

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/446/2020

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **Marappan Textiles Private Limited (Formerly
Known as Prithviraj Spinning Mills Pvt Ltd)***

Rajendra Agro Industries (Partnership Firm)

Represented by its **Partner**,
Mr. Sheetal Kumar Kothari,
12-7-68/3,
Machalapur Raod, Raichur,
Karnataka – 584102

... Operational Creditor

-Vs-

Marappan Textiles Private Limited

(Formerly Known as Prithviraj Spinning Mills Pvt Ltd)
(CIN: U17111TZ2014PTC020436)
SF No.653/2,
Kanjapalli Pirivu Annur,
Tamil Nadu - 641653

... Corporate Debtor

Order pronounced on 8th March 2022

CORAM :

**R.SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor : Pawan Jhabakh, Advocate

For Corporate Debtor : Vidhya Shankar, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under adjudication is an Application filed by **Mr. Sheetal
Kumar Kothari** Partner of Rajendra Agro Industries, a Partnership

Firm, (hereinafter referred to as "**Operational Creditor**") under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, 'I&B Code, 2016) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Marappan Textiles Private Limited** (Formerly known as **Prithviraj Spinning Mills Private Limited**) (hereinafter referred to as "**Corporate Debtor**") to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. It is seen from the Application that the Applicant had enclosed the Copy of Certificate of Registration of Firm at Volume I Page No. 2 of the typed set of the application. Further, the Applicant had placed the Verifying Affidavit dated 18.02.2020, duly notarised, executed at Raichur and the same is enclosed at Volume IV Page Nos. 646 to 648 of the typed set of the application

3. From Part-I of the Application, it is seen that the Operational Creditor is a Partnership Firm. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 09.05.2014 bearing CIN: U17111TZ2014PTC020436, under the Companies Act, 2013 and the Registered Office Address of the Corporate Debtor as per the Application is stated to be situated at SF No.653/2, Kanjapalli Pirivu Annur, Tamil Nadu - 641653. However, the records from the MCA website shows that the

Registered office address of the Company is situated at S.F No. 653/2 & 654/2, Kanjapalli village, Annur, Coimbatore Coimbatore TN 641006. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to discretion of this Tribunal to appoint the IRP.

4. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a Total sum of Rs.2,30,89,679/ together with Principal amount of Rs. 1,94,78,635/- and interest amount of Rs.36,11,004/- which is due and payable by the Corporate Debtor. Part-V of the Application discloses the details of the documents filed by the Operational Creditor, in order to prove its 'operational debt' and the list of documents which filed along with the Application are as follows;

- a. Invoices
- b. Along with Lorry Receipts
- c. Purchase Orders as Annexed
- d. Tabular Calculation of unpaid and undisputed invoices as annexed under Annex – II

5. Learned Counsel for the Operational Creditor submitted that the Operational Creditor is a Registered Partnership Firm under the Partnership Act who is engaged in the Business as a wholesaler/ Distributor/Supplier of Raw Materials such as cotton and other derivatives based in Raichur, Karnataka since August 2017.



6. Learned Counsel for the Operational Creditor further submitted that the Operational Creditor had a healthy business relationship having transacted business up to 28 crores which has been admitted by the Corporate Debtor in his correspondence with the Operational Creditor. Learned Counsel for the Operational Creditor further submitted that the Corporate Debtor had committed default in payments from the Month of April 2019, for the goods supplied by the Operational Creditor to the Corporate Debtor. Thereafter, neither the Corporate Debtor raised any grievances regarding the quality of the Products supplied, nor given any reason for withholding the payments.

7. Learned Counsel for the Operational Creditor further submitted that the Corporate Debtor replied to the Operational Creditor request for payments of the goods supplied by sending a schedule of payment along with admitting to the fact that there had been a default on the part of the Corporate Debtor. Learned Counsel for the Operational Creditor further submitted that on 29.07.2019 the Corporate Debtor had sent a Schedule of payment for the dues pending towards the Operational Creditor to the tune of Rs. 2,71,06,415/-. Further, on 02.09.2019, the Corporate Debtor has issued a letter admitting the defaulted payment for the goods supplied by the Operational Creditor to the tune of Rs. 1,99,78,535/- and the same will be settled on or before 30.09.2019.

8. Subsequently, upon default by the Corporate Debtor on their promise, the Operational Creditor had issued a Demand Notice dated 10.10.2019, against which Corporate Debtor had sent a reply letter admitting the Default in payments and assured to pay the entire amount due to the Operational Creditor. It was averred in the application that the amount of Rs.1,94,78,635/- is due to be paid to the Operational Creditor as per the various invoices raised by the Operational Creditor till 31.09.2019 and the same has been admitted by the Corporate Debtor.

9. It was further averred in the application that the interest due on non-payment of the outstanding invoice amount to the Operational Creditor is calculated at the rate of 24% is Rs.36,11,004/- (Total Interest Debt), therefore, the total debt payable by the Corporate Debtor and the amount fell due from the month of April 2019 which stands at :

PARTICULARS	AMOUNT
Total Operational Debt due	Rs.1,94,78,635/-
Total Interest Due	Rs.36,11,004/-
TOTAL AMOUNT DUE	Rs. 2,30,89,679/-

10. The Operational Creditor has issued a Demand Notice dated 14.01.2020 as stipulated under section 8 of IBC 2016 to the Corporate Debtor and the same has been delivered to the Corporate Debtor on 20.01.2020. Further, perusal of the Affidavit filed under

Section 9(3)(b) of IBC, 2016 would shows that, neither the Corporate Debtor paid the amount which is outstanding to the Operational Creditor within the period of ten days from the date of receipt of the Demand Notice, nor the Corporate Debtor has brought to the notice of the Operational Creditor any dispute regarding the amount / goods. Under the said circumstances, the Learned Counsel for the Operational Creditor prayed for the initiation of CIRP against the Corporate Debtor.

11. The learned Counsel for the Corporate Debtor who belatedly filed the counter and thereafter preferred an application bearing IA/283/2021 for condonation of delay in filing the Counter and the same was allowed by this Tribunal vide order dated 30.11.2021.

12. It was averred in the Counter that the Respondent herein is a Private Limited Company incorporated under the Companies Act, 2013 under the name and style of Prithivraj Spinning Mill Private Limited and the name was subsequently changed to Marappan Textiles Private Limited on 31.03.2020. The Respondent had enclosed the Copy of the Fresh Certificate of Incorporation at Page no. 18 of the Counter Statement.

13. The Learned Counsel for the Corporate Debtor in para 6 of the Counter stated that the Corporate Debtor had admitted the debt

amount of Rs.1,94,78,635/- which is due and payable to the Operational Creditor.

14. Heard submissions made by both the parties and perused the file including the pleadings placed on record. The contention of the Learned Counsel for the Operational Creditor is that the Corporate Debtor has committed default in the payment of the sum which is due and payable by the Corporate Debtor to the Operational Creditor. Upon perusal of the records, the Corporate Debtor has not raised any disputes prior to the issuance of Notice and admitted the principal amount to be paid in para 6 of the Counter.

15. Before venturing into the merits of this case, it is pertinent to point out the proceedings of this Tribunal dated 10.03.2021, wherein this Tribunal directed the Applicant to amend the cause title within a period of one week from 10.03.2021. Thereafter, the Applicant Preferred an Amendment Application bearing MA/82/CHE/2021 and the same was allowed by this Tribunal Vide order dated 30.07.2021.

16. Thereafter, on 13.08.2021, Learned Counsel Ms.T.Renu who appeared for the Corporate Debtor submitted that she will file Change of Vakalat on behalf of the Respondent. Thereafter Learned Counsel Mr. R. Vidhya Shankar came by way of change of vakalat appeared on behalf of the Respondent.



17. During the Course of the hearing, both parties submitted that settlement process is underway and thereafter the same did not fructify. Further, the Learned Counsel for the Operational Creditor submitted that part payment has been received From the Corporate Debtor.

18. Thus, from the records it is manifestly made clear that the debt amount of Rs. 2,30,89,679/- is due as on the pendency of the Application. Further the Learned Counsel for the Corporate Debtor admitted the liability of the Principle amount of Rs. 1,94,78,635/- in para 6 of the Counter Affidavit.

19. The very fact that the Corporate Debtor has admitted their liability to the tune of Rs. 1,94,78,635/- proves that there is a 'default' on the part of the Corporate Debtor. Further, the said default is also in excess of a sum of Rs.1 Lakh, which was prevalent at the time of filing of the Application i.e. on 04.03.2020. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in



relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

20. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being



in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

21. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.



22. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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 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.

23. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between Jan 2022 – June 2022 appoints **Mr. Sriram Krishnamoorthy** having registration number *IBBI/IPA-002/IP-N01123/2021-2022/13654* as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order.



24. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

26. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.



27. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will



also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

30. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

31. Post this IBA/446/2020 for hearing on **25.04.2022**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Sriram Ananth.V