

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH  
KOLKATA**

**C.P (IB) No.324 /KB/2019**

**In the matter of**

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

**In the matter of:**

**M/s Chandak Commercial Private Limited, CIN: U51909WB1995PTC073712,** having its registered office at 10,Tara Chand Dutta Street, Kolkata-700073

*... Operational Creditor*

Versus

**In the matter of:**

**M/s BKS Leather Exports Private Limited, CIN: U19115WB2010PTC148843,** having its registered office at AA-5, Prafulla Kanan, Sivayan Apartment, Ground Floor, Krishnapur West, Kolkata-700101.

*...Corporate Debtor*

Date of hearing :27/04/2022

Order Pronounced on : 29/06/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***  
***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

1. Mr. Abhikshek Sikdar, Adv. ] For Operational Creditor
2. Ms. Pallavi Ray, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by M/s **Chandak Commercial Private Limited**, through its Director Mr. Uttam Kumar Chandak, (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process (CIRP) in respect of **M/s BKS Leather Exports Private Limited**, having its registered office at AA-5, Prafulla Kanan, Sivayan Apartment, Ground Floor, Krishnapur West, Kolkata-700101, (hereinafter referred as the Corporate Debtor).
3. It is submitted in the petition that the Operational Creditor had supplied Fabrics in terms of the specifications and various purchase orders placed by the Corporate Debtor and accordingly Invoices and Challans were raised by the Operational Creditor. The Corporate Debtor has agreed and confirmed to make 100% payment of Invoices within 60 days of credit period from the date of Invoices so issued. Copies of the Purchase Orders placed by Corporate Debtor and the copies of Unpaid Invoices, Challans and Monthly Billing Statements, placed by Operational Creditor upon Corporate Debtor are collectively annexed as Exhibit "C" and "D".
4. It is further submitted that based on the said Purchase Orders placed and in accordance with the terms thereof, the Operational Creditor duly supplied the ordered goods to the Corporate Debtor, which were duly acknowledged by issuing receipt of the goods supplied by the Operational Creditor but the Corporate Debtor failed to make the payments of Invoices within agreed period of 60 days. Reminders were given by the Operational Creditor to the Corporate Debtor for non payment beyond 60 days window in

terms of the purchase orders. The corporate Debtor was given repeated reminders. The emails are exhibited as exhibit-E.

5. It is further submitted that for the tax invoices and challans the part payment on adhoc basis was released by the Corporate Debtor with much delay and the balance amount of Rs. 6,33,520/- is due and remains payable by the corporate debtor. It is submitted that the Ledger sheets pertaining to the transactions with Corporate Debtor in the books of Operational Creditor for the period from 1<sup>st</sup> April, 2015 to 30<sup>th</sup> November,2018 which will also reflect the amount due, are annexed as Exhibit-F.

6. It is submitted that even the Ledger account which was forwarded by the Corporate Debtor vide email dated 27<sup>th</sup> July, 2018 will also established the fact that the amount due is payable by the Corporate Debtor. The email dated 27<sup>th</sup> July 2018 is Exhibit-G. The Corporate Debtor has taken the Tax benefit of VAT for the entire goods purchased from the Operational Creditor. In view of the aforesaid, the acts and activities of the Corporate Debtor qualified as events of default. Thus, no payments were forthcoming from the Corporate Debtor to the Operational Creditor that had caused the Operational Creditor to issue notices dated 19<sup>th</sup> December, 2018 in form-3 under Rule 5 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, which was duly received by the Corporate Debtor on 24<sup>th</sup> December, 2018 but the same was not replied back. The Demand Notice sent in Form-3 with two postal receipts and two article tracking report are marked as Exhibit-H.

7. Since, the Operational Creditor and the Corporate Debtor were in regular transactions, the Corporate Debtor had been assuring the payment. There has been an inordinate delay due to banking on such misrepresentations of the Corporate Debtor.

8. It is submitted that the Corporate Debtor is in default of a sum of

Rs.6,33,520/- along with interest @ 18% per annum which comes to Rs.1,33,458/-. Therefore, the total amount due and payable with interest is Rs.7,66,978/-

9. The Operational Creditor further submits that the Operational debt has become due because the unpaid tax invoice and challans constitute a legal, valid and binding contract between the Operational Creditor and the Corporate Debtor under which the Corporate Debtor is liable to pay the outstanding amount to the Operational Creditor for the supplies made to the Corporate Debtor, which is marked as Exhibit-I.

10. The Operational Creditor has enclosed various documents in support of its claim, which are as under:-

- i. Copies of Purchase Orders issued by Corporate Debtor.
- ii. Copies of Unpaid Tax Invoices, Challans and Monthly Billing Statements raised by Operational Creditor upon Corporate Debtor in terms of supply of the ordered goods placed by the Corporate Debtor.
- iii. Copies of email exchanged between the parties concerned.
- iv. Copies of Ledger Statements for the period from 01104/2015 to 3Affinyg.
- v. Copy of the ledger statement of the corporate debtor received via email dated 27/07/2018.
- vi. Copy of the Form 3 Notice under the Code demanding payment from the Corporate Debtor.
- vii. Copy of the Bank Statements.

11. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit. **In the reply affidavit** one of the Directors of the Corporate Debtor submitted that the Corporate Debtor is reputed export company to export various leather goods items to various International

companies with proper licence/registration from the concerned authorities and also other formalities from the various Govt./Semi Govt. and other authorities.

12. It is submitted that the Operational Creditor is the supplier of various types of lining cloths. It is submitted that Corporate Debtor has purchased various types of lining Cloths required for manufacturing leather bags from M/s Chandak Commercial Private Limited for export business purpose.

13. It is submitted that corporate debtor was negotiating with the Operational Creditor for returning of unused lining cloths which are in good condition. Corporate Debtor has requested the Operational Creditor to appropriate the value of the returned goods against the claim of the Principal amount of Rs.5,33,520/-. Further the Corporate Debtor has requested the operational Creditor to waive the interest which they have assured for sympathetic consideration.

14. **In the Rejoinder**, to the reply filed by the Corporate Debtor, the Operational Creditor has submitted that a sum of Rs.7, 66,978.50 is payable by the Corporate Debtor to the Operational Creditor. It is submitted that the reply filed by the Corporate Debtor is liable to be rejected at the very outset because the reply is unfounded and baseless. It is denied that the Corporate Debtor had returned the goods in due course of business to the Operational Creditor. It is submitted that the Operational Creditor was sent goods worth Rs. 99,987/- only after the filing of the application, which was accepted by the Operational Creditor, so now the claim of the Operational Creditor amounts to Rs.5,33,533/-It is further submitted that the Corporate Debtor has accepted the claim of the Operational Creditor in Para-D of its reply and has agreed to pay back and once the claim amount is accepted by the Corporate Debtor, it makes it clear that the Corporate Debtor was in default.

15. It is submitted that the Operational Creditor has filed the application under section 9 of the Code against the Corporate Debtor for initiation of CIRP

for the aforesaid amount and therefore, prays that the reply of the Corporate Debtor be ignored and the petition be accepted.

16. **During the course of arguments**, the Ld. Counsel for the Operational Creditor submitted that the Operational Creditor was awarded purchase orders in terms of which the Operational Creditor supplied fabrics to the Corporate Debtor. The Operational Creditor raised invoices and challans against such supply of goods.

17. It is submitted that the Corporate Debtor agreed and confirmed to make 100% payment of invoices within 60 days of credit period from the date of invoices so issued. The Corporate Debtor duly acknowledged the receipt of the goods supplied by the Operational Creditor. It however, failed to make the payments of invoices within agreed period of 60 days. The Corporate Debtor never raised any demur and/or protest after receipt of the goods from the Operational Creditor and appropriated the same. It is submitted that after repeated requests and reminders, the Corporate Debtor only made part payment of a meager sum to the Operational Creditor and the balance amount of Rs.6,33,520/- remained unpaid. The total operational debt was initially Rs.6,33,520/- along with interest @ 18% per annum total amounting to Rs.7,66,978.50/-. However, after filing the present application under section 9 of the Insolvency and Bankruptcy Code, the Corporate Debtor returned some unused items worth Rs. 99,987/- to the Operational Creditor. Therefore, the present amount of operational debt amounts to Rs.5,33,533/- along with the interest @ 18% per annum and the total amount due with interest is Rs.6,66,991.50/-

18. It is submitted that the Operational debt has been admitted by the Corporate Debtor in its reply affidavit to the present application. In such view, it is prayed that the application of the Operational Creditor be allowed.

19. After filing the reply affidavit on 20<sup>th</sup> September, 2019, the Corporate Debtor stopped appearing. On 8<sup>th</sup> February, 2021, notice was issued to the

Corporate Debtor but there was no appearance on behalf of the Corporate Debtor. The matter was listed for hearing on various dates but there was no appearance for the Corporate Debtor than finally on 27<sup>th</sup> April, 2022, the matter was heard and reserved for orders.

20. We find that there was no appearance at the time of final hearing in spite of notice issued to the Corporate Debtor.

21. The petition is otherwise complete in all respects.

22. We have heard the Ld. Counsel for the Operational Creditor and perused the pleadings filed by the parties. In the reply affidavit filed by the Corporate Debtor, the Corporate Debtor has not raised any plausible defence. The transactions between the parties giving rise to this operational debt have not been denied or disputed. The only averment in the reply affidavit is that the Corporate Debtor was negotiating with the Operational Creditor for returning of unused lining cloths, which was in good condition and a request to appropriate the value of the returned goods against the claim of the principal amount of Rs.5,33,520/- ( Rupees Five Lacs Thirty Three Thousands and Five Hundred Twenty only) .The Corporate Debtor has further mentioned that a request was made to the Operational Creditor to waive the interest. The Corporate Debtor has not raised any other defence which could help the Corporate Debtor. On the other hand, the Operational Creditor has been able to prove the operational debt and the default. Even the Demand Notice has been duly served on the Corporate Debtor, which has not been responded to giving rise to the presumption that the amount claimed by the Operational Creditor is acknowledged and admitted by the Corporate Debtor. It further indicates and tentamounts to the inability and incapability of the Corporate Debtor to pay off its outstanding operational debt to the Operational Creditor.

23. In these circumstances, we have no other option but to admit the petition. We, therefore, pass the following orders:-

**O R D E R S**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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 Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Pratap Mukherjee, IRP** having Reg. **No. IBBI/IPA-001/IP-P02515/2021-2022/13851**, email ID. [pratapmukherjee62@gmail.com](mailto:pratapmukherjee62@gmail.com) act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.

- x) **Mr. Pratap Mukherjee**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs1,00,000/- (Rupees One Lac only )** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

24. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

25. List the matter on **10/08/2022** for filing of **Progress Report**.

26. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on the, this, 29<sup>th</sup> day of June, 2022

PJ