

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM:
Dr. P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER
SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 106/9/JPR/2019

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

IN THE MATTER OF:

Mr. MANOJ LAKHERA, PROPRIETOR OF
M/S MANOJ KUMAR & COMPANY

**...OPERATIONAL CREDITOR/
APPLICANT**

VERSUS

M/S BHERAWA TEXTILE INDUSTRIES PRIVATE LIMITED

**...CORPORATE DEBTOR/
RESPONDENT**

For the Applicant: Naresh Kumar Sejvani

For the Respondent: None Appeared

MEMO OF PARTIES

Mr. Manoj Lakhera Prop. of M/s Manoj Kumar & Company
Office Address: - F- 130, Mandia Road,
Pali Rajasthan-306401

...Operational Creditor/Applicant

VERSUS

M/s Bherawa Textile Industries Private Limited
Registered Office At: - 4 To 7, Ist Phase,
Industrial Area, Pali Rajasthan-306401

...Corporate Debtor/Respondent

Order Pronounced On: 7.9.2020

ORDER

Per- Shri Raghu Nayyar (Technical Member)

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule-6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Manoj Lakhera Prop. of M/s Manoj Kumar & Company ('Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process against M/s Bherawa Textile Industries Private Limited ('Respondent').



2. The Applicant is the sole proprietor of M/s Manoj Kumar & Company. The Permanent Account Number of the Applicant is ABAPL2820N and the GSTIN/UIN No. is 08ABAPL2820N1ZN. The address of the Applicant is F- 130, Mandia Road, Pali -306401 (Rajasthan).
3. The Respondent is a Private Limited Company incorporated under the provisions of the Companies Act, 2013 on 24.06.2015, duly registered with the Registrar of Companies, Jaipur bearing CIN: U17290RJ2015PTC047790 and the Registered Office of the Respondent is located at 4 to 7, Ist Phase Industrial Area Pali – 306401 (Rajasthan). As per the Master Data annexed, the Authorised Capital of the Respondent Company is Rs. 7,50,00,000/- (Rupees Seven Crore Fifty Lakhs Only) and the paid-up capital is Rs. 6,65,00,000 (Rupees Six Crore Sixty-Five Lakhs Only).
4. According to the Applicant, since October 2016, the Respondent had been purchasing fabric chemicals from the Applicant and the payments thereof were made on time. However, the bill dated 27.01.2018 generated by the Applicant for amount of Rs. 1,19,077 was partly paid and an amount of Rs. 95,699/- is due from the Respondent. Also, the payments for the 9 bills raised thereafter from 31.01.2018 to 05.09.2018 for total amount of Rs. 6,87,512/- were not made by the Respondent. Copy of bills/ invoices are annexed with the Application. In order to clear the outstanding dues, the Respondent had



issued multiple cheques between August 2018 to October 2018. However, on presentation all cheques were returned unpaid with remark "CHQ UNUSABLE". Copy of cheque return memo are annexed with the Application.

5. According to the Applicant, the last payment of Rs. 60,000 through NEFT was made on 05.09.2018 by the Respondent. Thereafter the Applicant had made various request to clear outstanding dues and issued demand notice dated 11.01.2019 in Form 4, as prescribed under Rule 5 of IBC (Application to Adjudicating Authority) Rules, 2016 demanding an amount of Rs. 9,02,955/- (Rupees Nine Lakh Two Thousand Nine Hundred Fifty-Five Only). Copy of Demand notice along with tracking report is annexed with the Application. The Respondent through its advocate had sent reply dated 30.01.2019 to the demand notice and asked for copies of the document claiming that the same was not attached with the demand notice and had also refused to accept the claim amount. Copy of reply to the demand notice is annexed with the Application. The Applicant had responded to the reply notice vide letter dated 16.02.2019 enclosed with copy of invoices and ledger account and the same is not replied by the Respondent. Copy of response to reply notice is annexed with the Application.



6. Thus, the Applicant filed the present Application under Section 9 of IBC, 2016. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 9,02,955/- as an outstanding amount, as mentioned in Part IV of Form 5:

PART IV

Sr. No.	Particulars of Operational Debt	
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Rs. 9,02,955/- (Rupees Nine Lakh Two Thousand Nine Hundred Fifty-Five Only)
2.	Amount claimed to be in default and the date on which the default occurred	Total amount of debt claimed to be in default is Rs. 9,02,955/- including principal amount of Rs. 7,83,211/-, Bank charges Rs. 7,098/- and interest of Rs. 1,12,646/-. Date of default: 26.02.2018

7. Perusal of the records of the proceeding before this Tribunal shows that despite service of notice upon the Respondent / Corporate Debtor, as brought out by the order dated 16.10.2019, and in view of non-appearance, this Tribunal was constrained to proceed ex-parte against the Respondent / Corporate Debtor and the submissions of learned counsel for the Applicant were heard and order was reserved.



8. This Tribunal perused all the relevant papers and it is apparent from the record that the Respondent/Corporate Debtor has continuously failed to make payment against the invoices raised by the Applicant from January 2018 to December 2018. Also, despite the issuance of Section 8 notice under the Insolvency and Bankruptcy Code, 2016 by the Applicant and the receipt of the same by the Respondent, the payment was not made. Though the respondent has not filed reply to the present Application, it is noted that the respondent has not raised any dispute even in the reply to the demand notice sent to the Applicant. In these circumstances the claim stands established along with the prima facie presumption that there is default in payment of the amount due to the Applicant/Operational Creditor and also no dispute is in existence.
9. It is noted that the Respondent has made continuous default, initially of Rs 95,699/- on 26.02.2018 (due date for the first invoice dated 27.01.2018) which augmented to Rs. 9,02,955/- with interest and other charges on 04.11.2018 (due date for the last invoice dated 05.09.2018). Thus, the matter is within the purview of Law of Limitation.
10. The Registered Office of the Respondent/Corporate Debtor is situated in Pali, Rajasthan and therefore this Tribunal has jurisdiction to entertain and try this Application. Also, the matter is within the purview of Law of



Limitation. Hence, this Tribunal is inclined to initiate the proceedings namely, Corporate Insolvency Resolution Process (CIRP) as against the Respondent/Corporate Debtor as envisaged under the Provisions of IBC, 2016.

11. The Applicant has named the Interim Resolution Professional (IRP) Mr. Mahesh Chandra Purohit but failed to file certificate of Registration. Therefore, this Tribunal appoints Mr. Vikram Singh Rathore having Registration No. IBBI/IPA-003/IP-N00203/2018-2019/12361 and email vikram.nimbli@gmail.com and contact number 8696934073, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15,17,18,19,20 and 21 of the Code.
12. The consequences of initiation of CIRP shall be inter alia, as follows: -
 - (i) The Resolution Professional Mr. Vikram Singh Rathore, with the Registration No. IBBI/IPA-003/IP-N00203/2018-2019/12361 (e-mail: vikram.nimbli@gmail.com), is hereby appointed as the Interim Resolution Professional (IRP) to take over the affairs of the Respondent / Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including issue of publication in widely circulated newspapers as contemplated under the



provisions of IBC, 2016 and calling for the claims from the creditors of the Respondent/ Corporate Debtor and collating of the same shall be done.


- (ii) Further, as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Respondent / Corporate Debtor which will be in vogue during CIRP of the Respondent / Corporate Debtor. The IRP shall carry out Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Respondent / Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Applicant / Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report apprising this Tribunal about the progress of CIRP unfolding in relation to the Respondent / Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Respondent / Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended, will extend all cooperation to the IRP during his



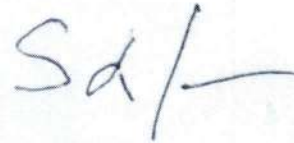
tenure as such and the management of the affairs of the Respondent / Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of IBC, 2016, a copy of this order shall be communicated to the Applicant / Operational Creditor, Respondent / Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

13. Accordingly, CP No. (IB)- 106/9/JPR/2019 is admitted.



**SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)**



**Dr. P.S.N PRASAD,
MEMBER (JUDICIAL)**