

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

CP No. 1978/IBC/NCLT/MB/MAH/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, 2016se

In the matter of

Shanaya Fashions

..... Operational Creditor

v.

Zephyr Fabric Trading LLP

..... Corporate Debtor

Heard on : 28.09.2018

Order delivered on : 03.10.2018

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

**For the Petitioner :**

Advocate Rubina Khan a/w Advocate Anil D'souza.

**For the Respondent :**

Advocate Chandrakant Mhadeshn.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. Shanaya Fashions (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 07.06.2018 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, Zephyr Fabric Trading LLP (hereinafter as **Debtor**) having registered address at, Todi Estate, 1<sup>st</sup> Floor, B wing, Sunmill Compound, Lower Parel-W, Mumbai-400013.
3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹1,34,39,329/- payable as on 31.01.2018.

**Submissions by the Operational Creditor :**

4. The Learned Advocate for the Operational Creditor has submitted that the Operational Creditor and the Corporate Debtor have regular business dealings for supply of fabrics, shirting and suiting of high end value. The Operational Creditor was responsible for sourcing fabrics & suitings for the company.
5. Accordingly, the Corporate Debtor had placed an order for suiting & fabrics vide separate Purchase Orders for different dates. The details of Purchase orders are given as follows:
  - a. Purchase Order No.Z-233 dated 12.09.2017 for delivery in the month of October, 2017 amounting to ₹1,82,83,635/-.
  - b. Purchase Order No.Z-296 dated 31.10.2017 for delivery in the month of November, 2017 amounting to ₹30,45,735/-
  - c. Purchase Order No.Z-339 dated 01.11.2017 for delivery in the month of December, 2017 amounting to ₹2,15,83,577/-
  - d. Purchase Order No.Z-402 dated 01.01.2018 for delivery in the month of January, 2018 amounting to ₹16,46,033/-.
6. Pursuant to these orders, the Operational Creditor had sold, supplied and delivered the required goods to the Corporate Debtor, against which the Operational Creditor raised invoices from SF/11/221 to SF/JAN-31/2018/44 till 31.01.2018 for an amount of ₹1,34,39,329/- only.
7. The Corporate Debtor availed and enjoyed the said supply and delivery of the goods by the Operational Creditor but in spite of repeated requests and reminders, failed to pay for the same and has till date not honoured their commitment and has defaulted in making payment of the said invoice amount to the Operational Creditor.
8. Hence, on 09.05.2018 the Operational Creditor has issued a 'Demand Notice' U/s. 8 of the Code and the said notice is duly served upon the Debtor. Pursuant to this Demand Notice, the Corporate Debtor replied vide letter dated 11.05.2018 acknowledging the receipt of the said Demand Notice and invoice.
9. However, even after receipt of this Notice the Debtor has neither paid the Demanded Amount nor raised a dispute regards to the 'Debt' within the stipulated time of 10 days. Instead, the Corporate Debtor has nowhere disputed its liability for the payment of the unpaid invoice of total amount of ₹1,34,39,329/-. The Operational Creditor has annexed the affidavit u/s 9(3)(b) of IBC stating that no notice of dispute has been received from the Respondent Corporate Debtor.
10. Hence, the Operational Creditor has filed this Petition/Application to initiate CIRP over the Debtor. It is stated that, as the Debtor has neither paid the amount nor contesting the Debt, this Petition/Application may be Admitted for Commencement of CIRP.

### **Submissions by the Debtor :**

11. The Learned Advocate for the Debtor has appeared and placed reliance on the reply filed. The Corporate Debtor in its reply letter dated 11.05.2018 has stated that few of its purchasers have defaulted in making the payments and it is resorting to all legal proceedings for recovering these sums. Other purchasers' request was to give them certain discounts citing that they are facing business losses. Further, it was requested to the Operational Creditor not to initiate any legal proceedings as it is going through some difficult times.

### **Findings :**

1. This Bench has gone through the submissions of both the parties and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that he has sold, supplied and delivered the fabrics, shirting and suiting of high end value to the Corporate Debtor, for which an amount of ₹1,34,39,329/- is due and a default of non payment had also occurred. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an '**Operational Debt**' as defined under section 5 (21) of the Definitions under The Code. There is a "**Default**" as defined under section 3 (12) of The Code on the part of the Debtor.
2. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that the Debtor received the same but not paid the amount of unpaid outstanding due. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he 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. Instead, the act of the Corporate Debtor to acknowledge the debt clearly reveals that the amount defaulted is payable and the liability has been admitted by the Corporate Debtor.
3. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant, it is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.
4. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Ajay Gupta**, having registration no. as IBBI/IPA-001/IP-P00192/2017-18/10371, as Interim Resolution Professional for initiation of CIRP, address at A-701I702 La-Chapelle, Evershine Nagar, malad West, Mumbai-400064. The proposed IRP is hereby appointed.
5. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date

of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

6. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
7. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
8. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

**Dated : 03.10.2018**

SD/-  
**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

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