

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No.493 (IB)/MB/C-IV/2018

Under Section 9 of the IBC, 2016

In the matter of

SRINIDHI INDUSTRIES LIMITED

...Operational Creditor

v/s.

DIDWANIA SPINNING MILLS PVT.

LTD

...Corporate Debtor

Order Delivered on 14.10.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

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

For the Petitioner: Mr. Navankar Pathak i/b ANB Legal

For the Respondent: Mr. Girish B. Kedia

ORDER

Per: Rajasekhar V. K. Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Srinidhi Industries Ltd., Public Company limited by shares** ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Didwania Spinning Mills Private Limited** ("the Corporate Debtor"), [CIN: U17200MH2013PTC239833].
2. The Corporate Debtor is a company incorporated on 18.01.2013 under the Companies Act, 1956, as a Private Company limited by

shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U17200MH2013PTC239833. Its registered office is at Room No. 33, 3rd Floor, New Vohra Building, 59 Nakhoda Street, Mumbai, 400003. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 22.03.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.1,78,00,000/- (Rupees One Crore Seventy-Eight Lakh only) as principal amount as per invoices dated 15.07.2016 (**Exhibit 'D'** to the petition at pp.56-60). The date of default is 22.12.2016.
4. The Operational Creditor states that the Operational Creditor deals with manufacturing and selling of yarn by using Plant and Machinery for Spinning Mills situated at Survey No. 60/7/1, Government Godown Road, Village Amli, Silvassa 396230 in the Union Territory of Dadra & Nagar Haveli. The Corporate Debtor approached the Operational Creditor for the sale of Plant and machinery and other items for installation in the Spinning Mill.
5. The Operational Creditor further stated that they had delivered the entire Plant and Machinery and other items as per the orders placed by the Corporate Debtor and invoices dated 15.07.2016 for the same was raised (**Exhibit 'D'** to the petition at pp.56-60). The Corporate Debtor has further issued a Form-C for filing before the Central Sales Tax for tax exemption (**Exhibit 'E'** to the petition at p.61).
6. The Operational Creditor stated that the account of the Operational Creditor with the Corporate Debtor was a running and continuous one and cheques were issued to the Operational Creditor on various dates (**Exhibit 'F'** to the petition at pp.63-72).

The Operational Creditor further stated that the last payment made by the Corporate Debtor was for a sum of Rs.10,00,000/- (Rupees Ten Lakh Only) on 22.12.2016. After factoring in all payments, the Corporate Debtor owes an amount of Rs.1,78,00,000/-(Rupees One Crore Seventy-Eight Lakh only) as on 31.03.2017 as per ledger account (**Exhibit 'J'** to the petition at pp.87-88).

7. The Operational Creditor had served a Demand Notice in Form 3 dated 29.12.2017 to the Corporate Debtor (**Exhibit 'G'** to the petition at pp.73-79) in terms of section 8 of the IBC. Proof of service of Demand Notice has been attached (**Exhibit 'H'** to the petition at p.80). The Corporate Debtor has sent a reply to the Demand Notice dated 11.01.2018 (**Exhibit 'I'** to the petition at pp.81-86). In its reply, the Corporate Debtor has stated that they had purchased machinery of Spinning mill at Silvassa. However, after taking possession, it was noticed that the condition of the machinery was not good and that it required substantive repairing and refurbishment. The Corporate Debtor has incurred heavy expenses to restore the old machinery and bring it to running condition. To cut a long story short, the Corporate Debtor has said that after accounting for everything, the Corporate Debtor has a counter claim of Rs.30,00,000/-(Rupees Thirty Lakh only) against the Operational Creditor.
8. The Corporate Debtor in its affidavit in reply dated 16.01.2019 has claimed that there is pre-existing dispute between the parties in respect of the subject matter of the claim and that they raised the dispute prior to the issue of the Demand Notice.
9. The Corporate Debtor in its affidavit in reply further stated that the Plant and Machinery which was supplied by the Operational

Creditor were not in accordance with the purchase order and also not of the same functioning quality which was decided at the time of inspection. Therefore, after the said plant and machinery was supplied the Corporate Debtor immediately called upon the director of the Operational Creditor and brought to his notice the defects in the plant and machinery. The other paras of the reply affidavit broadly mirror the contentions of the reply to the Demand Notice.

10. The Operational Creditor in its Affidavit In Rejoinder dated 01.03.2019 filed on 06.03.2019 stated that if in the Corporate Debtor's opinion the plant and machinery was not in good condition then the Respondent was at the liberty to return the plant and machinery as it is to the Operational Creditor and to not have accepted the invoices and issued the cheques (**Exhibit 'F'** to the petition at pp.63-72) in favour of the Operational Creditor. However, instead of exercising any of these options, the Corporate Debtor chose to retain the machinery supplied. Also, there is no written record of any defects being brought to the notice of Operational Creditor. Further the Operational Creditor Stated that the there was no fault in the machinery and that these allegations are an after-thought.
11. Since the Corporate Debtor failed to make payment, the Operational Creditor has filed this Petition on 22.03.2018 before the Adjudicating Authority.
12. We have heard the parties and perused the record.
13. The Petition is filed by Naresh Kumar Rateria, Director (DIN:00214572) of Srinidhi Industries Limited, duly authorised by the Board Resolution dated 14.02.2018(**Exhibit 'A-2'** to the petition at p.12).

14. It is noticed from the Petition that there is no pre-existing dispute regarding the unpaid operational debt, this Adjudicating Authority finds no proof to prove that there is pre-existing dispute. The principal amount of Rs.1,78,00,000/-(Rupees One Crore Seventy-Eight Lakh only) remains unpaid as per Invoices and date of default is 22.12.2016. Thus, the existence of both debt and default is established.
15. 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 the view of this, the Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor. However, the Operational Creditor has not recommended the name of IRP and requested the Adjudicating Authority to appoint the IRP.
16. Accordingly, this Adjudicating Authority proposes to appoint Mr. Shrikant Madanlal Zawar, Registration No. IBBI/IPA-001/IP-P00156/2017-18/10325, as Interim Resolution Professional of the Corporate Debtor. He has also filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of the Certificate of Registration.
17. It is, accordingly, hereby ordered as follows: -
 - (a) The petition filed by **Srinidhi Industries Ltd.** under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the corporate debtor i.e. **Didwania Spinning**

Mills Private Limited (CIN: U17200MH2013PTC239833), 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, suspended or interrupted during the moratorium period;
 - (ii) 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. Shrikant Madanlal Zavar, Registration No. IBBI/IPA-001/IP-P00156/2017-18/10325** having address at 525, The Summit, Business Bay, Near Western Express Metro Station, Andheri (E), Mumbai, 400093, Email Id:shrikantzavar1@yahoo.co.in, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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.

- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses towards issue of 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 **within two days** from the date of this Order.
- (j) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days**.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)
14.10.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)