



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,(Court No. II)
KOLKATA**

C.P (IB) No.1306/KB/2020

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.

In the matter of:

Rakhi (Proprietor of Srinivasa Cloth Mills)
(GST Reg. No. – 33ACSPR0465L1Z3)

... Operational Creditor

Versus

Chandrima Fashions Fabrics Private Limited
(CIN U51909WB2012PTC174622)

... Corporate Debtor

Date of hearing: 20 January, 2023
Order Pronounced on: 24 April, 2023

Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference/Physical hearing

For the Operational Creditor : Mr. Gulshan Kumar Sachdeva, Adv.
Ms. Preety Choudhary, Adv.

For the Corporate Debtor : Mr. Prena Choudhury, Adv.



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O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court is convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) by Ms. Rakhi, Proprietor of Srinivasa Cloth Mills (“**Operational Creditor**”), seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Chandrima Fashions Private Limited (“**Corporate Debtor**”) having its registered office at 11, Shiv Thakur Lane, 1st Floor, Room No – 104, Kolkata – 700 007.
3. The present petition was filed on 17 November, 2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make a payment of a sum of Rs.1,14,53,363/- (Rupees One Crore Fourteen Lakh Fifty Three Thousand Three Hundred Sixty Three only), including interest amount of Rs.3,54,071/- (Rupees Three Lakh Fifty Four Thousand Seventy One only).
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.2,00,00,000/- (Rupees Two Crore only) with subscribed share capital of 1,66,85,050/- (Rupees One Crore Sixty Six Lakh Eighty Five Thousand Fifty only). Part – IV of the Petition deals with the Particular of the Operational Debt.
5. ***Submission of learned Counsel appearing for the Operational Creditor***
 - i. The Operational Creditor is engaged in the trading business of Cheese, Cloth, Cotton Wadding, Medical Cotton Roll, Bedding Sheet, fabrics and many more items, whereas, the Corporate Debtor is also involved in cloth business of different kind of fabrics.
 - ii. Various Fabrics Materials were provided by the Operational Creditor to Corporate Debtor. The Corporate Debtor accepted the materials without raising any disputes relating to the quantity and quality of goods. However, the Corporate Debtor had failed to make the payment for the outstanding dues of the invoices dated 01 April, 2019 to 04 October, 2019.



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- iii. The Operational Creditor was maintaining the running account of Corporate Debtor in his books of Accounts. The Operational Creditor had issued a Demand Notice dated 25 November, 2019 claiming an amount of Rs. 1,16,84,292/- (One Crore Sixteen Lakh Eighty Four Thousand Two Hundred Ninety Two Only) towards Principal and Rs. 7,87,915/- (Rupees Seven Lakh Eighty Seven Thousand Nine Hundred Fifteen Only) towards Interest total amounting to Rs.1,24,72,207/- (Rupees One Crore Twenty Four Lakh Seventy Two Thousand Two Hundred Seven Only),
- iv. On failure of the Corporate Debtor to comply with Demand Notice; the Operational Creditor served an advance copy of Section 9 Application upon the Corporate Debtor on 28th January, 2020. Thereafter, upon receipt of the advance copy of the Petition, the Corporate Debtor approached the Operational Creditor. Subsequently, both the parties mutually entered into an agreement by executing a Settlement Deed dated 31 January, 2020 [*Exhibit – F*].
- v. As per terms and clauses of the said Settlement Deed, the Corporate Debtor was legally and contractually bound to make payment of first installment of Rs. 10,00,000/- (Rupees Ten Lakh Only) on or before 28 February, 2020. However, the Corporate Debtor paid only Rs. 25,000/- (Rupees Twenty Five Thousand Only) on 28 February, 2020 and, thereafter paid Rs.5,10,000/- (Rupees Five Lakh Ten Thousand Only) in various tranches between 28 February, 2020 to 31 March, 2020 [*Exhibit – K – Bank Statement reflecting the transactions*].
- vi. The Corporate Debtor having agreed to make the payment of first installment amounting to minimum Rs. 10,00,000/- (Rupees Ten Lakh Only) on 28 February, 2020 but having failed to do so consequently lost its privilege to the benefit of making payment of remaining outstanding amount in installments including lost of waiver of Rs. 2,00,000/- (Rupees Two Lakh Only) from the principal amount, Rs. 7,87,915/- (Rupees Seven Lakh Eighty Seven Thousand Nine Hundred Fifteen Only) towards interest and Rs. 3,25,021/- (Rupees



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- Three Lakh Twenty Five Thousand Twenty One only).
- vii. After deducting the amount that has been paid by the Corporate Debtor till date, the claim amount outstanding along with interest amounts to a total of Rs.1,14,53,363/- (Rupees One Crore Fourteen Lakh Fifty Three Thousand Three Hundred Sixty Three Only), [*Exhibit – F*].
- viii. Several reminders were given to the Corporate Debtor. Thereafter, on 19 June, 2020, the Operational Creditor issued a fresh Demand Notice in Form 3 along with Form 4 as required under Section 8 of Code to the Corporate Debtor at its Registered Office. After the issuance of demand notice, the Corporate Debtor through its Advocate Mr. Kamlesh Vaidankar approached the Operational Creditor and responded to email sent for Demand Notice, asking the Operational Creditor to either return the amount already paid in case if it choose to deny the proposal, or else the acceptance shall be deemed as agreement.
- ix. After several email communications and conference call held between the Operational Creditor and Corporate Debtor, the Corporate Debtor paid an amount of Rs. 18,99,292/- (Rupees Eighteen Lakh Ninety Nine Thousand Two Hundred Ninety Two Only).
- x. That the Operational Creditor has complied with all the mandatory provisions of Section 9 (3) (a), (b) and (c) of the Code.

6. Contentions of learned Counsel appearing for the Corporate Debtor

- i. It is alleged that this Petition is not at all maintainable in facts as well as in law.
- ii. That the Corporate Debtor has transferred Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only) via NEFT to the Operational Creditor on 13 August, 2020. Despite all hardships the Corporate Debtor fulfilled its commitment by paying Twenty Lakhs within committed timelines.
- iii. That the Operational Creditor has been putting unwarranted pressure and



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resorting to the arm-twisting methods, the Corporate Debtor has been constantly making payments. As far as the Settlement Agreement is concerned, the Corporate Debtor has been trying all its efforts to honor the terms and conditions of the Agreement.

- iv. Further that, the Corporate Debtor is despite all efforts to arrange funds has failed, but if some more time is granted it shall pay-off the entire dues owed by the Operational Creditor.
- v. So far the Affidavit under Section 9 (3)(b) is concerned, the Corporate Debtor has duly replied to the statutory demand notice under Section 8 of the Code.

Analysis and Findings

7. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor and have perused the records.
8. From the records, it is apparent that goods were supplied by the Operational Creditor to the Corporate Debtor. Further, on failure of the Corporate Debtor to pay the outstanding debt, the parties also entered into a settlement agreement dated 31 January, 2020.¹
9. From page 282 of the Petition, it is evident that as per the Settlement Deed dated 31 January, 2020 between the parties Rs. 1,16,84,292/- (Rupees One Crore Sixteen Lakh Elghty Four Thousand Two Hundred Ninety Two Only) - was overdue for payment and Rs. 7,87,915/- (Rupees Seven Lakh Eighty Seven Thousand Nine Hundred Fifteen Only) towards interest @ 18% per annum totaling to Rs.1,24,72,207 / - (Rupees One Crore twenty Four Lakh Seventy Two Thousand Two Hundred Seven Only) was outstanding as on date 31st January, 2020. Further, it was the Corporate Debtor, who approached the Operational Creditor for exploring the possibility of amicable settlement of payment. After detailed discussion between the parties, both the parties decided to settle their account amicably, wherein, the Operational Creditor

¹ Exhibit – F, Pages 281 – 292 of the Petition.



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agreed to accept Rs.1,14,84,292/- (Rupees One Crore Fourteen Lakh Eighty Four Thousand Two Hundred Ninety Two Only) from the Corporate Debtor towards full and final settlement of entire dues 31 January, 2020.

- 10.** In paragraph 9 of the Reply the Corporate Debtor is submitting that they have transferred Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only) via NEFT to the Operational Creditor on 13 August, 2020. Whereas, it has been further stated that despite all hardships the Corporate Debtor fulfilled its commitment by paying Twenty Lakhs within committed timelines. Further, in paragraph they are further contending that the actual amount that has is to be paid as on the date of filing of the Application is Rs.69,06,892/-. Thus, it is not clear as to what payments has been made. However, be that as it may, no proper documentation or bank statements have been put on record by the Corporate Debtor to substantiate the same. In fact, they have been contradicting their own submissions in the Reply.
- 11.** In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and has acknowledged the same. Further, the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time. In absence of any pre-existing dispute, no defence is available to the Corporate Debtor. Further, As envisaged under section 9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor.
- 12.** It is, accordingly, hereby ordered as follows:-

 - a. The application bearing *C.P. (IB) No.1306/KB/2020* filed by Ms. Rakhi, Proprietor of Srinivasa Cloth Mills, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Chandrima Fashions Private Limited, the Corporate Debtor, is *admitted*.



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- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Sanjay Khandelwal**, email: sanjay.pfs@gmail.com, Regn. No. IBBI/IPA-001/IP-P-01714/2019 -2020/12754 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.



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- g. The IRP/RP shall submit to these Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 13.** *C.P. (IB) No.1306/KB/2020* to come up on **19.05.2023** for filing the progress report.
- 14.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on 24th day of April, 2023

SA [LRA]