IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOCHI BENCH

TIBA NO.4/KOB/2019

(IBA No. 282/2019 of NCLT Chennai Bench)

(Under Section 9 of IBC & 6 of the IB(AAA)Rules,2016)

Date of Order: 25.09.2019

Applicant/Operational Creditor

M/s PSG Traders, Proprietrix Smt,. Lalitha Maheswari,
W/o Sivakumar, repd.by her Power of Attorney Mr.G.Sivakumar
No.17D, 15/22, Alagapuri, Rajapalayam-626117.

Vs.

Respondents/Corporate Debtors

1. Trivandrum Spinning Mills Ltd. Vizhinjam Road, Balaramapuram-695501 represented by its Manging Director M.Ganesh.
2. Mr.M.Ganesh, the Managing Director, M/s Trivandrum Spinning Mills Ltd. Vizhinjam Road, Balaramapuram-695501

Counsel for applicant .. M/s John Numpeli & B.Kishore

Counsel for respondents .. M/s PA Ahamed & Thoufeeq Ahmed.

ORDER

This petition has been filed by M/s. PSG Traders Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the Code) for initiating insolvency resolution process against the respondent-corporate debtor, a company registered under the Companies Act, 1956. The corporate debtor was incorporated on 01.11.1963 under the Companies Act, 1956 and continues now its existence with CIN No. U17119KL1963SGC002035 and has its registered office at Vizhinjam Road, Balaramapuram 695 501 in the State of Kerala and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

2. The Operational Creditor is involved in the business of supplying raw cotton material to corporate debtor.

3. As per averments made in the application, the Operational Creditor supplied raw cotton material on various dates for which balance confirmation letter acknowledging the outstanding balance along with statement of account was issued by the corporate debtor. The purchases were made by the corporate debtor for which payments were made in instalments over the period of time being a continuous process over the years from 2013 till 2017.

4. Therefore, the Operational Creditor submitted that as per the statement of account issued by the corporate debtor a sum of Rs. 14,79,859 /- (Rupees Fourteen Lakh Seventy-Nine Thousand eight hundred and Fifty-Nine Only) was outstanding as an unpaid balance as on 31.03.2017. As on 10.06.2018 the Corporate Debtor has an unpaid balance of Rupees 14,79,859/- (Rupees Fourteen Lakh Seventy-Nine Thousand eight hundred and Fifty-Nine Only) towards the principal and Rs 1,06,436/- (Rupees One Lakh Six Thousand Four Hundred and Thirty-six only) towards interest at 12% from 02.11.2017 to 10.06.2018 leaving the overall dues payable by Corporate Debtor amounting to Rs.15,86,295/- (Rupees Fifteen Lakhs Eighty six Thousand Two Hundred and Ninety Five Only) to Operational Creditor.

5. The Corporate Debtor failed to honour the payments in spite of admission of the debts and in spite of several reminders via letters/ legal notices. The date from which such debt fell due was 02.11.2017.The Operational Creditor, through its authorised legal representative sent a demand notice dated 11.06.2018 to the Corporate Debtor as per Section 8 of IBC. The Operational Creditor requested the Corporate Debtor to pay the pending dues within ten days from the date of the said statutory demand notice. Neither the Corporate Debtor nor its representatives have replied to the said demand notice sent by the Operational Creditor. Hence this petition is filed before this Bench.

6. On 28.08.2019, the counsel for both the parties represented and the counsel for respondent submitted that they are in the process of arriving at a compromise.

7. On 02.09.2019, counsel for Respondent submitted that as they are negotiating the matter, they prayed another few days for filing the memo and the same was agreed

by the Petitioner's counsel. Therefore, the matter stands adjourned for another date as a last chance and as on 18.09.2019, no settlement memo is filed.

FINDINGS:

8. We have heard both the parties and also perused whole case records including documents and Photostat copy appended with the case records.The Hon'ble Supreme Court in ***"Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited– 2017 1 SCC OnLine SC 353"***, held that as to what are the facts to be examined by the Adjudicating Authority while examining an application under Section 9, which are as follows:

(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (Section 4 of the Code)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid, And

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

And in the aforesaid decision of the Hon'ble SC it is clear that the Adjudicating Authority after satisfying itself that the 'operational debt' is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid 'operational debt', the application under Section 9 cannot be rejected and is required to be admitted.

9. It appears from the case record.

   i. The operational debt due to pay exceeds Rs 1 Lakh
   ii. The documentary Evidence Furnished with appropriate source that the aforesaid debt is due and not paid till date.
   iii. There is no proof of existence of any earlier dispute between parties or arbitration proceedings filed before the Competent Authority.

10. On Perusal of the record it appears that Annexure 1 (A) is the Form 4 demand notice along with copies of invoice demanding payment and the details of transaction between the Operational Creditor and the Corporate Debtor from 2013 to 2017, along with the audited balance sheet of M/s. PSG Traders as on 31.03.2017 clearly showing the Corporate Debtor under their sundry Debtors. Additionally, Annexure III (A) is the Ledger of Account Issued by the M/s. Trivandrum Spinning Mills Ltd, showing the closing balance during the period 01.04.2016 to 25.07.2017 as Rs.14,79,859/- (Rupees Fourteen Lakh Seventy-Nine Thousand eight hundred and Fifty-Nine Only).

11. Likewise, it also appears that Balance Confirmation Annexure II issued by the Corporate Debtor Trivandrum Spinning Mill Limited to PSG Traders, whereby the respondent Company has confirmed the Credit Balance of INR. 14,79,859.00 /- (Rupees Fourteen Lakh Seventy-Nine Thousand Eight Hundred and Fifty-Nine Only) as on 31.03.2017.

12. Since all the aforesaid condition are fulfilled in the instant case, we find that application submitted by Operational Creditor is Complete in all respects and there is no defect pointed out by Corporate Debtor. It is also proved that payment of unpaid operational debt has not been made by the Corporate Debtor.

13. In view of the above, the instant petition deserves to be **Admitted**. That this Bench at this moment appoints ***Mr. George Varkey, Building No.110, Ground Floor,Surabhi Nagar, Kakkanad, Kochi-682030 having registration No. IBBI/IPA-001/IP-P00433/2017-18/10756 (Email: geovaktm@gmail.com) as Interim Resolution Professional*** to carry out the functions as mentioned under IBC. He shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The petition **TIBA/4/KOB/2019**, therefore, is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended: -

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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b) transferring, encumbering, alienating or disposing off 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 Securitisation 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 corporate debtor.

14. It is further directed that the services to the corporate-debtor, of supplying raw cotton materials, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.

a) The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

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b) That the public pronouncement of the corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

c) We direct the Operational Creditor to deposit a sum of **Rs. 2 lakhs** with the Interim Resolution Professional namely Mr.George Varkey to meet out the expense to perform the 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 three days from the date of receipt of this order by the Operational 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 Operational Creditor.

d) The registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 25th day of September, 2019

Sd/-	Sd/-
(Veera Brahma Rao Arekapudi)	***(Ashok Kumar Borah)***
Member (Technical)	***Member (Judicial)***

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Certified to be True Copy
26/09/2019.
Deputy Registrar
National Company Law Tribunal
Kochi Bench, Kochi - 682 021

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Memo No.TIBA/4/KOB/2019/.......587 **Date: 26.09.2019**

1. Mr. John Numpeli, Advocate, Chamber No.104, First Floor, High Court Advocate Association, Golden Jubilee Chamber Complex, Ernakulam, Kochi-682031. **(Counsel for applicant/operational creditor)**

2. Mr.P.A.Ahmed Thoufeeq, Advocate, Gopal & Ahamed, Advocates, Vanchiyoor, Thiruvananthapuram-35. (Counsel for respondents/Corporate Debtors)

3. *Mr.George Varkey, Building No.110, Ground Floor, Surabhi Nagar, Kakkanad, Kochi-682030.* (***Interim Resolution Professional***)

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