

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 703/KB/2019

In the matter of:

Shree Maheswari Fashions, 203/1, Mahatma Gandhi Road, 3<sup>rd</sup> Floor,  
Room No. 298/299, Kolkata - 700007

..Operational Creditor

Versus

M/s. AB Garments Impex LLP, 5, Grastin Place, Ground floor, Kolkata  
700001

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Operational Creditor:

1. Ms. Urmila Chakraborty, Advocate
2. Mr. Sunil Singhania, Advocate

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3. Ms. Kalpana Singhania, Advocate

Date of Pronouncement of the Order : 18-12-2019

ORDER

Per Shri Jinan KR, Member(Judicial)

1. Shree Maheswari Fashions/ Operational Creditor filed this Application, under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution process (in short CIRP) as against M/s. AB Garments Impex LLP /Corporate Debtor, contending that the Corporate Debtor committed default in payment of Rs. 7,00,355/-/- (Rupees Seven Lakh three hundred fifty five only) with interest @ 18% per annum.

2. The brief averments for the consideration of the Application are the following :

The Operational Creditor is dealing with various types of garments and dresses. The Corporate Debtor has approached the Operational Creditor with an offer to purchase garments and dresses from the Operational Creditor. Pursuant to such request and order placed by the Corporate Debtor, goods were sold and delivered to the Corporate Debtor by the Operational Creditor as per two invoices totaling an amount of Rs. 7,50,237/-. Out of the above said amount,

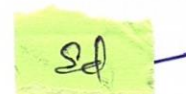
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the Corporate Debtor paid a sum of Rs. 50,000/-. The Corporate debtor, thereafter, issued a cheque of Rs. 1,50,000/- but that cheque was dishonored for want of fund in the account of the Corporate Debtor. The Operational Creditor repeatedly requested and reminded the Corporate Debtor to pay the balance outstanding and issued another cheque for Rs. 2 Lakh. That cheque, too, was dishonored on presentation. The Corporate Debtor has duly received the goods sold and delivered by the Operational Creditor and has also received the invoices raised by the Operational Creditor without any demur/objection and/or protest. Despite repeated demands, the Corporate Debtor failed in paying the amount outstanding due to the Operational Creditor. Therefore, the Operational Creditor issued a demand notice under Section 8(1) of the Code demanding the outstanding amount of Rs. 7,00,355/- (Rupees Seven Lakh three hundred fifty five only) along with interest at agreed rate of 18% per annum.

The demand notice was issued on 26-11-2018. The notice was delivered to the Corporate Debtor by way of E-mail on 17-12-2018. Despite receipt of the demand notice, the Corporate Debtor did not make any payment to the Operational Creditor and therefore, the Operational Creditor filed this application under section 9 for initiating the CIRP process as against the Corporate Debtor.

The Corporate Debtor has not turned up, despite service of notice by way of post as well as by way of e-mail. The Corporate Debtor was called absent and declared ex parte. Accordingly, this case was heard in the absence of the Corporate Debtor.



3. The Operational Creditor, who is a dealer in supply of garments and dresses, has delivered goods as described in the two invoices dated 09-9-2017 for Rs. 7,31,850/- and Rs. 18,387/-, respectively. The copy of invoices, Exhibit – P4, proves the delivery of goods to the Corporate Debtor. As per the ledger account maintained by the Operational Creditor, an amount of Rs. 50,000/- has been paid by the Corporate Debtor on 26-12-2017 and balance outstanding comes to Rs. 7,00,355/- (Rupees Seven Lakh three hundred fifty five only). Despite demand, the Corporate Debtor has not paid the above said amount found due to the Operational Creditor.

The demand notice under Section 8(1) of the Code has evidently been issued to the Corporate Debtor demanding the above said amount on 26-11-2018 and that demand notice seen delivered on the Corporate Debtor by way of E-mail along with the annexures. The master data produced on the side of the Corporate Debtor shows the E-mail ID of the corporate debtor and notice seen delivered to the said mail id. The Corporate Debtor has not chosen to come forward and defend the case. No reply to the demand notice also seen send by the corporate debtor. The goods as per the invoices seen delivered on the Corporate Debtor. The Corporate Debtor has not raised any dispute so far and not turned up for defending this case.

4. The Operational Creditor has succeeded in proving default in payment of the operational debt found due to the Operational Creditor. The Operational Creditor also proposed the name of an Insolvency resolution Professional, Mr. Balaknath Bhattacharyya. To prove that no disciplinary enquiry proceeding is pending against the



proposed Insolvency Resolution Professional produced Form-2 with written communication as Annexure P-3. It proves that no disciplinary enquiry proceeding is pending against the proposed Insolvency Professional. To prove that the operational creditor is entitled to claim interest Ld. Counsel relied upon the copy of the invoices. It demonstrates that in case of default, the Corporate Debtor is liable for interest @ 18% per annum.

5. In compliance of Section 9(3)(b) of the code, an affidavit seen produced by way of supplementary affidavit and also produced copy of statement of Bank account in compliance of section 9(3) (c) of the Code. The copy of statement of Bank account, is marked as Annexure – P11. It proves that unpaid amount has not been paid as demanded by the Operational Creditor.

6. In view of the above circumstances, this Application is fit for admission and accordingly is admitted, upon the following among orders :

### **ORDERS**

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. AB Garments Impex LLP., is hereby admitted.

ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016.



The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 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.

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- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.
- viii) **Mr. Balaknath Bhattacharyya, Insolvency Professional, registered with IBBI, having registration number IBBI/IPA-003/IP-N00096/2017-2018/10971, E-mail ID : bhattacharyyabn@yahoo.com** is hereby appointed as Interim Resolution Professional by this Tribunal for



ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date and follow Regulation 40A strictly.
- x) The Operational Creditor is directed to deposit Rs.2,00,000/- (Rupees Two Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order.
- xi) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xii) List the matter on 22/1/2020 for filing of the progress report.

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7. The free copy/certified copy of the Order may be issued to all the concerned Parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member(Technical)**



**(Jinan K.R.)**  
**Member(Judicial)**

Signed on this, the 18<sup>th</sup> day December, 2019

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