

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

CP(IB) No.250/NCLT/AHM/ 2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 03.05.2021**

Name of the Company: Royss Trades through its sole proprietor Kritika
Priyen Khona
V/s
Ahitri Spinning Mills Pvt Ltd

Section 9 of Insolvency and Bankruptcy Code, 2016.


S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

The order is pronounced in the open court vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 3rd day of May, 2021


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 250/9/NCLT/AHM/2020

In the matter of:

M/s. Royss Trades

Through its sole proprietor
Kritika Priyen Khona
306, 3rd Floor, Gala Mart,
Nr. Sobo Centre
Before Safar Parisar
Above SBI/Union Bank/Hindmart
South Bopal
Ahmedabad 380 058

GUJARAT STATE :

Petitioner
[Operational Creditor]

Versus

Ahtri Spinning Mills Private Limited

Survey No. 317
Dholi-Kharati Village Road
Mouje Dholi Village
Taluka Dholka
Ahmedabad 382 240

GUJARAT STATE :

Respondent
[Corporate Debtor]

Order delivered on 3rd May, 2021

Coram: Hon'ble Ms. Manorama Kumari, Member (J).
Hon'ble Chockalingam Thirunavukkarasu, Member (T)

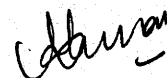
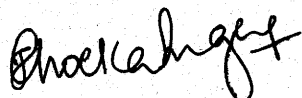
Petitioner : Mr. Rishabh Shah, Advocate
Respondent : Mr. Monal Davawala, Advocate

Chockalingam

Manorama

ORDER**Per se : Ms. Manorama Kumari, Member (Judicial)**

1. Ms. Kritika Priyen Khona, Sole proprietor of **M/s. Royss Trades** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.
2. The applicant/operational creditor is a proprietary firm having registered office at Mumbai, dealing in supply of cotton.
3. The respondent/corporate debtor is a private limited company registered on 23.06.2014 under the provisions of Companies Act, 1956, having identification No. U1712GJ2014PTC079865 and having registered office at Taluka Dholka, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs.11,00,00,000/- and paid up share capital is Rs. 10,44,45,130/-.
4. The applicant/operational creditor has stated that, vide several tax invoices, it had delivered cotton of desired



quality and quantity for a total amount of Rs. 9,92,01,378/- to the respondent and delivery of the material was made on respective dates at the address desired by the respondent. Copies of all the tax invoices along with e-way bills are annexed as Exhibit A-1" (Colly). That, the cotton sold to the respondent was thereafter converted into yarn by the respondent and supplied to the applicant and other traders. That, an amount of Rs. 5,13,12,320/- has been paid by the applicant to the respondent towards this business transactions.

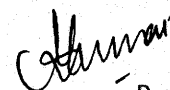
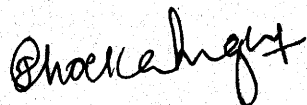
5. The applicant has further stated that a total amount of Rs. 43,35,958/- is deducted towards goods returned to the respondent by the applicant. That, an amount of Rs. 4,01,38,654/- has been received by the applicant from the respondent. That, the applicant has charged 1% commission on the cotton sale transactions with the respondent aggregating to Rs. 28,67,733/- and the respondent vide email dated 15.12.2019 has accepted and acknowledged that commission is payable by the respondent. Further, the respondent has acknowledged an amount of Rs. 15,18,806/- towards commission payable to the applicant by email dated 15.12.2019. That, in terms of the business transaction of yarn purchased and sale of cotton between the applicant and respondent, an amount of Rs. 1,18,39,134/- is due and payable by the respondent. That, according to the ledger account of the applicant, from 01.04.2018 to 07.01.2020, the respondent has acknowledged that an amount of Rs. 1,03,23,829/-

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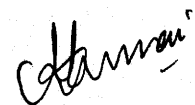
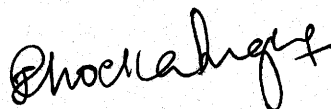
which is due and payable by the respondent. That, as per the ledger and as per the list of creditors provided by the respondent, an amount of Rs. 1,03,23,829/- is outstanding and payable to the applicant by the respondent. That, as per the ledger maintained by the applicant, an amount of Rs. 1,18,39,134/- is payable by the respondent as on 02.03.2020. As per the computation furnished by the applicant, a total sum of **Rs. 1,18,39,134/- (Rupees one crore eighteen lacs thirty-nine thousand one hundred thirty-four only)** is due and payable by the respondent which include interest @ 21% per annum from 22.11.2019 till 03.03.2020. According to the applicant, date of default is 22nd November, 2019.

6. The applicant/operational creditor has stated that despite efforts the corporate debtor has failed to make payment of the outstanding operational debt, therefore, this petition.
7. It is further stated by the applicant that having failed to receive the outstanding debt, the applicant was compelled to issue demand notice in form 3 under section 8 of the Code dated 03.03.2020 through advocate demanding operational debt due and payable by the respondent.
8. In support of its claim, the operational creditor has annexed to the application documents like; copy of invoices along with e-way bills (page 30-102) issued by



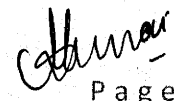
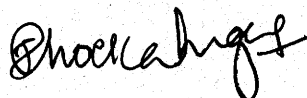
applicant, copy of all the tax invoices issued by respondent (page 103-264), copy of ledgers showing payments made by the applicant to the respondent (page 265-274), copy of ledger showing entries towards goods returned (page 275), copy of ledger maintained by applicant showing payment made by respondent (page 276-277), copy of the ledger of applicant in the books of respondent from 01.04.2018 to 07.01.2020 (page 278-281), copy of email dated 15.12.2019 sent by respondent (page 282-285), calculation of commission by applicant (page 286), copy of ledger accounts showing list of creditors (page 287), copy of ledger account maintained by applicant (page 288-295), calculation of interest (page 296) etc.

9. Mr. Hirabhai Ahir, Director of the respondent/corporate debtor filed affidavit in reply inter alia raising various objections like;
- that, there is a pre-existing dispute;
 - that, non-payment to supplier by petitioner;
 - that, non-confirmation of ledger accounts with respondent company's books of accounts and wrong debt entries without confirmation;
 - that, petitioner has avoided mentioning receipt of reply to the demand notice;
 - that, respondent company is directly or indirectly connected with petitioner firm;
 - that, there is/are mistakes in the petition;



Findings:

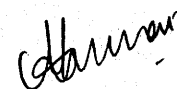
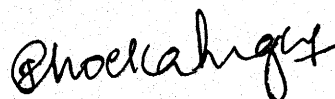
10. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
11. On perusal of the records it is found that on 16.03.2021, both the sides were heard extensively and the arguments were concluded, however, on the request of the respondent, permission was granted to file documents and fixing the matter on 13.04.2021. As per the records no document has been filed on 13.04.2021.
12. On perusal of the records it is found that the applicant, a trader, procure raw cotton from different producers from the open market and sell it to the respondent, who, in turn, convert the raw cotton into yarn. During the course of business, the applicant as well as the respondent raise invoices on each other and the applicant charge 1% commission on the respondent. On receipt of invoice from the respondent for the finished product, the applicant release payment of the suppliers. Copies of such tax invoices along with e-way bills raised by the applicant on the respondent and tax invoices along with e-way bills raised by the respondent on the applicant are annexed to the application at page 30 to 264 to the application. The main objection raised by the respondent (point No. 3 – page 4 to the reply) is that the petitioner firm had filed a suit No. 3201 of 2019, on 03.12.2019, before the Hon'ble Judge of Bombay Civil Court against one Amivarsha



Industries for supplying inferior quality of goods to the applicant, which, in turn, would have been supplied to the respondent company. Such plea raised by the respondent cannot be considered as a pre-existing dispute, because the said dispute is between the applicant and a third party viz. Amivarsha Industries and it has nothing to do with the respondent. Similarly, any dispute between the applicant and a third party regarding quality, quantity and non-payment to the third party Amivarsha Industries cannot be considered as a reason for non-payment of the debt of the applicant by the respondent. Other objections raised by the respondent like; non-confirmation of ledger accounts with respondent company's books of accounts and wrong debt entries without confirmation, petitioner has avoided mentioning receipt of reply to the demand notice, respondent company is directly or indirectly connected with petitioner firm and there is/are mistakes in the petition are illusory, imaginary and will not sustain in the eye of law.

13. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.

14. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and



there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.

15. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
16. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
17. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following:
 - (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
and
 - (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

18. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.
19. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public

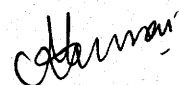
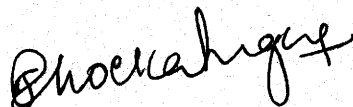
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announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

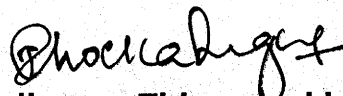
20. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
21. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (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 Act, 2002 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

22. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
23. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.
24. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp, Old RBI, Ashram Road, Ahmedabad-380009 having IBBI Registration No.: IBBI/IPA-001/IP-P00397/2017-18/10715 (Email cabsrajput309@gmail.com Mobile - 9426014155) to act as an interim resolution professional under Section 13(1)(c) of the Code. The IRP shall be under duty to protect and preserve the value of the property of the corporate debtor company and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by Section 20 of

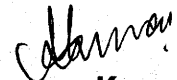


the Insolvency & Bankruptcy Code, 2016. The operational creditor is directed to pay an advance of **Rs. 1,00,000/- (Rupees one lac only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of corporate insolvency resolution process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with first progress report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

25. This Petition is accordingly admitted. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
26. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking of name of the respondent company be initiated arising out of non-compliance of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of liquidation and sale of assets to realise the amount of all the stakeholders.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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