

In the National Company Law Tribunal
Mumbai Bench.

C.P. (IB)-122/(MB)/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Shanti Synthetics
(Proprietor : Mr. Arjun Radheshyam Gupta) : Petitioner/ Operational Creditor

V/s

IDT Clothing Pvt. Ltd. : Respondent/ Corporate Debtor

Heard on 09.01.2019
Order delivered on:28.01.2019

Coram:
Hon'ble Shri M.K. Shrawat, Member (Judicial)

Present :

For the Petitioner(s) : 1. Ms. Sneha V. Agrawal, i/b. Mr. Lalit V. Jain

For Respondents : (None)

Per M.K. Shrawat, Member (Judicial).

ORDER

1. An Application on Form No.5 has been filed on 22.01.2018 by M/s. Arjun Radheshyam Gupta, (Proprietor of Shanti Synthetics) in the capacity of "Operational Creditor" by invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016 against the "Corporate Debtor" M/s. IDT Clothing Pvt. Ltd., Lower Parel, Mumbai 400 013 to claim an outstanding Operational Debt of ₹39,71,168/- including Interest @ 18% p.a. upto 31.03.2017 (Principal Amount ₹30,55,215/- + Interest ₹9,15,953/- = ₹39,71,168/-).

2. Brief history of the case is as follows:-

2.1. The Corporate Debtor allegedly issued various Purchase Orders and emails as annexed with the Petition for purchase of Cotton Twill 40 x 40 / 156 x 92/58" Cotton Twill RFD, Cotton Twill 20 x 20 / 108 x 56 Twill RFD Peach etc. upon the Operational Creditor. Thereupon the Operational Creditor sold, supplied and delivered goods to Corporate Debtor and accordingly raised Invoices upon the Corporate Debtor. The

details of the Invoices issued between 22.01.2015 and 01.06.2016 amounting to ₹38,29,251/- is on record.

2.2. In reply to Section 8 Notice, the **Corporate Debtor had admitted the liability**. The Corporate Debtor had allegedly received the delivery of goods and raised no dispute in respect of rate, quality or quantity of the goods supplied. The date of default as per Form No.5 is stated to be after expiry of 30 days from the date of each invoice’.

2.3. On acceptance of the Debt by the Debtor Company, certain part-payments have also been received by the Operational Creditor. After settlement of Account, the balance amount remained payable was ₹30,55,215/-, over which Interest of ₹9,15,953 is charged for the purpose of declaration of outstanding Debt. Admittedly, the Corporate Debtor had made part-payment of the following Invoices :-

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<i>Sr. No.</i>	<i>Date</i>	<i>Amount</i>	<i>Mode of payment</i>
1.	08/10/15	23,036.10	RTGS
2.	17/02/16	3,00,000.00	NEFT
3.	30/03/16	1,50,000.00	NEFT
4.	08/12/16	1,00,000.00	NEFT
	<i>Total</i>	5,73,036.10	

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2.4. Various emails exchanged between the Corporate Debtor and Operational Creditor are on record. The Corporate Debtor had admitted the outstanding Debt of ₹30,55,215/- vide Letter dated 17.01.2018, however, expressed inability to repay citing financial crunch.

2.5. Since the Corporate Debtor failed to pay the alleged outstanding Operational Debt, the Petitioner sent Demand Notice u/s. 8 of The Code vide Letter dated 08.12.2017 at the Registered address of the Corporate Debtor. It is stated that the Corporate Debtor had received the said Notice on 11.12.2017. A reply of the Corporate Debtor dated 07.01.2018 is on record, which is mentioned by the Operational Creditor, that there was an acknowledgement of the Debt, relevant para reproduced below:-

"17 January 2018

Mr. Arjun Radheshyam Gupta
Shanti Synthetics
360, Kalbadevi Road, 2nd Floor,
Mumbai – 400 002

Demand Notice/Invoices demanding payment under the insolvency and bankruptcy code, 2016.

Dear Mr. Gupta

We acknowledge receipt of your notice dated December 08, 2017

We do agree that the principal amount mentioned therein for Rs. 30,55,214.90 is payable to you, as per various supplies made by you.

You are aware that our operations are closed down since August 2017, and there are no cash-inflows.

In this situation, we will only be able to settle your dues once we are able to sell our factory building asset which should take about 12 months.

We are currently looking for buyers for the same."

3. From the side of the Respondent/ Corporate Debtor, no defence has ever been placed on record explaining the side of the Respondent, although the proceedings were attended by legal representatives of the Corporate Debtor in the past. However, on the last date of hearing (09.01.2019), none present from the side of the Corporate Debtor.

FINDINGS :-

4. From the above narrations it is clear that the Operational Creditor had made supplies as required as per the Orders placed by the Corporate Debtor. The Corporate Debtor had accepted the goods supplied but never raised any "dispute" with regard to the quantity/ quality of the goods supplied. Section 8 Notice has been issued and received by the Corporate Debtor. The Corporate Debtor had "Admitted" the Debt in its Letter dated 17.01.2018, however, expressed his inability to make the payments. Admittedly, some part payments were made, however, there are still outstanding Debts for which the Petitioner has filed Petition in Form No.5 under The Code to initiate Corporate Insolvency Resolution Process against the impugned Corporate Debtor.

5. Having considered the totality of the facts and circumstances mentioned above, the impugned outstanding Operational Debt of ₹39,71,168/- and the occurrence of **default** are established. Considering the communication between the parties, duly placed on record, the Debtor had admitted the Liability. Considering the circumstances mentioned *supra*, this Petition under consideration deserves to be "Admitted".

6. The Petitioner/Operational Creditor has proposed the name of the IRP Mr. Manoj Kumar Mishra, Registration No. IBBI/IPA-001/IP-P01152/2018-19/11902, Address: Room 1406, Building 4B, New Hind Mill MHADA Sankul, Rambhau Bhogle Marg, Ghodapdev, Mumbai 400 033. The IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending. On due consideration, the proposal of appointment is hereby confirmed.

7. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order **within 30 days to this Bench.** A liberty is granted to intimate the CIRP progress even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

8. It is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

9. Accordingly, this **C.P. (IB)-122/MB/2018 stood Admitted.**

10. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 28.01.2019.

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