

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 762/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2020**

Name of the Company: Radharaman Fibers Pvt Ltd
V/s
Aunde Faze Three Autofab Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

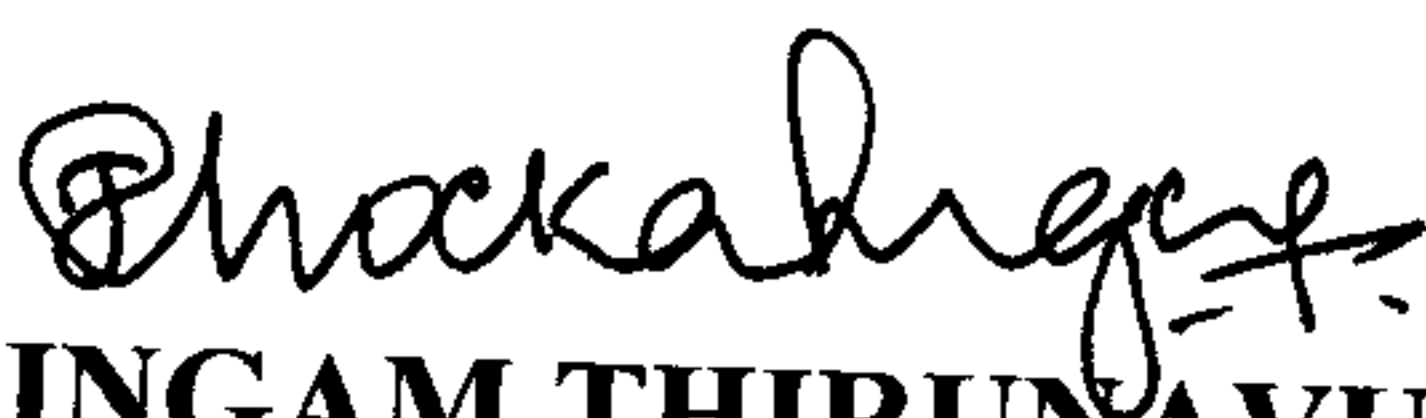
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

The Order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 20th day of March, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 762/NCLT/AHM/2019

In the matter of:

Radharaman Fibres Pvt. Ltd.

Having its address at:
S-39, Cotton Exchange Building,
Cotton Green,
Mumbai - 400033

...Petitioner
(Operational Creditor)

Versus

**Aunde Faze Three Autofab Ltd.
(formerly Aunde India Ltd.)**

Having its Registered Office at:
Plot No 146, Waghdhara Village,
Dadra N & H, Dadra -396191,
Dadra & Nagar Haveli ,India.

...Respondent
(Corporate Debtor)

Order delivered on 20th of March 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

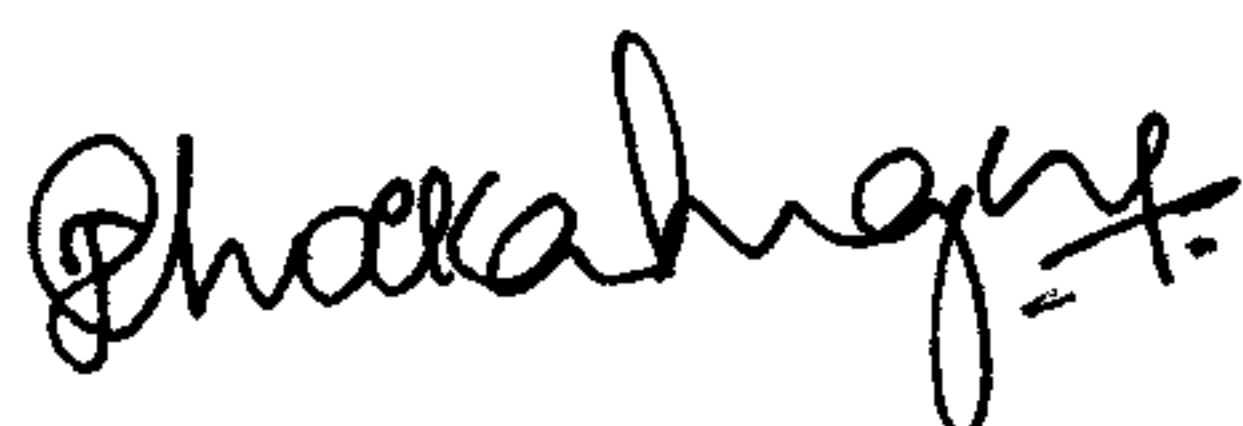
Appearance:

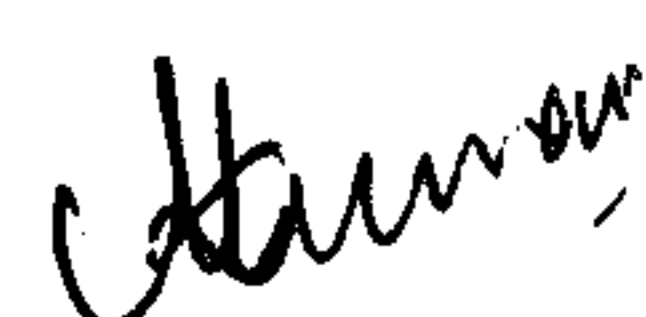
Advocate Mr. Rohan Lavkumar for the Petitioner.
Advocate Mr. Aishwarya Reddy for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(Technical)]

1. The present Petition is filed by Mr. Pramod Chokhani on behalf of Radharaman Fibres Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IB Code' for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('IB Rules' for short) for





initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Aunde Faze Three Autofab Ltd. (formerly Aunde India Ltd.) for the recovery of the unpaid Operational Debt due of Rs.14,86,693

2. It is submitted by the Petitioner that the Respondent Company, Aunde Faze Three Autofab Ltd. (formerly Aunde India Ltd.) is having its registered address at Plot No. 146, Waghdhara Village, Dadra N&H, Dadra - 396191, Dadra & Nagar Haveli, India and was incorporated on 03.10.1997 with Corporate DIN No. L17120DN1997PLC000196, having Authorized Share Capital of Rs. 11,00,00,000/- and Paid up Share Capital of Rs. 10,72,32,000/-.
3. The Petitioner (Radharaman Fibres Pvt. Ltd.) submitted that the company is a Del-Credere Agent of Reliance Industries Limited, Polyester Division and providing services to the Respondent. The Respondent places order for supply of polyester yarn by Reliance Industries Ltd. through the Petitioner. The payment for yarn is made by Operational Creditor to the Reliance Industries Ltd. at the behest of the Respondent (Corporate Debtor) and Corporate Debtor will make the payment to the Petitioner. The claim is towards interest on the payment by the Operational Creditor to Reliance Industries Ltd. from the date on which the payment is made to Reliance Industries Ltd. to the date on which amount is received from the Corporate Debtor by the Petitioner. The unpaid debit notes are towards interest for the period March 2015 to January 2019 totalling into Rs.14,86,693/- (Rs. Fourteen Lakh Eighty-Six Thousand, Six Hundred Ninety-Three Only).
4. It is submitted by the Respondent that his company was incorporated on 03.10.1997 and is engaged in designing, development and manufacturing automotive textiles (specialized

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in car seat cover fabric). The Annual Revenue of Corporate Debtor was INR 141 crores during FY 2018-19 and it is expected to be around INR 165 crores during FY 2019-20. The Corporate Debtor is a part of the "Faze Three" Group established in 1985 by Mr. Ajay Anand, a renowned and well respected businessman. The Faze Three Group has a combined revenue of INR 4.6 Billion and Assets over IR 3 Billion. The said Group employs more than 3500 people directly and many more indirectly. On 24th October, 2019, the name of the Corporate Debtor has been changed from Aunde Faze Three Autofab Ltd. To Faze Three Autofab Ltd.

5. It is submitted by the Respondent that the claim for interest is based upon the date of payment by the Operational Creditor to RIL and the date on which the amount was recovered from the Corporate Debtor. It is the Operational Creditor's claim the payment between the date on which the Operational Creditor would make payment to Reliance Industries Limited and receive full payment from the Corporate Debtor and its bank, are liable to charge interest @ 18% p.a. It is submitted by the Corporate Debtor that he is not privy to the contract between RIL and Operational Creditor and hence is not aware of the dates when the Operational Creditor would make payment to RIL. Even otherwise, in the agreements entered into between the parties herein, no details were provided by the Operational Creditor as to when the Petitioner is liable to make payment to RIL.
6. It is submitted by the Respondent that as can be seen from the Sales Indent issued by the Operational Creditor and the Purchase Order issue by the Corporate Debtor, there is no agreement between the Operational Creditor and the Corporate Debtor for payment of interest at the rate of 18% per annum. It will be open for the Operational Creditor to move before a recovery Court of competent jurisdiction. The Operational

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Creditor cannot rely upon the present petition for recovery of any alleged delayed payment interest / charges.

7. It is also submitted by the Respondent that the debit note raised by the Operational Creditor and that are being relied on by him have no acknowledgement from the Corporate Debtor as being payable to them. In fact, the debit notes annexed to the petition do not prove even receipt by the Corporate Debtor.
8. It is submitted by the Respondent that the interest towards delayed charges was paid for a short period of time from April 2013 to March, 2015 inadvertently by the Corporate Debtor. It is stated that during that period as the amounts were negligible, the same was being paid at the plant / unit level itself, without the confirmation from the management. However, when the management was made aware of the same around March 2015, the Operational Creditor was informed of such inadvertent payment and was told that such charges will no longer be paid by the Corporate Debtor. In fact, the Operational Creditor accepted the stand of the Corporate Debtor and continued to act as the Del Credere Agent, guaranteeing payments to Reliance Industries. Hence, after such a long period of time, the Operational Creditor cannot now seek to enforce a claim that was waived by it since March, 2015.
9. It is also further submitted by the Corporate Debtor that debit note raised by the Operational Creditor date back from March 2015 onwards and it is time barred as more than three years passed since the date of debit notes.

Findings:-

10. Heard counsels for both sides and examined the documents.

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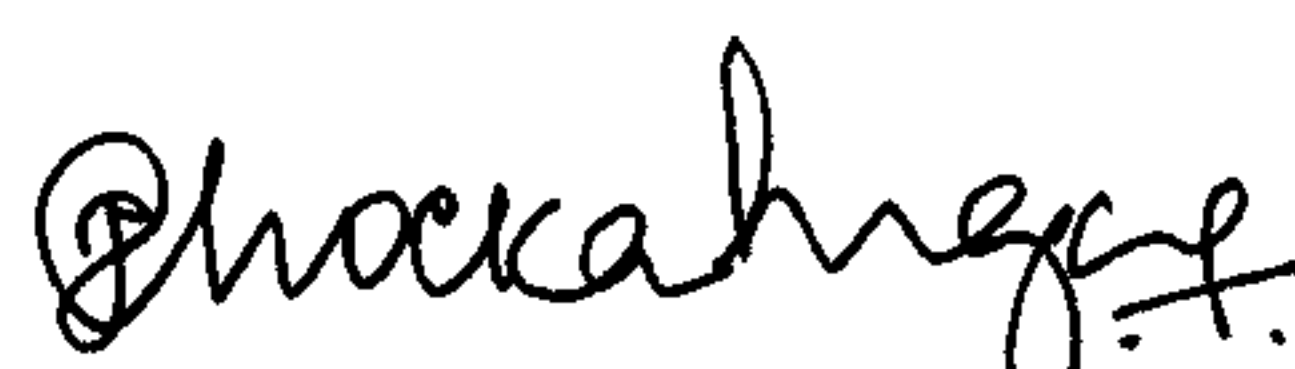
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11. The Operational Creditor has not produced any documents showing that he is Del-Credere Agent of Reliance Industries Ltd. Further there is no agreement between the parties i.e. Operational Creditor and Corporate Debtor about the mode of operation, payment terms, interest etc. The documents that made available are Sale Indent issued by Operational Creditor to the Corporate Debtor and purchase order issued by Corporate Debtor to Operational Creditor. In both documents, there is no mention about interest on any delayed payments. The entire amount towards purchase of material has been paid by the Corporate Debtor. The claim is only towards interest.
12. Further, the debit notes attached with the application are only for interest and did not contain any date. It is submitted by the Corporate Debtor that they have admitted and paid interest from April 2013 to March 2015 inadvertently and paid at plant level.
13. There is an e-mail from Corporate Debtor dated 03.06.2017 intending to settle interest @ 12.5% for which the Operational Creditor has not agreed. Further, the Corporate Debtor has exchanged certain mails dated 18.10.2017, 15.02.2019 etc. with Operational Creditor about quality of the products supplied. These correspondences show that there is pre-existing dispute before issue of demand notice regarding the claim towards interest, rate of interest and quality of material.
14. Thus, in case of dispute, this is not the forum to examine and adjudicate as to what extent the claim of the Petitioner is admissible as due and recoverable. Neither the Tribunal in the present proceedings will examine the merits of respective claims.

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15. The existence of non-disputed debt is sine-qua-non for initiation of CIRP under Section 9 of the IB Code.
16. In the factual scenario, there is no agreement between the parties for claiming for interest, rate of interest etc. It is disputed by the Corporate Debtor before issuance of Demand Notice. Entire amount towards supply of material were paid and the claim is only towards interest.
17. For the reasons stated above, this Adjudicating Authority is of the view that the petition does not qualify for admission under Section 9 of the IB Code and therefore, the same is rejected. No order for cost.
18. It is made clear that observation made in this order shall not be construed as an expression of opinion on the merits of the controversy. The rights of the Petitioner before any other forum shall not be prejudiced on account of dismissal of the instant petition.
19. Registry is directed to communicate this order to both parties.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Dated this the 20th day of March, 2020

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