17110MH1997PLC187124]**, the Corporate Debtor, is **admitted.**

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr. Dakshesh Choksi**, Registration No. IBBI/IPA-01/IP-P00718/2017-2018/11300, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- (h) The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees three lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-

H.P.CHATURVEDI
MEMBER (JUDICIAL)