**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH-IV**

**CP (IB) No.553/MB-IV/2023**

Under Section 9 of the IBC, 2016

*In the matter of*

**KANHA TRADING COMPANY**

**...Operational Creditor**

v/s.

**CHUR TEXTILES LIMITED**

[CIN:U17110MH1996PLC103857]

**...Corporate Debtor**

**Order Delivered on: 05.01.2024**

*Coram:*

| | |
|---|---|
| Ms. Anu Jagmohan Singh<br>Hon'ble Member (Technical) | Mr. Kishore Vemulapalli<br>Hon'ble Member (Judicial) |

*Appearances:*

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|---|---|
| For the Operational Creditor: | Ms. Suyesha Kakarla a/w Adv. Nancy Singh i/b Apex Law Partners, Ld. Counsel. |
| For the Corporate Debtor: | Mr. Sumedh Rolkar a/w Aditya Chitale and Sachin Raje i/b MNSQ Legal, Ld. Counsel. |

## ***ORDER***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by KANHA TRADING COMPANY ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of CHUR TEXTILES LIMITED, the Corporate Debtor.

   1.1. The Company Petition is filed on 18.05.2023 claiming that an amount of Rs. 1,44,72,405/- is due and payable by the Corporate Debtor as on 28.02.2023 (Principal Amount Rs. 1,30,56,511/- alongwith Interest @24% p.a. Rs. 14,15,894/-). The date of default as specified in Part IV of the petition is 17.06.2022.

***Submissions of the Operational Creditor:***

2. The Operational Creditor is a sole proprietorship carrying out business in the name of Kanha Trading Company and Mr. Ashok Agarwal is its sole proprietor. The Operational Creditor is a stockist, supplier and a distributor of Dyes Chemicals, Auxiliaries, and Solvents etc.

   2.1. The Corporate Debtor is primarily a manufacturer of woven fabric, fabric finishing service & rayon fabrics in Thane, Maharashtra. The Operational Creditor has supplied goods to the Corporate Debtor from time to time and has raised invoices for supply of such goods from March 2022 till December 2022. However, the Corporate Debtor has failed to make any payment since April 2022.

   2.2. The Operational Creditor and the Corporate Debtor with mutual agreement decided 60 days' time period for repayment to be done by the Corporate Debtor after raising of the invoices. The Operational Creditor had sent several reminders via e-mails for the repayment of the pending amount, but the Corporate Debtor made false promises and sought time without any intention of repayment.

2.3. The Corporate Debtor vide its letter dated 11.02.2023 in response to the Demand notice has also confirmed the debt amount of Rs. 1,30,56,511/-.

3. The Operational Creditor vide its Demand Notices dated 14.03.2023 and 21.03.2023 addressed to the Corporate Debtor respectively to it's corporate office and registered office, demanding a payment of total amount of Rs. 1,44,72,405 together with interest calculated at the rate of 24% per annum as on 28.02.2023. The Corporate Debtor replied to the said Demand Notice vide its letter dated 01.04.2023 and admitted the debt amount and has also admitted its failure to make the repayment. The Corporate Debtor has neither raised any dispute nor made any payment thereof.

***Findings***

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1. This bench observes that, the Operational Creditor in Part IV of the application has specified date of default as 17.06.2022 and the present petition filed on 18.05.2023 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor.

4.2. As per the material on record this Bench finds that pursuant to order dated 05.07.2023, the Corporate Debtor was directed to file their Affidavit in Reply within two weeks from the receipt of the court notice, but the Corporate Debtor sought time on 07.08.2023, 11.09.2023, 5.10.2023 for filing their affidavit in reply and two weeks of time was allowed for several times to the Corporate Debtor to file reply. Furthermore, this Bench vide order dated 05.10.2023 directed the Corporate Debtor to file reply and finally granted further two weeks' time, failing which the right to file reply will be forfeited. However, no Affidavit in reply was filed on record by the Corporate Debtor.

4.3. Thereafter, this bench after granting several opportunities to the Corporate debtor to file affidavit in reply, forfeited their right to file reply and the case was heard on merits on 18.12.2023.

4.4. As per the material on record this Bench finds that, the Corporate Debtor had approached Operational Creditor for providing the supply of goods and services and the amount claimed in default is due on account of such services provided by the Operational Creditor. The Operational Creditor has placed on record the letters dated 11.02.2023 and 01.04.2023, the ledger copy of Kanha Trading Company in the books of the Corporate Debtor for the period from 1.04.2022 to 31.03.2022 which clearly shows the outstanding Liability and also admission of liability on the part of Corporate Debtor.

4.5. On perusal of Invoices, the bench observes that the terms and conditions attached to the delivery challan have stipulated for interest @24% p.a. from the date of delivery of the goods for non-payment of dues on or before the due date. It is noted that the total principal debt amount of Rs. 1,30,56,511/-( Rupees One Crore thirty lakhs Fifty-Six Thousand Five Hundred and Eleven Only) alongwith Interest @ 24% p.a. Rs. 14,15,894/- (Rupees Fourteen Lakhs Fifteen Thousand Eight Hundred and Ninety-Four Only) the total debt makes total outstanding as Rs. 1,44,72,405/-

(Rupees One Crore Forty-Four Lakhs Seventy-Two Thousand Four Hundred and Five Only). Thus, the total debt outstanding of Operational Creditor is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020, and meets the criteria of Rs. 1 crore as per Section 4 of IBC and Application is therefore maintainable in present case.

5. This Bench observes that since, the debt and default exist, and no pre-existing dispute has been brought out by the Corporate Debtor, it is a fit case for admission u/9 of IBC, 2016.

6. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

7. The petition bearing CP (IB) No.553/MB-IV/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by KANHA TRADING COMPANY ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of CHUR TEXTILES LIMITED, the Corporate Debtor is **Admitted.**

I. That this Bench as a result of this prohibits:

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;

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 Operational 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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. The bench hereby appoints **MR. RAKESH BOTHRA**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P-01758/2019-2020/12675** is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order

Sd/-

**ANU JAGMOHAN SINGH**
**MEMBER (TECHNICAL)**

Sd/-

**KISHORE VEMULAPALLI**
**MEMBER (JUDICIAL)**