IN THE NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

COURT - II

CP (IB) 212/NCLT/AHM/2020

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

<u>In the Matter of:</u>

Shreedhar Cotsyn Private Limited **Applicant/ Financial Creditor**

Versus

Whitefield Spintex (India) Private Limited **Respondent/ Corporate Debtor**

Order Pronounced on: 26/07/2022

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Shreedhar Cotsyn Private Limited
A-404, Gokul Arcade
Subhash Road
Vile Parle (E)
MUMBAI 400 057 **…** **Applicant/Financial Creditor**

Versus

Whitefield Spintex (India) Private Limited
306, Center One,
Near Wockhardt Hospital
Kalawad Road
RAJKOT 360 005
Gujarat State **…** **Respondent/Corporate Debtor**

Appearance:

For the Applicant : Mr. Shashvata Shukla, Advocate
For the Respondent : Mr. Saurabh Patel, Advocate

ORDER

1. The Present Application is filed on 16.03.2020 under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Dharmendra Goyal, Director, **Shreedhar Cotsyn Private Limited**

(for brevity 'Applicant'), duly authorised vide Board Resolution dated 04.12.2019, with a prayer to initiate the Corporate Insolvency process against **Whitefield Spintex (India) Private Limited** (for brevity 'Corporate Debtor').

2. The applicant is a private limited company incorporated on 09.12.2010 under the Companies Act, 1956 having corporate identification number U17120MH2010PTC210851 and having its registered office at A/404, Gokul Arcade, Subhash Road, Vile Parle (E), Mumbai 400 057.

3. The corporate debtor is a Private limited company, incorporated under the provisions of The Companies Act, 1956 on 06.09.2013, duly registered with Registrar of Companies, Ahmedabad with CIN: U17290GJ2013PTC076737 and having registered office at 306, Center One, Near Wockhardt Hospital, Kalawad Road, Rajkot 360 005, Gujarat State. The Authorized share capital of the Respondent is Rs. 9,10,00,000/- and paid up share capital of the company is Rs. 9,10,00,000/-.

4. It is submitted by the applicant that they had entered into an agreement dated 14.06.2018 with the corporate debtor wherein clause 12 and 13 contained an agreement to advance a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) against consideration for time value of money. Prior to entering into the agreement dated 14.06.2018, the corporate debtor had requested a sum of Rs. 50,00,000/- from the applicant since the corporate debtor was falling short of funds to commence production in the mill. Accordingly, the applicant had executed an indemnity agreement with the corporate debtor on 14.06.2018. Clauses 12 and 13 of the said agreement is reproduced herein below:

> *"12. The mill has informed to the customer that there are various amounts to be received by them from various government authorities and agencies and/or Bank by way of increase of Bank Limit, which the mill is expected to receive shortly, within a period of about forty-five days.*
>
> *13. Pending the receipt of funds as mentioned in para 12 above, and for the purpose of commencement of this agreement, on the request of the mill <u>the customer has agreed to advance a sum not exceeding Rs. 50 lakhs, for a period not exceeding three months, which shall carry an interest of 15% per annum and the said funds will only be utilised for the payment of certain arrears. For the said advance the mill will issue a PDC of the like amount in favour of the customer.</u>"*

Accordingly, the corporate debtor had issued post-dated cheques of the like amount in favour of the applicant on 05.07.2018, copies of which are annexed to the application. On presentation, all the three post-dated cheques of 07.03.2019 for a sum of 20,00,000/-, Rs. 10,52,740/- and Rs. 24,51,713/- were dishonoured by the bankers of the corporate debtor. Applicant issued notice through advocate dated 03.04.2019 under Section 138 of the Negotiable Instruments Act, 1881.

5. It is submitted by the applicant that as the corporate debtor failed to clear the outstanding debt, demand notice dated 27.11.2019 was issued calling upon the corporate debtor to pay Rs. 50,00,000/- with interest as per Clause 12 & 13 of the agreement dated 14.06.2018. The corporate debtor responded to the demand notice through advocate vide letter dated 12.12.2019 wherein at para No. 11, the corporate debtor had admitted the debt, which is reproduced herein below:

> *"11. As stated above, my client had to pay your company Rs. 50,00,000/- with interest which comes to Rs. 2,19,109/- upto 13.10.2019. My client had also to pay your company Rs. 37,90,347/- for credit according to business transaction and thereby my client is liable to pay your company Rs. 90,19,456/- My client was ready and willing to pay the above amount but my client is entitled to recover more amount from your company and your company is liable to pay my client the above amount after deducting the amount of Rs. 90,19,456/-. You have made false complaint before the police and you have pressurized*

> *my client through police officers, that action on your part is not legal and proper."*

6. It is further submitted that the corporate debtor had approached the applicant and offered to run a mill belonging to the corporate debtor. On 14.06.2018, the applicant and the corporate debtor had entered into an agreement for running the mill as per the terms and conditions mentioned in the agreement. As per the terms of the agreement, the applicant had to supply raw cotton to the corporate debtor and also place order for cotton yarn with the corporate debtor as per the specifications and requirements of the applicant. This arrangement led to the applicant supplying raw cotton to the corporate debtor pursuant to separate and independent sales contracts for the raw cotton sold, supplied and delivered to the corporate debtor. The transactions involving the supply of raw cotton based on independent sales contract are separate and distinct.

7. The corporate debtor filed objections inter alia stating that:

- The applicant has suppressed material facts;
- The present applicant had filed an application under Section 9 of the Code in the capacity of operational creditor prior to filing of present application;

- The alleged debt is in dispute even prior to filing of application under Section 9 of the IB Code;
- The present application is hit by the period of limitation;
- There is nothing on record to indicate that authorised person of applicant is authorised to file Section 7 application;
- The corporate debtor has brought on record several judgements in support of the contentions raised in the reply.

8. The applicant filed written submissions reiterating the contentions raised in the application.

9. The corporate debtor also filed written submissions reiterating the contentions raised in the reply to the application.

10. As per Form 1, part IV, the amount in default is for an amount of Rs. 58,59,931.50 (Rupees fifty-eight lacs fifty-nine thousand nine hundred thirty-one and paise fifty only). As per Form 1, Part IV, the default occurred on 29th September, 2018 for transaction carried out on 28th June, 2018 and for the transaction carried out on 13th July, 2018, default occurred on 13th October, 2018. Therefore, the application filed on 16.03.2020 is within the period of limitation and not barred by law.

11. The registered office of the corporate debtor is situated in Rajkot District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

12. Heard the submissions and perused the documents on record. On perusal of the records it is found that prior to this application, one application was filed by the same applicant under Section 9 of the IB Code against the same corporate debtor. As stated above, an agreement dated 14th June, 2018 was entered into between the applicant and the corporate debtor. It is necessary to refer to clauses No. 12 & 13 of the said agreement which reads as under:

> *"12. The Mill (corporate debtor) has informed to the customer (applicant) that there are various amounts to be received by them from various government authorities and agencies and/or bank by way of increase of bank limit, which the mill is expected to receive shortly, within a period of about forty-five days.*
>
> *13. Pending the receipt of funds as mentioned in para 12 above, and for the purpose of commencement of this agreement, on the request of the Mill the customer has agreed <u>to advance a sum not exceeding Rs. 50.00 lakhs, for a period not exceeding three months, which shall carry an interest @ 15% per annum</u> and the said funds will only be utilised for the payment of certain arrears. For the said advance the Mill will issue a PDC of the like amount in favour of the customer."*

13. According to aforesaid agreement, first instalment of Rs. 25,00,000/- was disbursed on 23.06.2018 and second instalment of Rs. 25,00,000/-

was disbursed on 13.07.2018. The applicant has filed bank statement evidencing remittance of the aforesaid amount into the account of the corporate debtor. Copies of bank statements for disbursement and computation of debt are filed as evidence of the outstanding and unpaid financial debt.

14. It is also noticed that the instant application under Section 7 of the IB Code has been filed against the debt arising out of the money borrowed by the corporate debtor from the applicant. In this context it is desirable to refer to Para 11 of reply of the corporate debtor dated 12.12.2019 is reproduced below:

> *"<u>As stated above, my client had to pay your company Rs. 50,00,000/- with interest which come to Rs. 2,19,109/- upto 13.10.2019. My client had also to pay your company Rs. 37,90,347/- for credit according to business transaction and thereby my client is liable to pay your company Rs. 90,19,456/-</u>. My client was ready and willing to pay the above amount but my client is entitled to recover more amount from your company and your company is liable to pay my client the above amount after deducting the amount of Rs. 90,19,456/-. You have made false complaint before the police and you have pressurised my client through police officers that action on your part is not legal and proper."*

15. A plain reading of the aforesaid clauses makes it clear that the loan transaction was always separate and independent and did not have any nexus with the remainder of the agreement dated 14.06.2018.

Moreover, issue of previous application filed under Section 9 or any other debt in other capacity may not be relevant in view of the admission by corporate debtor of unpaid debt. There is no doubt that the default has occurred of unpaid financial debt. The applicant and the corporate debtor had entered into agreement on 14.06.2018 and as per the said agreement Rs. 50,00,000/- was disbursed on 28.06.2018. The application filed on 16.03.2020 is well within limitation and not barred by law.

16. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In light of the above facts and records, the present application is admitted and CIRP is ordered to be initiated against corporate debtor.

17. The applicant has proposed the name of Mr. Chetan B. Patel as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N-00819/2019-20/12561 having office at 301, Akshar Stadia, Opp. Symphony House, Behind Armieda Cosmetic Center, Bodakdev, Ahmedabad 380 059, Gujarat, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of

the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

18. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Chetan B. Patel to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

19. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

20. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-	**Sd/-**
AJAI DAS MEHROTRA **MEMBER (TECHNICAL)**	**DR. DEEPTI MUKESH** **MEMBER (JUDICIAL)**

Nair