

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

IBA/1180/2019 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 ***M/s. Alkas Spinning Mills Private Limited***

M/S. SUPERFINE BLEACHINGCOMPANY LIMITED
No.11-D, Gandhipuram, Komarapalayam,
Namakkal District,
Tamil Nadu – 638 183

... Operational Creditor

-Vs-

M/S. ALKAS SPINNING MILLS PRIVATE LIMITED
No.9, Amutham Apartment,
Bharathi Nagar, Karur,
Tamil Nadu – 639 002

... Corporate Debtor

Order Pronounced on **05.05.2020**

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Harshini J, Advocate
For Corporate Debtor : Ramasubramaniam Raja,
Advocate



ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant viz., **M/s. Superfine Bleaching Company Limited** (hereinafter referred to as "*Operational Creditor*") against **M/s. Alkas Spinning Mills Private Limited** (hereinafter referred to as "*Corporate Debtor*"). The Operational Creditor seeks to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Public Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U1712TN2010PTC077454 which was incorporated on 23.09.2010 and that its Authorized share capital and paid up capital is Rs.2,00,00,000/- and Rs.2,00,00,000/- respectively.



The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.9, Amutham Apartment, Bharathi Nagar, Karur, Tamil Nadu – 639 002.

3. Part-III of the Application shows that the Operational Creditor has proposed the name of one Mr. Kannan Sambasivam as the Interim Resolution Professional. From Part-IV of the Application, it is seen that a sum of Rs.38,37,972/- inclusive of interest at the rate of 24% p.a. is being claimed as total debt which is due and payable by the Corporate Debtor to the Operational Creditor.

4. Part V of the Application describes the particulars of the documents, records and evidence of default of the Operational debt which *inter alia* includes the following;

- (i) Form IV – Demand Notice dated 19.03.2019
- (ii) Invoices raised by the Operational Creditor on the Corporate Debtor
- (iii) Ledger Extract of the Operational Creditor in the books of the Corporate Debtor 01.04.2016 to 17.08.2019

5. The Learned Counsel for the Operational Creditor submitted that they are in the business of textile processing and the Corporate Debtor approached the Operational Creditor for



processing of cotton fibre and for the supply and delivery of the goods and based upon the same, the Operational Creditor supplied the same to the Corporate Debtor during the year 2016 and raised around 24 invoices which are as follows:

Sl. No.	Invoice No.	Date
1	1054/16 - 17	19.07.2016
2	1092/16 - 17	23.07.2016
3	1150/16 - 17	29.07.2016
4	1365/16 - 17	24.08.2016
5	1388/16 - 17	26.08.2016
6	1416/16 - 17	29.08.2016
7	1417/16 - 17	29.08.2016
8	1443/16 - 17	31.08.2016
9	1481/16 - 17	05.09.2016
10	1493/16 - 17	07.09.2016
11	1597/16 - 17	19.09.2016
12	1615/16 - 17	21.09.2016
13	1674/16 - 17	24.09.2016
14	1690/16 - 17	26.09.2016
15	1691/16 - 17	26.09.2016
16	1745/16 - 17	29.09.2016
17	1829/16 - 17	06.10.2016
18	1830/16 - 17	06.10.2016
19	1836/16 - 17	07.10.2016
20	1871/16 - 17	11.10.2016
21	1872/16 - 17	11.10.2016
22	1927/16 - 17	15.10.2016
23	2422/16 - 17	02.12.2016
24	2528/16 - 17	13.12.2016

It was further submitted by the Learned Counsel for the Operational Creditor that as per the terms contained in the

Invoice, the payment has to be made within 7 days from the date of which the readiness of the goods are intimated and the inspection of the good was at the option of the Corporate Debtor upon the delivery of the goods. The terms also contained an interest clause, which charged interest at the rate of 24% p.a.

6. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor had enough time to inspect the quality of the goods and to return the goods, if any defect is found, however, the Corporate Debtor took delivery of the goods and consumed the same without any demur and has failed to discharge its liability by not effecting the payments as against the invoices raised. It was further submitted that the account is a running account and the Corporate Debtor has paid only a part of the consideration against the invoice on various dates as reflected in the Bank Statement of the Operational Creditor and the ledger account of the Corporate Debtor maintained in the books of the Operational Creditor. It was stated that all the payments made against the delivery of the goods have been adjusted towards the invoices in chronological order starting from the first invoice and despite several reminder both written and oral, the Corporate Debtor has failed to discharge the amount which is due and payable to the Operational Creditor.



7. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor issued a Demand Notice to the Corporate Debtor on 19.03.2019 and after receipt of the said Demand Notice, on 25.03.2019 the Corporate Debtor undertook to settle the amount shown as outstanding in the Demand Notice, it has also been alleged that the Corporate Debtor has deposited a sum of Rs.1,00,000/- vide Bank Transfer (IMPS) on 31.05.2019, which is reflected in the Bank statement of the Operational Creditor, thereby admitting to and acknowledging the amount outstanding due and payable to the Operational Creditor.

8. *Per contra*, the Learned Counsel for the Corporate Debtor has filed its counter and submitted that the present Application filed by the Operational Creditor is barred by limitation. Further, it was contended that the Corporate Debtor has not paid the sum of Rs.1,00,000/- to the Operational Creditor as alleged by them and the Operational Creditor has stated so, so that the period of limitation stands extended by virtue of Section 19 of the Limitation Act, 1963. It was also stated by the Learned Counsel for the Corporate Debtor that Section 19 of Limitation Act, 1963 is not applicable to the Application filed under Section 9 of the IBC, 2016.



9. The Learned Counsel for the Corporate Debtor denied that the amount of debt is Rs.38,37,972/-. Further, it was stated that the Operational Creditor did not dye the cotton as per specifications and as a result of which the Corporate Debtor's client did not pay the Corporate Debtor for the coloured yarn supplied for loom processing and knitting processing and thus it was alleged that there is a pre-existing dispute between the parties. Further, the Corporate Debtor is also disputing the amount in the invoices and its terms and conditions.

10. Heard the Counsel for both the parties and perused the records including the documents placed on file. Apart from the plea of limitation, the rest of the plea raised by the Corporate Debtor are baseless and without any documents being produced to substantiate the same. Further, it may also be seen that the Corporate Debtor has not replied to the Demand Notice issued by the Operational Creditor and the plea of pre-existing dispute is an afterthought.

11. As to the contention of the Learned Counsel for the Corporate Debtor that the Application is barred by limitation, it may be seen that the Operational Creditor has filed the present Application before this Tribunal on 24.09.2019. The date of the



first invoice is 19.07.2016 and the date of the last invoice is 13.12.2016. Since the account is a running account, as no evidence has been placed on record by the Corporate Debtor that it should be treated otherwise and for the purpose of calculating the period of limitation, if the date of the last invoice is to be reckoned i.e. 13.12.2016, then the Application which was filed by the Operational Creditor before this Tribunal on 24.09.2019 is sufficiently well within the prescribed period of Limitation.

Further, the conclusion of this Tribunal that this Application is well within the period of limitation, is irrespective of the fact whether the Corporate Debtor has paid a sum of Rs.1,00,000/- to the Operational Creditor or not.

12. The Learned Counsel for the Corporate Debtor contended that Section 19 of Limitation Act, 1963 is not applicable to the Application filed under Section 9 of the IBC, 2016. However, Section 238A of the IBC, 2016 states that the Limitation Act, 1963 shall, as far as may be, apply to the proceedings before the Adjudicating Authority. Further, Section 29(2) of the Limitation Act, 1963 reads as follows;

29 (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or



application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(emphasis supplied)

Thus, a bare reading of Section 29(2) of the Limitation Act, 1963 would posit the position that Section 4 to Section 24 (inclusive) of the Limitation Act, 1963 shall be applicable to the applications filed under IBC, 2016. Therefore, the contention of the Corporate Debtor that Section 19 of Limitation Act, 1963 is not applicable to the Application filed under Section 9 of the IBC, 2016 is required to be brushed aside.

13. The Operational Creditor has also filed the extract of the Bank Statement for the corresponding period showing that no payment has been made by the Corporate Debtor since the issuance of Form 3 by the Operational Creditor. Further, the Operational Creditor has also filed Affidavit as mandated under Section 9(3)(b) of IBC, 2016 wherein they have stated that after the issuance of the Demand Notice, the Corporate Debtor has not issued any notice of dispute nor paid the due amount to the Operational Creditor.

14. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years. The registered office of the Corporate

Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

15. Thus, this Tribunal is perforce to initiate CIRP in relation to the Corporate Debtor by admitting this Petition under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016. The IRP proposed has filed his consent in Form-2, which is available at Page 159 – 160 of the typed set. In view of the consent given in respect of the proposed IRP, **MR. KANNAN SAMBASIVAM**, Reg. No. **IBBI/IPA-001/IP-P00755/2017-2018/11287** is appointed as Interim Resolution Professional in relation to the CIRP against the Corporate Debtor as contained in the provisions of Insolvency and Bankruptcy Code, 2016 and IBBI Rules and Regulations governing this Act subject to the directions which are as follows:

16. As a consequence of the Application being admitted under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016, the moratorium as envisaged under the provisions of Section 14(1) and as

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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.

17. 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

18. 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.

19. Based on the above terms, the Application stands **admitted** under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 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.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond

*Order pronounced by concord in terms of
NCLT circular dated 14/04/2020 through vide o*

conferencing platform. Member (J) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 05/05/2020 for Chennai Bench - I.



N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
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