

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No. 286/Chd/Pb/2020**

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

**In the matter of:**

**M/s Gagan Fibres Private Limited**

with its registered office at  
D-5, Textile Colony, Industrial Area-A,  
Ludhiana PB-141003

...Petitioner-Operational Creditor

Vs.

**Sohrab Textile Mills Limited**

**CIN No.: U17115PB1986PLC007058**

with its registered office at  
Nabha Road, Malerkotla,  
Distt. Sangrur Malerkotla,  
Pb - 148023

...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 : Ms. Niharika Sohal, Advocate

For the Corporate Debtor : Mr. Bhavin Aggarwal, Advocate

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

### **JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Gagan Fibres Pvt. Ltd. (**for brevity 'Operational Creditor' / 'Petitioner'**), through its Director Mr. Kishan Singh Makkar with a prayer to initiate Corporate Insolvency Process (CIRP) in case of Sohrab Textile Mills Ltd. (**for brevity 'Corporate Debtor' / 'Respondent'**). There is an affidavit of Mr. Kishan Singh Makkar, Director of the Operational Creditor in support of the contents of the application dated 16.11.2020 from Page No.15-17 of the petition. The Board Resolution dated 09.11.2020 authorising Mr Kishan Singh Makkar to represent the company in the present application is attached at page 174 of the petition.

2. The Corporate Debtor namely, Sohrab Textile Mills Private Limited, is a Company incorporated on 13.10.1986 under the provisions of Companies Act, 1956 with CIN No. U17115PB1986PLC007058 with its registered office at Nabha Road, Malerkotla, District Sangrur Malerkotla, Punjab- 148001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹2,00,00,000 and Paid-Up Share Capital of the Company is ₹1,15,67,000/-. Copy of Master Data of corporate debtor is found attached at page 19 of petition.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor has supplied polyester yarn and polyester staple fibre to the corporate debtor and raised invoices from 09.12.2014 and 03.10.2016 totalling ₹2,48,21,744 [₹1,68,38,153 (principal) + ₹79,83,591 (interest)]. Copies of these invoices have been attached as Annexure P-2 (colly) of the petition. Copy of the ledger account ranging from 01.04.2015 to 31.03.2020 has also been attached as Annexure P-3 (colly) of the petition. Copy of workings for computation of amount and dates of default has been attached as Annexure P-4 to the petition. The counsel for the applicant in Form 5 (page 7-14) of the petition states that as per invoices attached with the petition date of last invoice i.e. 03.10.2016, therefore the date from which the debt fell due is 10.10.2016. Copy of invoice dated 03.10.2016 has been attached at page 26 of the application.

4. A demand notice in **Form 3 and Form 4** dated 23.09.2020 along with the relevant postal receipts are stated to be served upon the corporate debtor by speed post on 01.10.2020 and e-mail on 24.09.2020. The demand notice was accompanied by statement of accounts of corporate debtor & copy of invoices. The corporate debtor vide the demand notice was called upon to repay the total unpaid operational debt of ₹2,48,21,744/- within 10 days. Copies of the Demand Notice, postal receipts, tracking report as well as proof of service have been attached as Annexure P-5 (colly) of the application from page 42-73.

5. Notice of this petition was issued to the corporate debtor on 03.03.2021 to show cause as to why this petition be not admitted. Learned

counsel for the respondent Mr. Bhavin Aggarwal while accepting notice submitted that the respondent is not going to oppose the petition.

6. The Corporate Debtor in its reply vide Diary no. 01778/1 filed on 22.03.2021 admitted that the Corporate Debtor owes money as demanded by the applicant. It is also stated that the Corporate Debtor had been experiencing severe financial crisis since their plant operations were not able to generate any surplus and therefore, they could not make payment of their dues to the operational creditor. It has also been stated that due to non-servicing of dues to Punjab National Bank which is stated to be a secured financial creditor and has taken physical possession of the manufacturing facility of the corporate debtor on 30.01.2020 and the plants are inoperative since then. A copy of the resolution passed by Board of Directors of Sohrab Textile Mills in the meeting held on 29.10.2019 at Malerkotla authorising Mr Sohrab Amjad to represent the company has been attached at page no. 5 of the reply filed on behalf of the corporate debtor.

7. We have heard the learned counsels for the petitioner and corporate debtor and have perused the records.

8. The first issue for consideration is whether the demand notice in **Form 3 & Form 4** dated 23.09.2020 was properly served. The demand notice was sent to the registered address of the corporate debtor on 24.09.2020 and original postal receipt are found at Page No. 70 of Annexure P-5 (colly). As per tracking report for consignment number EP584068944IN, it is seen that notice was not delivered with the remark "Dispatched to BO". As per tracking report for consignment number EP584068825IN, it is seen that the notice was delivered with the remark "Item delivery confirmed" on 01.10.2020. It is also

observed that the petitioner has sent the demand notice vide email dated 24.09.2020 to the e-mail address provided by the corporate debtor in the company Master Data which has not bounced back. In view of the same, it is held that the demand notice has been duly served.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by the operational creditor in their affidavit dated 16.11.2020 attached at Page Nos. 170-173 of the petition that the corporate debtor challenged the instant application on grounds of limitation. However, the respondent-corporate debtor has in their reply vide Diary No. 017781/1 dated 22.03.2021 submitted that corporate debtor is unable to pay the debt due to financial crisis. Their secured financial creditor i.e. Punjab National Bank has taken physical possession of manufacturing facility of the corporate debtor. Further, the last payment of ₹50,000/- on 17.11.2017 also amounts to acknowledgement of debt by the corporate debtor. Thus, there is no dispute as to the liability of the corporate debtor. It is observed that copy of bank statements has been attached as Annexure P-7 (colly) of the application and the specific entries showing payments being made to the operational creditor are at pages 76 & 77.

10. The other issue for consideration is whether present application is filed within limitation. Since the last payment was made to the operational creditor by corporate debtor for ₹50,000/- (Annexure P-7 Colly) on 17.11.2017, the period of limitation would begin on 17.11.2017. The demand notice was served on 01.10.2020 (Page 72) of the present application was filed on 18.11.2020. Therefore, the petition is filed within limitation.

11. We have gone through the contents of the application filed in the Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,48,21,744/-. The operational creditor has supplied goods to the corporate debtor and raised invoices from 09.12.2014 to 03.10.2016 attached as Annexure P-2 (colly). Table of computation showing the calculation of outstanding debt amounting to ₹2,48,21,744/- is found at Annexure P-4 of the petition. It could be seen that the operational creditor has sent the demand notice in Form-3 and Form-4 vide e-mail dated 24.09.2020 for the payment of outstanding dues attached at page 73 of the application along with postal receipt and tracking report of duly served legal notice attached at Page 72 of the petition. The same demand notice has also been stated to be delivered via e-mail dated 24.09.2020 and which has not bounced back. Ledger account of corporate debtor maintained by operational creditor is found at Annexure P-3 (colly). A copy of bank statement of operational creditor from 27.09.2017 to 17.11.2017 and from 03.04.2020 to 30.09.2020 maintained with State bank of India is attached as Annexure P-7 (colly). 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.

12. 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.”

13. The operational creditor has not recommended any Interim Resolution Professional. In this regard a letter bearing File No. 25/02/2021-NCLT dated 01.07.2021 has been received from National Company Law Tribunal, New Delhi forwarding therewith a copy of letter no. IP-12011/1/2020-IBBI/1013/1965 dated 30.06.2021 along with the guidelines and the panel of resolution professional approved for NCLT Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid from 01.07.2021 to 31.12.2021. We select Mr. Ashok Malik appearing at Serial No. 15 of the panel to be appointed as Interim Resolution Professional.

14. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ashok Malik and there is nothing adverse against him. In view of the above, we appoint Mr. Ashok Malik, registration no. IBBI/ IPA-001/IP-P01913/2019-2020/12957 mobile no. 9815199011, e-mail ID [malikandmalikadvocates@gmail.com](mailto:malikandmalikadvocates@gmail.com) as the interim resolution professional subject to the condition that the appointed IRP will furnish Form 2 within 1

week from the date of this order, if not filed. The IRP is directed to take the steps as mandated under sections 15, 17, 18, 20 and 21 of IBC 2016.

15. 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 06th, 2021  
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