

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

IBA/199/2019

Under Section 9 of the IBC, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the Matter of M/s. Paramount Mills Private Limited

M/s. ESSKAY INTERNATIONAL

---Operational Creditor

V/s

M/s. PARAMOUNT MILLS PRIVATE LIMITED

---Corporate Debtor

Order delivered on: 20.03.2019

Coram:

B.S.V. PRAKASH KUMRAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: *Ms. Usha Balasubramaniam, Advocate*

For the Corporate Debtor :*Mr.M.Sathiavel, Advocate*
Ms.R. Ashwini, Advocate

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 20.03.2019

Matter under consideration is a Company Petition filed by
M/s. Esskay International (in short, "Operational Creditor")

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against M/s. Paramount Mills Private Limited (in short, **"Corporate Debtor"**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**) r/w Rule 6 of the Insolvency and Bankruptcy (Application of Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules 2016**).

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this Petition.

3. The Operational Creditor is a government recognised export house in Mumbai engaged in the business of export of variety of goods and commodities and certified as *"One Star Export House"* Status Holder No.03/1/0464/150929 by the Ministry of Commerce & Industry (Directorate General of Foreign Trade), Government of India on 29.09.2015 having its registered office at No.27, Maker Chambers, VI Nariman Point, Mumbai, Maharashtra 400021. The Corporate Debtor Company was incorporated on 20.02.1998 under the Companies Act, 1956 with its registered office at

Rajapalayam Road, N.H.208 T. Pudupatti Post, Thirumangalam
625704, Madurai District, Tamilnadu.

4. The learned counsel for Operational Creditor stated that they had placed an order on 06.11.2017 with the Corporate Debtor for the supply of "18,000 meters of 600 tc – 80 x 200 – 205 x 62 (6 pick) fabric in 120". The Corporate Debtor had raised a Proforma Invoice No.17/2017 dated 6th November, 2017 (Page No.24 of the typed set filed along with application) in respect of the above order amounting to ₹34,72,875 (Rupees Thirty Four Lakhs Seventy Two Thousand Eight Hundred and Seventy Five only) including 5% GST. The Operational Creditor had placed the said order for the purpose of fulfilling an Export Order and made full advance amount as mentioned above and credited to Corporate Debtor's Bank account on 07.11.2017 (page 25).

5. The learned counsel for Operational Creditor further stated that before taking delivery of the material from Corporate Debtor, the representative of Operational Creditor complained that

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quality supplied appeared to be different on visual inspection. The Corporate Debtor informed that they have used 80s count on both side instead of 80 x 100. At the time of placing the order, the Corporate Debtor has assured that the supply of materials would be delivered by 20.11.2017. However, due to non-delivery of the fabrics as per specifications by the Corporate Debtor within the time frame, the Operational Creditor was unable to fulfil its export order commitments due to which the Export Order was cancelled. The Operational Creditor sent e-mails on 28.11.2017, 19.02.2018, 20.02.2018 to the Corporate Debtor informing about the quality of fabric not being in conformity with the specification and hence not being acceptable and also sent Reminder Notice on 02.08.2018 demanding refund of advance amount of ₹34,72,875 together with interest @18% p.a. to be paid by the Corporate Debtor.

6. It is further stated that on 29.08.2018, the Operational Creditor sent Demand Notice (under Section 8 Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating

Authority) Rules, 2016) to the Corporate Debtor for the total unpaid debt amount of ₹34,72,875. Copy of Bank accounts maintained by the Operational Creditor is also enclosed confirming that 100% full advance amount of ₹34,72,875 was credited to the account (Current A/c. No.1161135000005407, Karur Vysya Bank) of the Corporate Debtor.

7. To prove the existence of debt, the Operational Creditor has placed (i) Proforma Invoice No.17/2017 dated 6th November, 2017 in respect of the export order amounting to ₹34,72,875 (Rupees Thirty Four Lakhs Seventy Two Thousand Eight Hundred and Seventy Five only) including 5% GST payable by the Corporate Debtor; (ii) various e-mails from 28.11.2017 to 02.08.2018; (iii) Demand Notice (under Section 8 Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) on 29.08.2018; (iv) tracking report for the delivery of notice; (v) Bank Statement etc. before this Tribunal.

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8. As we have gone through all the material documents filed by the Operational Creditor, we are of the view, that the Operational Creditor furnished all material documents proving existence of debt. Further, the Corporate Debtor has not pointed out any instances of dispute as they are mandated to do as per Section 8(2) of the I&BC, 2016 and has not filed any written statement except for one occasion where the counsel for the Corporate Debtor appeared before this Bench on 27.02.2019 and sought for an adjournment, as instructed by her senior counsel, expressing her inability to argue the matter. Hence, this Bench hereby hold that this Application is fit for admission for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor..

9. In view of the above, this Tribunal **admits the** instant **IBA/199/2019** filed under Section 9 of the I&BC, 2016 and order commencement of Corporate Insolvency Resolution Process (CIRP) which shall ordinarily get completed within 180 days, reckoning from the date of this order is passed.

10. Since the Petitioner/Operational Creditor has not recommended the name of Interim Resolution Professional (IRP), we appoint Mr. G. Gunasekaran as IRP from the list provided by the IBBI Penal. The IRP is directed to take charge of the Respondent/Corporate Debtor management immediately. He is also directed to cause public announcement as prescribed under section 15 of the I&B Code, 2016 within three days from the date of copy of this order is received and call for submissions of claim in the manner as prescribed.

11. We declare the moratorium which shall have effect from the date of this order till the completion of CIRP for the purpose referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following namely,

- (i) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtors including execution of any judgement, decree or order in any court of law, Tribunal, Arbitration panel or other authority;*

- (ii) *Transferring, encumbering, alienating or disposing of by the Corporate Debtors any of its assets or any legal right or beneficial interest therein;*
- (iii) *any action to foreclose, recover or enforce any security interest created by the Corporate Debtors in respect of its property including any action under the Securitization and Reconstruction or Financial Assets and Enforcement of Security Interest Act 2002 (54 of 2002);*
- (iv) *the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the Corporate Debtors;*

12. The supply of essential goods or services of the Corporate Debtors shall not be terminated or suspended or interrupted during the moratorium period. The provisions of sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government;

13. The IRP so appointed shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtors are directed to extend all assistance and co-operation to

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the IRP as stipulated under section 19 and for discharging his functions under section 20 of the I&B Code;

14. The Operational Creditor as well as the Registry is directed to send the copy of this order to IRP on his appointment so that he could take charge of the Corporate Debtors' assets etc. and make compliance with this order as per the provisions of the I&B Code, 2016; and

15. The Registry is also directed to communicate this order to the Operational Creditor and Corporate Debtor and to the IRP for obtaining consent letter in Form-2.

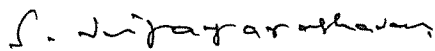
16. The address details of the IRP as follows:

Mr.G. Gunasekaran

Regd. No. [IBBI/IPA-001/IP-P00681/2017-2018/11178]

E-Mail :cagunasekar@yahoo.com

Mobile No: 9842222105


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


(B.S.V. PRAKASH KUMAR)
(MEMBER (Judicial))

TJS/KNP/