

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - V
Company Petition (IB)No.321/ND/2020
Along with IA/1908/2020**

In the matter of:

Sections 9 of the Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

Jayna Traders Private Limited

M-183-B, Gali No. 11, Shastri Nagar,

New Delhi-110052

...Operational Creditor/Applicant

Versus

Calzini Fashions Limited

D-9/3, Okhla Industrial Area,

Phase-II, New Delhi-110020

...CORPORATE DEBTOR

ORDER DELIVERED ON: 19.07.2022

CORAM :

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

For the Applicant: Rishabh Jain, Advocate

For the Respondent: Advocate Vaibhav Tyagi & Advocate
Shubham Jaiswal along with Mr. U.S. Goenka

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ORDER**PER: P.S.N. PRASAD, MEMBER (JUDICIAL)**

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. ***“Jayna Traders Private Limited”*** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company ***“Calzini Fashions Limited”*** and to cause a public announcement of the initiation of Corporate Insolvency Resolution Process and calling for submission of claims under Section 15 of the code and to declare a moratorium in terms of Section 14 of the code.

2. The Operational Creditor is engaged in the business of trading of yarn and supplies yarn to various manufacturing units. The Corporate Debtor is a manufacturer of socks and other garments.

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3. Brief Facts of the case are as follows:

- i. From 30.03.2019 to 11.09.2019, the Operational creditor supplied the goods to the Corporate Debtor and raised several invoices in respect of the goods supplied.
- ii. From 12.09.2019 to 01.12.2019, the Operational Creditor requested the corporate debtor to pay the balance amount of INR 11,39,515/- over telephone and by email.
- iii. It is submitted that the Corporate Debtor had defaulted in making the payment of the invoice raised by the Operational Creditor and shown unpaid as per statement of account.
- iv. Thereafter, the Operational Creditor send a demand notice dated 30.11.2019 as per Form-3 under Section 8 of the Insolvency and Bankruptcy Act Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy Act Code, 2016 (Application to adjudicating Authority) calling upon the Corporate Debtor to clear the outstanding amount within a period of 10 days of receipt of Demand Notice.

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- v. After receipt of demand notice in Form 3 via email on 02.12.2019, the Corporate Debtor, vide email dated 04.12.2019, alleged bad quality of goods supplied.
 - vi. The Corporate Debtor sent a written letter dated 14.12.2019 in reply to notice of demand in Form 3.
 - vii. It is submitted by the Operational creditor that there was no dispute with respect to the quality of goods supplied by the operational creditor.
4. The total amount of debt claimed to be in default is Rs. 12,19,124/- as on 05.01.2020 including interest of Rs. 79,611/- on outstanding amount. The date of default is 27.10.2019.
5. The Corporate Debtor, in its reply dated 05.03.2020, submitted that:
- i. The present petition is not being filed by the duly authorized person on behalf of the Operational Creditor as per the provisions of the Companies Act, 2013.
 - ii. The Corporate debtor on various occasion brought to the notice of the Operational Creditor that the products are defective and the same be returned back which the operational creditor failed to do so. The same is evident

from the email dated 04.12.2019, 05.12.2020 as well as vide reply to the demand notice dated 14.12.2019.

- iii. As per the books of account of the Corporate Debtor, the books shows a sum of Rs. 35,348/- is due and payable and the demand made by Operational creditor is false, frivolous and misconceived.
 - iv. In Annexure B of the petition, it has been alleged that a sum of Rs. 11,88,514/- is due and payable by the Corporate Debtor to the Operational Creditor. On the other hand, in the petition, it has been alleged that a sum of Rs. 12,19,124/- is payable by the Corporate Debtor inclusive of some amount as interest.
 - v. There exists pre-existing disputes with respect to the quality of the product supplied by the operational creditor to the corporate debtor.
 - vi. There is no agreement between the Operational Creditor and Corporate debtor that any interest shall be payable by Corporate Debtor to the Operational Creditor.
- 6.** The Operational Creditor, in its rejoinder dated 29.01.2021, submitted that:

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- i. The Operational creditor has complied with all the mandatory provisions of IBC, 2016 and the technical rules of Evidence Act are not applicable on the Adjudicating Authority.
- ii. The signatory to the petition is authorized by Board of Directors of operational creditors in their meeting held on 30.11.2019.
- iii. Following discrepancies and contradictions are arising out from the perusal of reply of corporate debtor to the demand notice u/s 8 and reply to the main IB petition:
 - a. In para 4 of the reply to the demand notice, the inception point of supply of defective goods was June, 2019 whereas in para 15 of the Reply to IB petition, the supply of defective goods is April, 2019.
 - b. In para 8 of the reply of demand notice, the Corporate Debtor is threatening to debit the account of the operational creditor in future (ie. after 14.12.2019) whereas in Annexure-3 at page 17 of their Reply to IB petition, the Corporate Debtor already and allegedly debit the account of Corporate Debtor and alleged the debit entries were shown to be passed on 30.04.2019,

31.05.2019, 30.06.2019, 31.07.2019, 31.08.2019 and 30.09.2019.

- c. In para 10 of the reply of demand notice, the Corporate Debtor is alleging the acceptance of delivery of goods whereas the main bone of contention in Reply to IB petition is the quality of goods.
- d. In para 5 of the reply of demand notice, the Corporate Debtor alleges that the socks manufactured out of yarn supplied by the Operational Creditor were found to be defective whereas in para 10 of the Reply to IB petition, the Corporate Debtor is asking the Operational Creditor to lift the defective yarns supplied by the operational creditor.
- e. In para 3 of the reply of demand notice, the Corporate Debtor admits the time limit of payment of bills is 30 days whereas in para 9 and 10 of the Reply to IB petition, the Corporate Debtor wants the Operational Creditor to demonstrate what is the stipulated time to make the payment to the operational creditor.

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- iv. The closing balance as per the ledger account provided by the Corporate Debtor was Rs. 11,88,514/- whereas the real outstanding amount was Rs. 11,39,513/-.
 - v. The invoices are the agreement as per the Indian Contract Act, 1872.
 - vi. The Operational Creditor referred the judgment of the Hon'ble Supreme Court in para 40 in the matter of **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2017) 85 taxmann.com 292** and the judgment of the Hon'ble Appellate Tribunal in para 13 and 14 in the matter of **Excel Infra Logistics (P) Ltd. v. Karnani Solvex (P) Ltd. (2020) 118 taxmann.com 340 (NCLAT)** and also the judgment of this Hon'ble Tribunal in para 13 in the matter of **Fine Group Corporate Limited v. Lemon Electronics Limited (2020) 120 taxmann.com 177 (NCLT-New Delhi)**.
7. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.

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8. The Operational Creditor supplied the goods to the corporate debtor from time to time and raised several invoices in respect of the goods supplied. The Operational Creditor had submitted its last bill dated 11.09.2019 to the Corporate Debtor. Thus, from the aforesaid facts, it is clear that there is continuous cause of action and period of limitation for filing the present petition commences when the last bill was submitted by the Operational Creditor. The above said facts clearly establish that both the parties were maintaining a running account in lieu of which invoices were being raised and part payment had been made and as the petition has been filed on 18.01.2020, hence it is well within the limitation period.
9. The Corporate Debtor has contended that there exist pre-existing disputes with respect to quality of the product supplied by the Operational Creditor to the Corporate Debtor and enclosed the email dated 04.12.2020 and 05.12.2020 which were sent by the Corporate Debtor to the Operational Creditor in respect of inferior quality of the product of the Operational Creditor.

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10. The Hon'ble Supreme Court in the case of Mobilox Innovations (P.) Ltd. v. Kirusa Software (P.) Ltd. (2017) 85 taxmann.com 292/144 SCL 37 held that:

"What is important is that the existence of the dispute and/or the suit or arbitration proceedings must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. Admittedly, there is nothing on record which can prove that a dispute exists between the parties before the issuance of demand notice. Ld. Adjudicating Authority ought to have rejected the weak feeble contentions of the Corporate Debtor and admitted the application."

11. It is observed that both the emails dated 04.12.2020 and 05.02.2020 were sent by the Corporate Debtor after issuance of Demand Notice dated 02.12.2019. The Corporate Debtor has not placed on record any other document to prove that there is pre-existing dispute before the issuance of Demand Notice. Therefore, in view of the aforesaid judgement of the Hon'ble Supreme Court, there exist no pre-existing dispute between the Operational Creditor and Corporate debtor.

12. The Corporate Debtor, in its written submissions, has contended that the ledger account of the corporate debtor, from 01.04.2019 to 05.03.2020, has shown seven payments made by the corporate debtor to the financial creditor.

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- 13.** It is observed that the amount/transactions written in the ledger account of a person cannot be relied upon i.e. it does not have any authenticity in the eyes of law. Also, the Corporate Debtor has not filed its Bank Statement to show that the payment has been made to the Financial Creditor. Therefore, the aforesaid contention of the Corporate Debtor cannot be accepted by this Hon'ble Tribunal.
- 14.** In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the corporate debtor and the corporate debtor has defaulted in making payment of the amount due and along with that, in the absence of any pre-existence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.

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- 15.** The Applicant has proposed the name of IRP. Accordingly, this Adjudicating Authority, hereby appoints Mr. Kailash Chander Jain, (Email - sasd32@yahoo.com), Reg. No: IBBI/IPA-001/IP-P01573/2018-19/12407 to act as Insolvency Resolution Professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
- 16.** The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
- 17.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
- 18.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the

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moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 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 corporate debtor.

19. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant

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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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

20. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

21. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19,

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20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

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22. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

23. IA 1908/2020 for condonation of delay in filing the reply has been disposed off accordingly.

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(Member Technical)

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