IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IBA/169/2020

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Jai India Weaving Mills Private Limited***

Karmal Garment Exports
Represented by its Managing Partner
Mr. R.K. Soundhar Rajen
Having office at No.10, 1st Main Road,
United India Colony,
Kodambakkam,
Chennai – 600 024
& 4 Others

... Financial Creditor

-Vs-

M/s. Jai India Weaving Mills Private Limited
Reg. Off:-
Vannakattuvalasu,
Kathirampatty (P.O.), Nasiyanur
(Via) Erode TN 638107

...Corporate Debtor

Order Pronounced on 9th August 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : Srenik S. Jain, Advocate
For Corporate Debtor : Ex-parte

ORDER

***Per:* R. SUCHARITHA, MEMBER (JUDICIAL)**

1. Under Adjudication is an Application that has been filed by **Karmal Garment Exports and 4 other** (hereinafter referred to

as *'Financial Creditor"*) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Jai India Weaving Mills Private Limited** (hereinafter referred to as *'Corporate Debtor'*). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditors are Individual. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U17115TZ2003PTC010472 was incorporated on 05.02.2003 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at Vannakattuvalasu, Kathirampatty (P.O.), Nasiyanur (Via) Erode TN 638107. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. V. Venkata Siva Kumar, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.2,01,65,328/- is being claimed by all the four Financial Creditors as the Financial debt. Part – V of the Application discloses the details of the documents which has been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;

a) Bank Statement of Accounts and the amounts lent through RTGS respectively.
b) Ledger Account maintained by the Financial Creditor
c) Copy of PAN
d) Master Data of the Corporate Debtor
e) Notice dated 27.11.2019 to the Corporate Debtor along with acknowledgment card
f) Notice dated 16.12.2019 to the Corporate Debtor along with acknowledgment card.

4. The Learned Counsel for the Financial Creditors submitted that the Corporate Debtor had approved the proposal for availing loan from the respective Financial Creditors and that the Financial Creditors with immense trust and good faith have lent a total sum of Rs.1,90,00,000/- by way of RTGS to the Corporate Debtor with the interest rate agreed at 12% p.a. Further, it was submitted that as against the amount availed, the Corporate Debtor have been paying the required interest on time, however for the months between July 2019 to December 2019 have defaulted in making the payment of interest despite number of reminders from the Financial Creditor.

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor had also been paying the TDS towards the interest amount paid by them till date and has also placed on record the TDS certificate in this regard. Further, it was submitted that the Financial Creditor has sent a Legal Notice dated 27.11.2019 and 16.12.2019 to the Corporate Debtor to repay the outstanding principal plus interest payments; however the Corporate Debtor paid some interest, but declined to pay the principal amount. Thus, it was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor is liable to pay the balance amount of Rs.2,01,65,328/- to the Financial Creditor and they have failed to do so and hence the Corporate Debtor has committed default in repaying the financial debt owed to the Financial Creditor and as such prayed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

6. In relation to the Corporate Debtor, it is seen that they have already been set ex-parte by this Tribunal vide order dated 08.02.2021 and till date no Application has been filed by the Corporate Debtor to set aside the said ex-parte order. In the such circumstances, the matter was heard in the absence of the Corporate Debtor.

7. Heard the submissions made by the Learned Counsel for the Financial Creditor. The instant petition has been filed under Section

7 of the IBC, 2016 r/w Rule 4 of the IBBI (Application to Adjudicating Authority) Rules, 2016. The Rule 4 of the said rule is extracted hereunder;

> **4. Application by financial creditor.**— (1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In this context, it is relevant to refer to the attendant Regulation 8 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

> **8. Claims by financial creditors.** (1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule:
>
> Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.
>
> (2) The existence of debt due to the financial creditor may be proved on the basis of –
>
> (a) the records available with an information utility, if any; or
>
> (b) other relevant documents, including –
>
> > (i) **a financial contract supported by financial statements as evidence of the debt;**
> >
> > (ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
> >
> > (iii) financial statements showing that the debt has not been paid; or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

The term *'Financial contract'* is defined in clause (d) sub-section 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

> (d) **"financial contract"** means a contract between a corporate debtor and a financial creditor <u>setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment;</u>

8. Referring to the aforementioned Rule, it becomes clear that it is incumbent upon the Financial Creditor while filing this petition to place on record before this Authority, the *'Financial Contract'* and demonstrate without any ambiguity from the financial contract, the amount disbursed as per the loan/debt, the tenure of the loan/debt, the interest payable and the conditions of repayment. In the present case, it is evident that the Financial Creditor has not placed on record any *Financial Contract* or any *Financial Agreement*, in pursuance of which the loan was disbursed to the Corporate Debtor. The Part V of the Petition also discloses the fact that the Financial Creditor has only attached the copy of the ledger of the Financial Creditor maintained in the books of accounts of the Corporate Debtor.

9. Even the Financial Creditor has not placed on record any Promissory Note, in the present case, which can be construed as a

'Financial Contract' in order to prove the debt qualifies to be a 'financial debt'. In the present case, there is no financial contract which is seen on record in order to establish that the relationship between the Financial Creditor and the Corporate Debtor herein in order for the Applicant to qualify as a 'Financial Creditor' and in the absence of the same, the default as alleged by the Financial Creditor cannot be determined.

10. Thus, in view of the facts mentioned supra, and in the absence of any 'Financial Contract' between the parties, we are constrained to **dismiss** this petition, however without any costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond