

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(through web-based video conferencing platform)**

**CP (IB) No. 352/Chd/Chd/2018**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**Kotak Commodity Services Private Limited and  
Kotak Ginning & Pressing Industries,**

with its registered office at:

Nirlon House, 1st Floor, Dr. Annie Besant Road,  
Near Old Passport Office, Worli, Mumbai.

...Petitioner-Operational Creditor

Vs.

**Cheema Spintex Limited,**

with its registered office at

House No.167, Sector 19-A,  
Chandigarh.

...Respondent-Corporate Debtor

**Judgement delivered on: 06.10.2021**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

For the Operational Creditor : 1. Ms. Mandeep Gujral, Advocate  
2. Mr. R.S. Badhran, Advocate

For the Corporate Debtor : None

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, **(for brevity 'IBC' / 'Code'), 2016** read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Kotak Commodity Services Private Limited **(for brevity 'Operational**

**Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Process (CIRP) in case of Cheema Spintex Limited (**for brevity 'Corporate Debtor' / 'Respondent'**). The petitioner-operational creditor passed a resolution dated 29.05.2018 (Annexure – II (A) – 23) authorizing Mr. Sanjay N.Vyas to initiate appropriate proceedings against corporate debtor. There is an affidavit of Mr. Sanjay N.Vyas in support of the contents of the application at Page No.112-113 of the petition.

2. The Corporate Debtor namely, Cheema Spintex Limited, is a Company incorporated on 10.10.1994 under the provisions of Companies Act, 1956 with CIN No. U17115CH1994PLC015140 with its registered office at House No.176/2, Sector 41-A, Chandigarh, which falls within the U.T. of Chandigarh. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹45,00,00,000/- and Paid-Up Share Capital of the Company is ₹41,68,12,000/-.

3. The facts of the case, briefly, as stated in the petition are that the petitioner-operational creditor is carrying on the business of buying, selling and import, export of cotton and trading in cotton bales/raw material and the respondent-corporate debtor has approached the petitioner to deliver cotton bales/raw cotton from time to time. Copy of various retail invoices and lorry receipts against the delivery of cotton yarns and bales are found attached as Annexure-I (A)-1 to Annexure-I (A) -13 and Annexure-I (A)-15 to Annexure-I (A)-18. It is further submitted that the corporate debtor has issued cheques for a sum of ₹87,52,568/- which were returned unpaid with the reason 'Funds Insufficient'. The copies of cheques and cheque return memos are found attached as Annexure-I (A)-21 to Annexure-I (A)-27.

4. It is further submitted that the corporate debtor has confirmed and acknowledged the debt as on 31.03.2016. The corporate debtor has also signed the confirmation of closing balance in ledger account from 04.04.2015 to 31.03.2016. Copy of confirmation letter dated 31.03.2016 issued by the corporate debtor and ledger account is attached as Annexures-1 and 2 respectively of Diary No.6582 dated 25.11.2019.

5. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as it failed to make the payment due to the applicant-operational creditor.

6. A demand notice under Section 8 of the Code dated 21.06.2018 (Annexure-I(A)-20) is stated to be served upon the corporate debtor by speed post as well as by e-mail. The demand notice was accompanied by statement of ledger account of corporate debtor maintained with the petitioner, copy of invoices, balance confirmation letter, undertaking dated 16.03.2016 given by the corporate debtor and the copy of complaint filed under Section 138 of the Negotiable Instrument Act. The corporate debtor has raised objections vide Notice dated 29.06.2018 Annexure II (A)-24 regarding the quality of cotton yarns supplied by the operational creditor.

7. It is deposed by the authorised signatory of the operational creditor that the petitioner has not received any reply to its demand notice dated 21.06.2018. It is also deposed that there is no dispute of unpaid operational debt pending between the parties.

8. In part-III of Form 5, the operational creditor has proposed Mr. Alok Kaushik, bearing registration No.IBBI/IPA-002/IP-N00253/2017-18/10767 as the Interim Resolution Professional (IRP). The consent of the proposed IRP

is furnished in Form 2, dated 12.07.2018 and the same is placed at Annexure-V (A)-1, in which he has stated that he is currently serving as Resolution Professional/Liquidator in one other proceeding. It is also stated that there are no disciplinary proceedings pending against the Resolution Professional with the Board or with ICSI Insolvency Professionals Agency.

9. Notice of this petition was issued to the corporate debtor on 15.02.2019 to show cause as to why this petition be not admitted.

10. Respondent-corporate debtor filed reply vide Diary No. 5502 dated 11.10.2019, in which it has been stated that demand notice was not sent at registered office of corporate debtor. As per master data, the registered address of the corporate debtor is at House No.176/2, Sector 41-A, Chandigarh. The corporate debtor has further submitted that the raw material provided by the operational creditor is of bad quality being excess moisture. The corporate debtor has further raised objection regarding raising of debit notes and delivery of debit notes. It is submitted that all the invoices pertain to the years 2014 and 2015. Since the present application is filed on 13.07.2018, all the invoices are time barred except two invoices dated 30.07.2015.

11. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

12. The first issue for consideration is whether the demand notice u/s 8 of IBC, 2016 dated 21.06.2018 Annexure-1(A)-20 was properly served. The demand notice was sent to the registered address of the corporate debtor on 21.06.2018. It can be seen that the corporate debtor has replied to the Demand Notice on 29.06.2018 (Annexure-II(A)-24. Therefore, the question of non-delivery of Demand Notice does not arise at all. It can be seen that the

operational creditor has replied to the response/reply vide notice dated 11.07.2018. In view of the same, it is held that demand notice has been duly served.

13. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent-corporate debtor has filed reply and raised objections with regard to quality of material supplied by the operational creditor. It can be seen that respondent has raised the same objection in its reply to Demand Notice dated 29.06.2018. However, the corporate debtor has raised the objections for the first time only after issuance of Demand Notice dated 21.06.2018 and has failed to show that if any dispute was raised prior to the issuance of Demand Notice. Thus, the dispute was raised for the first time only after service of Demand Notice, therefore it cannot be treated as pre-existing dispute. Hence, this issue is held in favour of the petitioner.

14. The other issue for consideration is whether the CP is filed within limitation. It can be seen that the invoices and lorry receipts Annexure 1(A)-1 to Annexure 1(A)-18 pertains to the years 2014 and 2015. The present application is filed on 13.07.2018. It can be seen from the Balance Confirmation letter dated 31.03.2016 issued by the corporate debtor, that the corporate debtor has acknowledged the debt amounting to ₹93,05,491/- towards operational creditor. Thus, the CP is well within the period of limitation.

15. We have gone through the contents of the application filed in the Form No. 1 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹1,42,04,251/-. Operational

creditor has supplied raw cotton to the corporate debtor and raised invoices Annexure 1(A)-1, Annexure 1(A)-13 and Annexure 1(A)-15 to Annexure 1(A)-18. Summary showing the computation of calculations of debt amounting to ₹1,42,04,251/- is found at Annexure-III (A)-2 (Page No. 111). It can be seen that the corporate debtor has issued four cheques in lieu of payment against the invoices and same are dishonoured. Copy of cheques and Cheque Return Memo are found attached as Annexure 1(A)-22 to 1(A)-27. Copy of judgement dated 01.01.2020 passed by the Metropolitan Magistrate, Mumbai are at Annexure A-1 of Diary No.558 dated 21.01.2020. A demand notice under Section 8 of IBC dated 21.07.2018 was issued stating that an amount of ₹1,42,04,251/- was due. Leger account of corporate debtor maintained by operational creditor is found at Annexure-III(A)-3. The corporate debtor has issued Balance Confirmation letter dated 31.03.2016 stating that an amount of ₹93,05,491/- is to be paid to the operational creditor. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lakh by the respondent-corporate debtor.

16. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in

terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) 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) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector

regulator and to a surety in a contract of guarantee to a corporate debtor.

- (g) The order of moratorium shall have effect from the date of this order till 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.”

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Alok Kaushik and there is nothing adverse against him. In view of the above, we appoint Mr. Alok Kaushik, Registration No. IBBI/IPA-002/IP-N00253/2017-18/10767, E-mail: alok\_kaush@yahoo.com as the Interim Resolution Professional subject to the condition that the appointed IRP will furnish Form 2 within one week from the date of this order, if not filed. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

18. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution



Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

October 06<sup>th</sup>, 2021  
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