

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH- III

IB-1694/ND/2019

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

In The Matter Of:

FLEXITUFF VENTURES INTERNATIONAL LIMITED

...APPLICANT / OPERATIOANAL CREDITORS

Versus

TREND FLOORING PRIVATE LIMITED

... CORPORATE DEBTOR

MEMO OF PARTIES

Flexituff Ventures International Limited
C41-50, Sec No. III, SEZ Industrial Area,
Pithampur, Dhar, (MP)- 454775

...Operational Creditors/Applicants

Versus

1

IB-1694/ND/2019

Flexituff Ventures International Limited vs. Trend Flooring Private Limited

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Trend Flooring Private Limited
Regd. Office- 441, 4th Floor,
43, Chiranjiv Tower,
Nehru Place, New Delhi- 110019.

... **Corporate Debtor**

CORAM:

SHRI R.VARADHARAJAN, Member (Judicial)

K.K VOHRA, Member (Technical)

Counsel for the Petitioner: Rajeshwer K. Gupta & Co.
(Advocates)

Counsel for the Respondent: Iswar Mohapatra (Advocate)

ORDER

Delivered on: 09.10.2019

1.The above petition has been filed under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC, 2016) by Flexituff Ventures International Limited (for brevity "Operational Creditor/ Applicant") having CIN no : L25202MP1993PLC034616, against Trend Flooring Private Limited (for brevity "Corporate Debtor") having CIN number: U17226DL2005PTC143849.

2.The Operational Creditor (OC) states that it is a Registered Company dealing in fabrics. That the Corporate Debtor (CD) placed various purchase orders during the period 2016 to April 2018. The OC from September, 2016 to April, 2018 supplied the goods ordered by the CD which were duly received, and

IB-1694/ND/2019

Flexituff Ventures International Limited vs. Trend Flooring Private Limited

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acknowledged by the CD. There is a debit balance of Rs.3,04,65,520/- including interest @ 24% till 31.8.2018.

3. The OC further avers that from time to time it demanded its dues of Rs. 3,04,65,520/- including interest @24% till 31.8.2018 but the payment was not made by CD. A demand notice dated 1.6.2018 was sent by the OC and a reply dated 22.6.2018 was given by CD, but no payment is made thereby denying debt/liability.
4. Since the payment of the balance amount was pending for long, it is averred another statutory demand notice under section 8 of IBC 2016 dated 5.9.2018 was issued by the Operational Creditor as required under the provisions of IBC, 2016 wherein the amount in default, stated to be a sum of Rs. 3,04,65,520/- including interest was demanded as per the invoice annexed with the demand notice till the date of actual payment and also calling upon the CD to repay the unpaid Operational Debt within 10 days or to demonstrate that the amount claimed as in default has been paid or in the alternative to provide for the existence of any dispute in relation to the unpaid Operational Debt.
5. Till the expiry of statutory period of 10 days, from the date of service of notice in Form-3, the CD has neither paid the Operational debt nor has informed the OC about any existence of dispute within those 10 days.
6. The CD has not provided an attested copy of record of electronic transfer of the unpaid amount from its bank accounts and has also not provided to the OC any details of pending suit or arbitration proceedings in relation to such dispute.

7. The OC on 28.9.2018, changed its name and the ROC, at Gwalior accepted and issued a certificate of incorporation pursuant to change of name under Rule 29 of the Companies (Incorporation) Rules, 2014, whereby the name was changed from Flexituff International Limited to Flexituff Ventures International Ltd.

8. The CD has also filed a reply and has raised certain points.

- a) The CD submits that the petition is signed and filed by Shri Anand Khandelwal, Director of the Company who is not authorized in a duly constituted Board Meeting of the Petitioner Company as OC has not enclosed copy of the Board Resolution and hence the Petition is signed and filed without authority. So that same is liable to be dismissed.
- b) The CD further submits that the amount claimed by OC amounting to Rs.2,13,17,401/- is a disputed amount because the amount claimed vide Invoice No. T/DEL/0137/1617 dated 1.9.2016 is different both in Annexure-A attached to the demand notice and the statement of account enclosed in annexure P-6.
- c) The so-called ledger account enclosed by Annexure P-6, is not a ledger account reflecting the debit and credit entry made by the petitioner but is merely a summary of invoices and hence the exact outstanding amount as claimed by the OC is not legally admitted amount.
- d) The CD has claimed the unpaid dues from CD for the transaction effective mostly during the month of September, 2016 to December, 2016 and January, 2017 and nearly after 1 year 9 months the OC has raised an issue for non-payment of bills and prior to this the OC has neither

written any letter nor sent any mail in this regard. The CD further states that the OC has supplied inferior quality of material resulting in huge loss to the CD and hence there exists a prior dispute between OC and CD.

9. The OC has filed detailed invoices from 01.09.2016 to 20.12.2018 and it has further placed on record copies of proof delivery of goods in relation to the unpaid invoices giving rise to the claim. Further it has also submitted copies of printouts of the emails sent to and received from Mr. Arvind Narayan Singh, Director of the CD from his ID trendflooring@gmail.com where the CD has clearly admitted its liability. From the material available on record it is amply clear that there is an existence of default of more than Rs. 100000. Further, the CD has failed to bring anything on record which could suggest that there is a dispute pre-existing between the parties. Thus, this petition requires to be admitted in view of the default and that CIRP process is required to be initiated against the CD.

10. From the Application filed it is seen that the Applicant has named an interim resolution professional in Part III of its Application whose details are as follows:

MR. RAJEEV SAXENA

Reg. no. IBBI/IPA-001/IP-P00550/2017-2018/10980.

102, Manas Bhawan Extn., 11, RNT Marg Indore,
Madhya Pradesh- 452001

11. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein he has agreed to accept appointment as an IRP if Application is admitted.

5

IB-1694/ND/2019

Flexituff Ventures International Limited vs. Trend Flooring Private Limited

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Further, it is also evident from the said Form 2 as filed by the IRP signed under his hand that he is not a related party to the CD and that he is eligible to be appointed as an independent director on the Board of the CD. Certificate of registration of the IRP as issued by the Insolvency and Bankruptcy Board of India (IBBI) and self-attested has also been enclosed along with the Application by the proposed IRP and taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 9 of the Code and thereby initiate corporate insolvency resolution process as against the CD with the following consequences:

Mr. RAJEEV SAXENA, having registration no. IBBI/IPA-001/IP-P00550/2017-2018/10980, is appointed as the interim resolution professional and he shall strictly act in accordance with the provisions of the Code and the attendant Rules enjoined upon him;

a. In terms of Section 14, as reproduced hereunder, the CD shall be under moratorium on the following terms:

(a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitization 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 CD.

b. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the CD as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

c. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:



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 CD under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.


- d. The Board of Directors of the CD shall stand suspended on and from this day as envisaged under Section 17 of the Code.
- e. The registry of this Tribunal is directed to communicate the order to both the OC and the CD at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

With the above directions, the application stands disposed of.

(K.K. VOHRA)
MEMBER (TECHNICAL)

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Pronounced today in open Court in pursuance of power under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (Judicial) Mr R. Varadharajan is not holding Court today.


MADHU HARULA
COURT OFFICER