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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.136/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rule, 2016

In the matter of:

M/s. Bannari Amman Spinning Mills Ltd.

Regd. Off: No.252,

Mettupalayam Road,

Coimbatore,

Tamil Nadu – 641 043.

- Petitioner/Operational Creditor

Versus

M/s. My Choice Knit & Apparels Pvt. Ltd.

No.26/08/2011, 4th Road,

1st Cross, Begur Road,

Bommanahalli,

Bangalore – 560 068.

- Respondent/Corporate Debtor

Date of Order: 18th October, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Revathi Shivakumar

For the Respondent : Shri Vishal Kumar Boob, Managing Director
Party-in-person

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P. (IB) No.136/BB/2018 is filed by M/s. Bannari Amman Spinning Mills Limited ('Petitioner/Operational Creditor') under



Section 9 of the IBC, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. My Choice Knit and Apparels Private Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed a default for an amount of Rs.1,07,27,295/- (Rupees One Crore Seven Lakhs Twenty Seven Thousand Two Hundred and Ninety Five only) which included principal amount and interest @ 24% p.a.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

- (1) M/s. Bannari Amman Spinning Mills Limited (Petitioner/Operational Creditor) is a Company incorporated on 10.07.1989 under the provisions of Companies Act, 1956 and having its registered office at No.252, Mettupalayam Road, Coimbatore, Tamil Nadu-641 043.
- (2) M/s. My Choice Knit and Apparels Private Limited (Respondent/Corporate Debtor) is a Company incorporated on 12.03.2009 under the provisions of Companies Act. Its Authorised Share Capital is Rs.1,75,00,000/- and Paid-up Capital of the Company is Rs.1,74,78,000/-.
- (3) The Petitioner has issued Demand Notice dated 23.03.2017 under Rule 5 of I&B (AAA) Rules, 2016 by demanding the Respondent to pay Rs.79,57,794/- (Rupees Seventy Nine Lakhs Fifty Seven Thousand Seven Hundred and Ninety Four Only) apart from interest for an amount of Rs.27,69,501 within 10 days from the date of receipt of copy of notice. Accordingly, the Respondent has



issued a reply dated 04.04.2017 through their Counsel by inter alia denying the debt and also explained the reasons for the same.

- (4) The transaction is based upon the sale of the grey knitted fabric and also dishonour of the cheques issued by Respondents for a sum of Rs.79,57,794/- towards Principal amount and a sum of Rs.27,69,501/- towards interest.
- (5) The Corporate Debtor has denied the entire amount of Rs.79,57,794/- by claiming that the Corporate Debtor has opened a Letter of Credit with a mutual understanding with the Operational Creditor for Rs.48,80,396/- through Bank of Maharashtra at Koramangala, Bangalore. However, subsequently, the said Bank intimated the establishment of Letter of Credit was erroneously given and the bills were returned as the invoices were dated prior to the date of Letter of Credit incidentally. Thus, the Corporate Debtor is now acknowledging Rs.79,57,794/- but is willing to pay only Rs.30,77,398/- and wants Operational Creditor to pay Rs.48,80,396/- from Letter of Credit opening in the said Bank of Maharashtra, which the bank has refused to encash/honour the said Letter of Credit for the reasons recorded in Bank's letters.
- (6) A winding up notice has also been served by the Operational Creditor, followed by the Demand Notice under the Code and also has also lodged a complaint before the Inspector of Police, District Crime Branch, Tirupur District, Tirupur, Tamilnadu on 12.12.2016 and the said Police Officer has dispensed a notice to the Corporate Debtor, for which notice, the Corporate Debtor



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has also issued a reply to them through RPAD dated email on 31.01.2017.

(7) The Petitioner got issued Demand Notice dated 23.03.2017 under Rule 5 of I&B (AAA) Rules, 2016 to the Corporate Debtor by demanding them to pay an amount of Rs.79,57,794/- towards Principal amount and a sum of Rs.27,69,501/- towards interest. In pursuant to that Demand Notice, the Corporate Debtor got issued a reply dated 04.04.2017 by raising the dispute.

3. The instant Company Petition was opposed by the Respondent by filing Statement of Objections dated 31.10.2018, by raising various contentions inter alia contending as follows:

(1) The Corporate Debtor is an MSME textile Company and due to cyclical fluctuations, it run into financial distress. They have also enclosed the MSME Registration Certificate issued by the Ministry of Micro, Small & Medium Enterprises vide *Udyog Aadhaar Number KR03B0056379*. They had a good business relationship with the Petitioner for more than five years and they are paying diligently. However, at present, they are facing various issues in running its business activities. It has been trials and tribulations that have been adversely affected its functioning. The Corporate Debtor has employee and workmen strength of 198 (38 employees and 160 workmen) and paying their salaries/wages in spite of its financial stress. The Corporate Debtor is trying to come out of its financial constraints and is trying to protect the interest of its employees and that they are trying to pool internal and external resources to settle its debts.

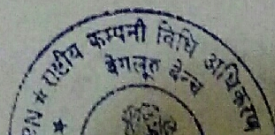


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The Corporate Debtor also owes to the Bank of Maharashtra an amount of Rs.4,70,00,000/- and is in the process of negotiations for settlement of the same under One Time Settlement (OTS) Scheme and an amount of Rs.10,00,000/- was paid and admitting of the application filed by the Applicant would scuttle the efforts made by the Corporate Debtor for its revival.

- (2) It is further stated that for the Financial Year 2017-18 as per the Audited Financial Statements, the Corporate Debtor has reported a loss of R.3,59,69,987/- and has tangible asset base amounting to Rs.60,76,369/-. The Operational Creditors would not get any amount in accordance with the provisions of Section 53 of the IBC, 2016, in case the Application filed by the Applicant is admitted. Further, it would scuttle the efforts made by the Promoters of the Corporate Debtor for its revival.
- (3) It is also stated that the Petitioner is a company of huge magnitude having a turnover of about Rs.1000 Crores, whereas, the Corporate Debtor is a small MSME entity. The Petitioner in spite of having huge turnover is not showing any compassionate attitude to the Corporate Debtor even though the Corporate Debtor has explained to them about their financial ups and downs in running the business.

4. Heard Ms. Revathi Shivakumar, learned Counsel for the Petitioner and Shri Vishal Kumar Boob, Managing Director of the Respondent Company, Party-in-Person. We have carefully perused the pleadings of the parties and the extant provisions of the Code.



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- NCLT, BENGALURU BENCH
5. The Adjudicating Authority has dismissed the Company Petition (IB)No.136/BB/2018, vide Order dated 04.04.2019, and aggrieved by both the parties, the Petitioner has filed an Appeal before the Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No.513 of 2019 and the Hon'ble NCLAT, New Delhi, vide its order dated 03.09.2019, has set aside the order of this Tribunal and thus remitted the case to the Adjudicating Authority with a direction to admit the Application under Section 9 of the I&B Code, after notice to the Corporate Debtor so as to enable the Corporate Debtor to settle the claim prior to the admission of Application and by observing that there is a debt payable by the Respondent, which is more than Rs.1 Lakhs and also there is no provision under the Act, which stipulates that a Company which is MSME does not come within the purview of 'I&B Code' or Application under Section 7 or 9 or 10 is not maintainable.
 6. Thereafter, the case is listed for admission on 25.09.2019, 15.10.2019 and 18.10.2019, and it is adjourned on those dates at the request of the parties, in order to serve the notice and also to give an opportunity to the parties to explore the possibility of settlement of the issue etc. However, the parties have not come forward to settle their dispute and thus putting the Adjudicating Authority, in no option except to comply with the direction of Hon'le NCLAT by admitting the case.
 7. Since the Petition is filed in accordance with law and a qualified Resolution Professional Shri Ramanahalli Shivanna Doddabyregowda bearing IP Registration No. IBBI/IPA-002/IP-N00583/2017-2018/11775, is suggested, who also has filed his



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Written Consent in Form-2 dated 16.10.2019 by inter alia affirming that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore, it is a fit case to admit to initiate CIRP against the Corporate Debtor by appointing IRP, imposing moratorium etc.

8. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, Company Petition bearing C.P.(IB)No.136/BB/2018 is hereby admitted with the following consequential directions:

(1) We hereby appointed Shri Ramanahalli Shivanna Doddabyregowda bearing IP Registration No. IBBI/IPA-002/IP-N00583/2017-2018/11775 as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s. My Choice Knit & Apparels Pvt. Ltd., and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

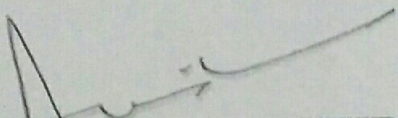
- i. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- ii. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



- iii. 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 Financial Assets and Enforcement of Security Interest Act, 2002;
 - iv. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - vi. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
 - vii. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time to carry out the CIRP process as expeditiously as possible.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take

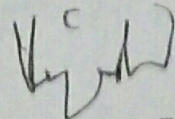
expeditious steps so as to complete the process of CIRP within the stipulated time.

(6) Post the case for report of the IRP on **19.11.2019**.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

Shurahi




(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench

Swarna. c
27/11/19