



**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL  
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.08.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No. 78/9/AMR/2021		9 of IBC	Gayatri Cotton Pressing Mills Private Limited Vs. Sri Srinivasa Spin Tex (India) Limited

**Counsel for Petitioner(s):**

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

CP(IB) No. 78/9/AMR/2021 is admitted, vide separate orders.

sd/-

**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**



**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT MANGALAGIRI**

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**CP (IB) No. 78/9/AMR/2021**

**In the matter of a Petition under Section 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. SRI SRINIVASA SPIN TEX (INDIA) LIMITED**

**Between:**

M/s. Gayatri Cotton Pressing Mills Private Limited,  
Survey No.39/1, Kurnuthala Village,  
Vatticherukuru Mandal,  
Guntur District,  
Andhra Pradesh - 522017.

**... Operational Creditor**

AND

M/s. Sri Srinivasa Spin Tex (India) Limited,  
D.No.8-104, K.N.Road,  
Peda Tadepalli Village,  
Tadepalligudem Mandal,  
Tadepalligudem,  
Andhra Pradesh - 534101.

**... Corporate Debtor**

**Date of Order: 17.08.2022**

**CORAM:**

**Justice Telaprolu Rajani, Member Judicial.**

**Appearance:**

For Operational Creditor : Mr. Naresh Kumar Sangam, Advocate.

Sd/-



For Corporate Debtor : Mr.G.Sethu Rama Rao, Advocate.

**ORDER**

1. This petition is filed by M/s.Gayatri Cotton Pressing Mills Private Limited i.e., the Operational Creditor (in short OC) for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (in short CD) i.e., Sri Srinivasa Spin Tex (India) Limited for the default committed in discharging the due of Rs.1,09,68,956/-.

2. The facts stated in the Petition are as briefly as follows:

During July, 2018 the Corporate Debtor has approached the Operational Creditor for supply of Cotton Lint. As such the Cotton Lint was supplied and invoices were raised, the last invoice being raised on 24.07.2018. The Corporate Debtor has been paying the amounts to the Operational Creditor on running account basis. The last payment was made on 19.12.2018. Thereafter, the Operational Creditor made several follow ups through telephone and personally, but the Corporate Debtor did not choose to pay the outstanding amount till date. The Operational Creditor raised various invoices to a tune of Rs.1,29,03,984/- against the material supplied by the Operational Creditor to the Corporate Debtor, out of which the Corporate Debtor paid an amount of Rs.55,00,000/- only. As per the invoice, the Corporate Debtor was required to pay interest @ 18% p.a. As such, the total due has become

Sd/-



Rs.1,10,68,956/-. A demand notice was issued by the Operational Creditor. On receipt of the demand notice the Corporate Debtor paid an amount of Rs.1,00,000/- to the Operational Creditor from third party account and confirmed the same in reply mail to the demand notice. Hence, the remaining amount is Rs.1,09,68,956/-. Since, the same is not paid by the Corporate Debtor, this application is filed seeking to initiate CIRP against the Corporate Debtor.

3. The Corporate Debtor filed counter, contending that the Petition is not maintainable as it is squarely hit by the threshold of Rs.1 Crore, according to the amendment under Section 4 of IBC, 2016 (31 of 2016) and the notification issued by the Central Government vide S.O. 1205(E) on 24.03.2020. The Operational Creditor, in order to overcome the said lapse in the threshold limit, added interest to the principal amount. Time value of money is not applicable to the present case. For the financial debt, interest is specifically included under definition under Section 5(8) of IBC, whereas Operational Debt does not include interest as per the definition under Section 5(21) of IBC. The Corporate Debtor is a Company incorporated under Companies Act, 1956 which is involved in the business of spinning etc. The Corporate Debtor used to buy cotton bales from the market on credit basis, from the farmers, as well as from entrepreneurs involved in trading of cotton. The Operational Creditor, knowing that the Corporate Debtor uses cotton as a raw

Sd/-



material for its operations, as promotional activity of his business approached the Corporate Debtor and requested him to buy cotton candy from him on credit basis. After discussions with regard to the price, the Operational Creditor agreed to supply the cotton @ Rs.13,952/- per quintal. Cotton is a seasonal crop and it is supplied on credit basis, without any interest, as there would be fluctuation of prices and demand of commodity in the market. It is not the case of the Operational Creditor that the Corporate Debtor issued purchase order to him addressing that he will buy cotton @ Rs.14,397.44/- per quintal. The mutual agreement between the parties is that the Operational Creditor has to supply cotton @ Rs.13,952/- per quintal. The Operational Creditor supplied 171 quintals, 174.17 quintals and 169.57 quintals of cotton on 23.07.2018 against invoices and as per the mutually agreed rate he should raise invoices only for the agreed price. The invoices enclosed to the Company Petition are printed and standard format, which are self-serving in nature. There is a variation in the price mentioned in the invoices. There is no cut-off date of 19.12.2018 mentioned in the invoice, from which the Corporate Debtor is liable to pay interest. It is only the presumption of the Operational Creditor. Even if it is taken that interest clause is applicable since, the amount fell due under the invoice, he should have calculated interest from 24<sup>th</sup> July onwards. He did not given justification as to why he has treated 24<sup>th</sup> July to 19<sup>th</sup> December, 2018 as interest free period when he has received part amounts only from 24.10.2018 to

Sd/-



19.12.2019. This Corporate Debtor never agreed to pay interest. The Operational Creditor informed the Corporate Debtor that he has issued a demand notice on the advice of his counsel and requested this Corporate Debtor to ignore the said demand notice and that he will restrain himself from taking any legal action and requested him to pay part amount of Rs.1,00,000/- to his company as well as to his firm Gayatri Cotton Products, so as to keep the respective claims alive and not to be barred by Limitation. Believing the same as true, the Corporate Debtor did not give any reply to the demand notice and paid Rs.1,00,000/- as requested. Section 61 of the Sale of Goods Act, 1930 deals with interest and the same is as follows:

*“Interest by way of damages and special damages-*

*(1) nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable or to recover the money paid where the consideration for the payment of it has failed.*

*(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it things fit on the amount of the price-*

Sd/-



*(a) to the seller in the suit by him for the amount of the price from the date of the tender of the goods or from the date on which the price was payable;*

*(b) to the buyer in a suit by him for the refund of the price in a case of breach of the contract on the part of the seller – from the date on which the payment was made.”*

Seeking interest on the principal amount is nothing but asking to compensate loss and damages as per Section 61 of the Sale of Goods Act, 1930. The Corporate Debtor did not acknowledge the invoice, hence, the interest clause does not apply to him. Mere silence to give reply to the demand notice does not amount to admission of debt, hence the application is liable to be dismissed.

4. Heard both the Counsel. As regards, the threshold limit of Rs.1 Crore the law is well settled that the interest also can be included to decide the threshold limit. The Counsel for the Operational Creditor relied on a judgment of NCLAT, Principal Bench in ***Company Appeal (AT) (Ins) No.690 of 2022 between Mr.Prashat Agarwal Vs. Vikash Parasrampuria and another***, wherein it is held that the interest can also be included in the principal amount in order to decide threshold limit of Rs.1 Crore as per the requirement

Sd/-



under Section 4 of IBC read with Notification No. S.O 1205 (E) dated 24.03.2020.

5. As regards the acknowledgment of the invoices it is an admitted fact that the Corporate Debtor did not sign on the invoices. But the Counsel for the Operational Creditor draws the attention of this Tribunal to the email dated 22.09.2021 issued by the Operational Creditor mentioning that they are sending the invoice along with the demand notice in respect of unpaid operational debt of Rs.1,10,68,956/-, for which a reply was issued by the Corporate Debtor stating that their proposal with bank, for restructuring of limits is likely to take place and the dues to the Operational Creditor will be paid within short time. There was a humble request made not to resort any legal action and the matter will be settled within short time in an amicable manner. The Counsel for the Corporate Debtor relies on a judgment of the NCLT, New Delhi Bench-II in the matter of *CBRE South Asia Private Limited vs. M/s.United Concepts and Solutions Private Limited*. It was held therein that “since the present application has been filed in the year 2021 therefore, we find no force in the argument of learned Counsel for the Operational Creditor that the limit of Rs.1 Crore is not applicable to its case”. It was further observed that since, the principal amount of operational debt claimed by the Applicant is less than Rs.1 Crore and since the application is filed in the year 2021, the application is not maintainable. But in the light of the

Sd/-



judgment of the NCLAT, the above judgment cannot be considered.

6. The Counsel for the Corporate Debtor by relying on the words “an amicable manner” mentioned in the letter dated 01.10.2021 makes an effort to convince the Tribunal that since, there was no agreement with regard to interest, they mentioned the said words and the said words would imply that there is a dispute between the parties. This Tribunal is unable to accept the said contention. They only wanted to settle the matter amicably without resorting to legal action, which means to say that they would pay the amount which is admitted by them without the intervention of the Tribunal. It does not imply that there is a dispute with regard to the interest. They only wanted the Operational Creditor to wait till the restructuring of the limits by the Bank is done. Hence, by virtue of the clear acknowledgment, the contention with regard to non-acknowledgment of the invoices containing the interest clause does not hold any value. Without there being any evidence pertaining to the reasons for which the Corporate Debtor paid Rs.1,00,000/-, the contentions made in the counter in that regard cannot be accepted. As regards the contention pertaining to the dates for which the interest is calculated also the above discussion would stand as an answer, as there is a categorical undertaking given by the Corporate Debtor that the dues as demanded by the Operational Creditor

Sd/-



would be settled within short time. Hence, in view of the above, the Company Petition Admitted.

**ORDER**

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. Kantipudi Venkata Raju**, (Registration No. IBBI/IPA-002/IP-N01125/2021-2022/13675), having office at 4-198, Manikya Nagar, Valasapakala PO, Near Water Plant, Near Water Plant, Kakinada, East Godavari, STATE: Andhra Pradesh-533005 Mobile:9848835882; e-mail:**kantipudiven@gmail.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all

Sd/-



assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.

- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-

**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**

*Swamy Naidu*