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

CP(IB)/223/(CHE)2022

*(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. Jai Hind Spinning Mills Limited

M/s. H.M. Textiles Private Limited,
No. 66. Robertson Road,
Opp. Nehru Vidyalaya School,
R.S. Puram,
Coimbatore 641002

... Applicant / Operational Creditor

-Vs-

M/s. Jai Hind Spinning Mills Limited,
CIN : U17111TN1990PLC018822
235, Mint Street,
Park Town,
Chennai 600003

... Respondent / Corporate Debtor

Order Pronounced on 19th January, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor : *Dr.K.S. Ravichandran PCS*
Ms. Manjula Devi Advocate

For Corporate Debtor : *Ms. P.V. Rajeswari, Advocate*

ORDER

(Heard through VC Mode)

This application has been filed by **M/s. H.M. Textiles Private Limited** (hereinafter referred to as "**Operational Creditor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Jai Hind Spinning Mills Limited** (hereinafter referred to as "**Corporate Debtor**") for initiating Corporate Insolvency Resolution Process ("**CIRP**").

2. Part-I of the application sets out the details of the Operational Creditor. It is stated that the Operational Creditor M/s. H.M. Textiles Private Limited, is a Private Limited company having its office situated at R.S. Puram, Coimbatore. Part-II of the application sets out the details of the Corporate Debtor M/s. Jai Hind Spinning Mills Limited, a Limited company incorporated under the Companies Act, 1956 with CIN No. U17111TN1990PLC018822. The Registered Office of the Corporate Debtor is situated at 253, Mint Street, Park Town , Chennai, Tamil Nadu 600003. In Part-III of the application, the Operational

Creditor has not proposed the name of Interim Resolution Professional.

3. Part-IV of the application details the total amount of debt as Rs.2,11,50,572/- (Rupees Two Crore eleven lakhs fifty thousand five hundred and seventy two only). Amount claimed to be in default is Rs.2,11,50,572/- Further, the Date of Default is stated as 01.11.2019.

4. Part-V of the application describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- a) Demand Notice dated 11.04.2022.
- b) Confirmation of balance as on 2018-19 by letter dated 25.06.2021 by the Corporate Debtor.
- c) Job Work and Personal Guarantee Agreement dated 20.06.2019.
- d) Memorandum of Agreement dated 05.04.2018.

ARGUMENTS ON BEHALF OF APPLICANT

5. It is stated that the Corporate Debtor undertook to do a job work for conversion of 100% cotton into 60s to 90s Combed yarn for the Operational Creditor. It is stated that the Corporate Debtor and Operational creditor entered into an agreement of Job Work. Pursuant

to the same ~~an~~ a Personal Guarantee Agreement was entered into on 20.06.2019, which is enclosed as Annexure – I. Mr. Muthuswamy gave a personal guarantee by a Memorandum of Agreement dated 05.04.2018. Copy of the Agreement is enclosed as Annexure 4. The Operational Creditor supplied the raw materials and the Corporate Debtor did the job work of conversion and the charges were paid to the Corporate Debtor. As a part of business practice, the Operational Creditor gave an advance of Rs.2,27,46,406/-. The Corporate Debtor adjusted the advance against the conversion charges. The Corporate debtor stopped the conversion job work from 31.10.2019 and a default occurred on the advance given.

6. It is stated that the date of default is 01.11.2019 on which date last conversion charges were adjusted. As per Clause 4 of the Job Work and Personal Guarantee Agreement dated 20.06.2019, the delayed payment will attract an interest of 18% p.a. for number of days delay.

7. It is stated that the Operational Creditor served the demand notice dated 11.04.2022 claiming an amount of Rs. 2,11,50,572/- . The demand notice was duly delivered on the Corporate Debtor on

13.04.2022. It is stated that the Corporate Debtor failed to respond to the demand notice within the prescribed time and not brought to the knowledge of the applicant of any existence of dispute.

8. It is stated that Hon'ble Supreme Court in **M/s. Consolidated Construction Consortium Limited vs M/s. Hitro Energy solutions Private Limited (2022) 7 SCC 164** in para 50.1 has held that a debt which arises out of advance payment made to a Corporate Debtor for supply of goods or services would be considered as an operational debt.

REPLY BY THE CORPORATE DEBTOR:

9. It is stated that this application under Section 9 of IBC 2016 is not at all maintainable because this is just a threatening and coercive action initiated by the Operational Creditor to recover some dues which the respondent owes to the Applicant in the course of their business of conversion of cotton into yarn. This application has been made by the applicant suppressing SA.No 724 of 2021 which is a proceeding for redelivery of stock / raw materials initiated by the applicant before DRT Coimbatore against South Indian Bank, who had wrongly taken

possession of stocks from the factory of the respondent under SARFAESI Act and retained them even after discharge of their liability.

10. It is stated that the Operational creditor had claimed payment of advance conversion charges as per trade practice, without enclosing any proof for such payment and without filing the complete statement of accounts from March 2018. It is stated that the Operational creditor has based its claim on the Job Work Agreement filed along with Application as Annexure 7. It is stated that as per clause 4 of the agreement, the amount of Rs.2,27,46,406/- will be fixed at the end of runout of MOA dated 15.03.2018. The Operational Creditor has neither produced the MOA dated 15.03.2018 nor the MOA dated 15.03.2019. It is stated that the Operational creditor had not accounted for the payments which have been made by the Corporate Debtor on various dates. It is stated that Corporate Debtor had been regularly making the payments and also despatching the converted yarn to the applicant until it started facing the financial crunch in December 2019.

11. It is stated that the factory premises including land and building worth Rs. 40 crores, Plant and Machinery worth about Rs. 20 crores

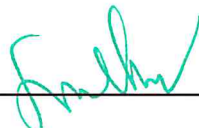
and Stock in trade worth Rs. 1.5 crores were taken into possession by South Indian Bank on 21.11.2020 for recovery of outstanding amount of Rs. 10.05 crore. It is stated that the Corporate Debtor has challenged the action of the Bank and during the pendency of the said proceedings, the respondent was able to clear its entire liability to South Indian Bank by paying a sum of Rs.14,57,69,400/- by middle of July 2022. It is stated that the Corporate Debtor filed an application before DRT 2 in IA No 1741/2022 in S.A. No 363 of 2021 for redelivery of stock in trade to it in order to handover the same to the Operational Creditor. It is stated that after the redelivery was ordered by the DRT, South Indian Bank redelivered all the secured assets and stock in trade to the Corporate Debtor only on 20th January 2023.

12. It is stated that the Operational Creditor did not agree to take back the stock of cotton which were supplied to the Corporate Debtor for conversion which was re-delivered to the Corporate Debtor by the Bank. It is stated that the Corporate Debtor is ready to hand over to the Operational Creditor the stock of cotton and semi-finished goods which are lying in its factory, on proper valuation from an approved valuer and if the same is returned after due accounting, the Corporate

Debtors liability to the Operational Creditor would be reduced to a great extent.

13. It is stated that the Computation Sheet cannot be taken into account, since the principal amount taken into account for calculation is not correct and the interest claimed is not based on any agreement and is arbitrary. It is stated that the Operational Creditor is relying on the account statement issued by HDFC bank which shows a credit of Rs.1,00,000/- received by Operational Creditor , however the value of finished yarn supplied by the Corporate Creditor has not at all been accounted.

14. It is stated that the Corporate Debtor is doing job work for the Operational Creditor and because of temporary closure of the factory unit in the above mentioned circumstances, there was delay in carrying on the conversion activities and supplying of converted yarn to the Operational Creditor. It is stated that the Corporate Debtor is a going concern which started its revival process after temporarily facing the financial crisis.



15. It is stated that on the ground of suppression of facts and making of false claim, the instant application is liable to be dismissed as per the provisions of IBC Code.

REJOINDER BY THE APPLICANT:

16. It is stated that the advance given by the applicant to the Corporate Debtor is very much evident from the confirmation of balances and from the agreement entered into between the parties. Hence there is **debt**. The fact that there was advance amount and no job work was carried out is admitted by the Corporate Debtor in the counter filed and hence there is **default**.

17. It is stated that the cause of action before the Debt Recovery Tribunal is totally different from the application filed before the tribunal. The respondent is misleading the Tribunal by stating irrelevant information.

18. It is stated that Job Work and Personal Guarantee Agreement ('JWPGA') dated 20.06.2019 are very much substantive for the debt owed by the Corporate Debtor which is enclosed as Annexure 4. The

applicant and Corporate Debtor had entered into the Memorandum of Understanding (MOU) dated 05.04.2018 which was the basis for JWPGA. There is a clerical mistake in the date mentioned in the JWPGA as '15.03.2019' and '15.03.2018'. The amount of claim is crystallised in the JWPGA, whereas MOU is the initial agreement between the parties. It is stated that the clerical mistake in the date of MOU does not invalidate the claim of the applicant and this has nothing to do with JWGPA.

19. It is stated that clause 4 of JWPG provides for interest clause and it is calculated as per the agreed terms between the applicant and Corporate Debtor.

20. We have heard the learned counsel of both the parties and perused the record.

FINDINGS:

21. The Corporate Debtor had undertaken to do the job work for conversion of 100% cotton yarn into 60's to 90's Combed Yarn for the Operational Creditor. The Operational Creditor had supplied the raw

materials and Corporate Debtor had done the job work. The charges were paid to the Corporate Debtor.

22. Operational Creditor in support of his claim has furnished the following documents:

- a) Memorandum of Agreement dated 05.04.2018.
- b) Job Work and Personal Guarantee Agreement (JWPGA) dated 20.06.2019.
- c) Confirmation of balance as on 2018-19 by letter dated 25.06.2021 by the Corporate Debtor.
- d) Copy of the ledger showing the amount of debt due from the Corporate Debtor as on 31.03.2022 in Annexure 5.

23. Let us examine each one of them in detail:

- i) *Memorandum of Agreement dated 05.04.2018* between the Operational Creditor and the Corporate Debtor contains terms and conditions under the heads: Scope, Raw Material supply, Finished goods & Delivery, Payments, Billing, Quality Controls/Rejections, insurance, safeguards Guarantee by Mr. P. Muthuswamy, Managing Director of Corporate Debtor, Expenses and General areas. *There is no mention of advance given by the Operational Creditor in the Memorandum of Agreement.* Clause 11.1 of the Memorandum of Agreement mentions that

' This agreement shall be effective for the period of 11 months from the 05/04/18 unless terminated as provided hereunder, However, if for any reason any monies remain due to HMT under this agreement, at the option of HMT, the term of the agreement shall automatically stand extended till full settlement there of by the MILL to HMT.'

24. Clause 11.6 of MOA states that

' The agreement may be extended for such period as may be mutually agreed upon in writing.'

ii) *Job Work and Personal Guarantee Agreement (JWPGA) dated 20.06.2019* again contain terms and conditions under the heads : General, Raw Material, Finished Goods and delivery, Payments, Quality Control/ Rejections , Insurance, Safeguards, Guarantee of Mr. P. Muthuswamy, Managing Director of Corporate Debtor, Miscellaneous. In the JWPGA Clause P-5 talks about GST as under:

'P-5 GST as per the government rules will be applicable. HMT will pay the GST amount directly to the government on receipt of Challan from the MILL and the same will be debited to Mill account. Mill to file GSTR 1 & GSTR 3B in time and inform HMT regarding the same. GST amount of Rs.82,90,649/- upto May 2019 has not been paid by the MILL. MILL to pay the same and the credit to reflect in HMT GST portal once paid by the MILL'.

25. Clause P-6 talks about the balance outstanding and interest payable as follows:

P-6 An account balance of Rs.2,27,46,406/- as on 24/06/19 against MOA dt 15/03/19. The above balance will attract an interest of 18% per annum. Rs.10 per kg will be deducted in each conversion bill against outstanding balance.*

**The said amount will be fixed at the end of the run out of our MOA dt.15/03/18.*

iii) *Confirmation of Balance issued by Corporate Debtor on 25.06.2021 in its letter head addressed to Operational Creditor states*

'Sub; confirmation of outstanding balance -2018-19

We hereby confirmation that our outstanding balance as Rs.2,21,43,956/- for the year 2018-19

Please note that it will be assumed that you have accepted the balance and your pan number shown below

Please confirmation letter your letterhead only'

iv) *Copy of the ledger showing the amount of debt due from the Corporate Debtor as on 31st March 2022 in Annexure 5 (Page 23). The ledger sheet of Jaihind Spinning Mills has an opening debit balance of Rs.2,27,46,405.48/-. The ledger sheet does not contain transactions prior to 20th June 2019. The last transaction is credit of Rs.1,00,000 on 02nd Feb 2022.*

26. The argument of Operational Creditor is that Corporate Debtor has accepted the amount of Rs. 2,27,46,405.48/- due in JWPGA dated 20th June 2019, there is confirmation of balance dated 25.06.2021 and

the ledger sheet shows calculation of interest at the agreed rate. Further citation of M/s. Consolidated Construction Consortium Limited vs M/s. Hitro Energy solutions Private Limited (*supra*) is also given where Hon'ble Supreme Court in para 50.1 has held 'that a debt which arises out of advance payment made to a Corporate Debtor for supply of goods or services would be considered as an operational debt'.

27. Corporate Debtor states that Operational Creditor has filed the Section 9 application on misconceived ground suppressing the material facts. It is stated that when South Indian Bank took possession of secured assets of the Corporate Debtor on 21.10.2020 under SARFAESI Act, it wrongly took possession of goods of Operational Creditors and retained them even after discharge of their liability. It is stated that the goods were returned to the Corporate Debtor on 30th January 2023, after the intervention of DRT, based on the suit filed by the Corporate Debtor. It is stated that the Operational Creditor was not willing to take back the stock of cotton. Corporate Debtor has given the *DRT case numbers SA No. 724 of 2021, IA No.1741 /2022 in SA No 363 of 2021* to substantiate its contention.

28. **Section 5 (20) of IBC Code 2016** read as under

'Operational Creditor means a person to whom an operational debt is owed and it includes any person to whom such debt has been legally assigned or transferred.'

29. **Section 5 (21) of IBC Code 2016** read as under

'Operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government or any State Government or any local authority.'

30. **In Consolidated Construction Consortium Limited vs Hitero Energy Solutions Private Limited** (*supra*) decided on Feb 4, 2022, Hon'ble Supreme Court has held as under;

'50.1 First Section 5(21) defines "operational debt" as a "claim in respect of the provision of goods or services". The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. Such an interpretation is also supported by BLRC Report which specifies that operational credit is in relation to operational requirements of an entity.

50.3 Finally, the judgement of this Court in Pioneer Urban , in comparing allottees in real estate projects to operational creditors, has noted that latter do not receive any time value for their money as consideration but only provide it in exchange of goods or services. Indeed, the decision notes that "examples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees". Hence, this leaves no doubt that a debt which arises out of advance payment

made to a corporate debtor for supply of goods or services would be considered as an operational debt.'

CONCLUSION:

31. We have analysed the facts and the legal provisions.
32. While examining the fact as to whether the Operational Creditor has established its claim about the default in the Operational Debt, we find that Judgement dated 03rd Jan 2024 of Hon'ble NCLAT in the case of *D S Kulkarni & Associates Vs Manoj Kumar Agarrwal , Company Appeal AT Insolvency 923 & 924 of 2023 [(2024)ibclaw.in 02NCLAT]* as relevant. In the case supra, Hon'ble NCLAT held in para 13,14 & 20 as follows:

13. The MoU stated that the Appellant approached the Corporate Debtor for purchasing and or jointly developing the properties. Further, Clause 11 indicates that parties may chose to execute the joint venture and the said consideration amount shall be considered as share/ investment brought by the party of the Second Part. The MoU, which is the basic document submitted by the Appellant to prove financial debt, does not indicate that transactions are covered by Section 5, sub-section (8) of the Code. The consideration according to the MoU was paid either for purchasing the property or for entering into joint venture, where the consideration was to be treated as investment. Joint venture profit has also been captured in Clause 11. The Ledger extract, which has been filed also cannot make the transaction as financial debt.

14. We have looked into the aforesaid MoU and claim of Ledger extract to satisfy ourselves as to whether RP was obliged to admit the claim as financial debt on the basis of said documents. We are of the view that RP has rightly communicated to the Appellant that documents submitted are

insufficient to accept their claim as financial debt and no error has been committed.

20. Insofar as documents which have been brought on record by the Appellant(s) before the Adjudicating Authority by filing additional affidavit, suffice it to say that the basic documents relied by the Appellant(s) were MoU and Ledger extract. The MoU, which is a basic document evidencing the transaction does not qualify as a financial debt and the RP has rightly taken the view that the documents filed, i.e. MoU and Ledger statement are insufficient to accept the Claim as financial debt.

33. We find that:

- i) Operational Creditor had not provided details about the dates on which advance was given to the Corporate Debtor and details of mode of payment.
- ii) Operational Creditor had not filed complete statement of accounts from the beginning i.e. March 2018.
- iii) No correspondence or exchange of e-mails are produced regarding the follow-up made since 01.11.2019, i.e. date of default.
- iv) Only documents provided by Operational Creditor are Job Work and Personal Guarantee Agreement (JWPGA) dated 20.06.2019, confirmation of balance dated 25.06.2021 and the ledger sheet as proof of debt .
- v) In response to the Corporate Debtor's remarks about the Operational creditor's goods being taken by South Indian Bank wrongly in 2020 under SARFAESI and being returned only in 2023 and about the DRT Case,

Operational Creditor has not denied the facts but only advised that these facts are not relevant to the current case.

34. In view of the above, the Operational Creditor has failed to make out a case as to how the advance payments were made to the Corporate Debtor and how these payments can be treated as Operational Debt.

35. Accordingly, CP/IB/223/CHE/2022 stands dismissed. No costs.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)