

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.301
CP(IB)/314(AHM)2022

Order under Section 9 IBC

IN THE MATTER OF:

Shrinathji Spintex Pvt Ltd
V/s
Sunrise Ginning Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 20/07/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT - II**

CP (IB) 314/NCLT/AHM/2022

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

M/s. Shrinathji Spintex Private Limited

Applicant/ Operational Creditor

VERSUS

M/s. Sunrise Ginning Private Limited

Respondent/ Corporate Debtor

Order Pronounced on: 20/07/2023

Coram:

**SHAMMI KHAN
HON'BLE MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

M/s. Shrinathji Spintex Private Limited

CIN : U17120GJ2010PTC062917

Having its Registered Office at:

Gundala Road, Survey No. 461,

Near Khedut Solvant, Behind Gujarat,

Ginning, Gondal, Gujarat – 360 311

...Applicant/Operational Creditor

Versus

M/s. Sunrise Ginning Private Limited

CIN : U17110GJ2006PTC047767

Having its Registered Office at:

Survey No. 595/4, Opposite Balaji Paper

Mills, Upleta Road, Dhoraji, Gujarat.

...Respondent/Corporate Debtor

APPEARANCE:

For the Applicant : Mr. Tirth Nayak, Ld. Adv.

For the Respondent : Mr. Yuvraj Thakore, Ld. Adv.

ORDER

1. This application is filed on 25.11.2022 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **M/s. Shrinathji Spintex Private**



Limited (for brevity '**Applicant**') to start the Corporate Insolvency Resolution Process (for brevity '**the CIRP**') against **M/s. Sunrise Ginning Private Limited** (for brevity '**Corporate Debtor**') on the ground that the Corporate Debtor committed default in paying the operational debt of Rs.5,77,85,361/- including principal amount of Rs.3,44,98,716/- and an interest amount of Rs.2,32,86,645/-.

2. The present application is filed through, Mr. Jatinbhai Dhirajbhai Lakkad, a director of the Applicant having its registered office at Gundala Road, Survey No. 461, Near Khedut Solvant, Behind Gujarat, Ginning, Gondal, Gujarat – 360 311. The Applicant engaged in the business of buying and selling cotton bales.
3. The Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 having CIN: U17110GJ2006PTC047767 and having office at Survey No. 595/4, Opposite Balaji Paper Mills, Upleta Road, Dhoraji, Gujarat. The authorized share capital of the corporate debtor is Rs. 4,00,00,000/- and paid-up share capital is Rs. 2,50,00,000/-. The corporate debtor is engaged in the business of buying and selling cotton bales.
4. It is submitted by the Applicant that a total amount of debt is Rs. 5,77,85,361/- (Rupees Five Crores Seventy-Seven Lakhs Eighty-Five Thousand Three Hundred and Sixty-One Only) is due and payable by the



corporate debtor which includes the principal amount of Rs. 3,44,98,716/- (Rupees Three Crores Forty-Four Lakhs Ninety-Eight Thousand Seven Hundred and Sixteen Only) and an interest amount of Rs.2,32,86,645/- (Rupees Two Crores Thirty-Two Lakhs Eighty-Six Thousand Six Hundred and Forty-Five Only) calculated @ 18% per annum as on 27.12.2019 with further running interest @ 18% per annum from 27.12.2019 towards the goods supplied under Fifteen invoices attached to the application, during the period from April, 2015 to July 2015.

5. It is submitted by the Applicant that the Applicant supplied cotton bales to the Corporate Debtor from time to time and Corporate Debtor which were accepted and acknowledged without any dispute. An amount of Rs. 3,44,98,716/- remained outstanding and payable against the following invoices:

Sr. No.	Invoice No.	Date of Invoice	Amount (in Rupees)
1.	B/T-25	16.06.2015	16,79,645/-
2.	B/T-26	18.06.2015	16,72,947/-
3.	B/T-27	18.06.2015	50,88,399/-
4.	B/T-28	20.06.2015	51,00,765/-
5.	B/T-29	20.06.2015	50,32,754/-
6.	B/T-64	02.07.2015	17,09,261/-
7.	B/T-65	02.07.2015	17,03,060/-
8.	B/T-66	02.07.2015	16,94,793/-
9.	B/T-67	03.07.2015	17,10,294/-
10.	B/T-68	03.07.2015	16,53,456/-
11.	B/T-69	03.07.2015	17,06,160/-
12.	B/T-70	04.07.2015	16,84,458/-
13.	B/T-71	04.07.2015	17,03,060/-
14.	B/T-72	04.07.2015	17,22,178/-
15.	B/T-73	05.07.2015	16,89,626/-



The copies of the above invoices are annexed with the application and further, the said default amount is also reflected in the books of account of the Corporate Debtor for A.Y. 2016-17. A copy of the same is also annexed with the application.

6. In spite of repeated reminders and follow-ups through various calls and E-mails the Corporate Debtor failed to make payment. Thereafter, the Applicant was compelled to file Special Civil Suit No. 02 of 2020 before the Ld. Principal Civil Judge, Rajkot. On 05.03.2020, the said Special Civil Suit No. 02 of 2020 was settled and consent decree came to be drawn by Ld. Principal Civil Judge, Rajkot. As per the said consent decree, the Corporate Debtor was liable to pay an amount of Rs.3,44,98,716/- towards the principal sum and Rs. 2,32,86,645/- towards the interest calculated at the rate of 18% per annum as of 27.12.2019. Due to the failure of the Corporate Debtor to make payment to the Applicant, the Applicant issued the Demand Notice on 07.11.2022, as per Section 8 of the Insolvency and Bankruptcy Code, 2016 which was duly served on 10.11.2022 to the Corporate Debtor. A copy of the service of demand notice is annexed with this application.
7. The Applicant submits that after service of the Demand Notice, the Corporate Debtor failed to reply to the demand notice within the prescribed timeline as per Section 8 of the IB Code, 2016, and Corporate Debtor also did not raise any dispute with respect to the amount outstanding to the Applicant.



8. Thereafter, the Applicant filed this instant application on 25.11.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 and notice was issued to the Corporate Debtor by the Adjudicating Authority on 02.12.2022. The Applicant filed the affidavit of service of notice on 27.12.2022 and the notice was duly delivered on 22.12.2022. A Copy of the tracking report is annexed with the affidavit.

9. The Corporate Debtor has filed its affidavit in reply on 07.03.2023 in which it denied allegations made by the Applicant in the Application and made the following averments:
 - a) It is submitted that the present petition is misconceived and baseless, devoid of any merits, and therefore, the same may kindly be rejected.

 - b) It is submitted that the application is not maintainable, in view of the fact that the claim of the Applicant is beyond the period of limitation. The invoices raised by the Applicant are starting from 16.06.2015 and the last invoice raised is dated 05.07.2015. The present petition is filed on 25.11.2022.

 - c) It is submitted that the application filed by the Applicant is beyond the period of limitation of 3 years as prescribed under Article 137 of the Limitation Act, 1963 read with Section 238A of the Insolvency and Bankruptcy Code, 2016. It is also submitted that the application ought to



have been filed within the period of limitation to be maintainable under law.

- d) It is submitted that the Hon'ble Supreme Court in the case of ***B.K. Educational Services Private Limited Vs. Parag Gupta and Associates reported in (2019) 11 SCC 633*** has held as under:

27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

28. In view of our finding that the Limitation Act has in fact been applied from the inception of the Code, it is unnecessary for us to go into the arguments based on the doctrine of laches. The appeals are therefore remanded to the NCLAT to decide the appeals afresh in the light of this judgment.

- e) Further the Hon'ble Supreme Court in the case of ***K. Sashidhar Vs. Indian Overseas Bank and Ors. reported in (2019) 12 SCC 150*** held that:



56. *As regards the decision in B.K. Educational (supra), the court was called upon to consider the question as to whether the Limitation Act, 1963 will apply to applications that are made under Section 7 and/or Section 9 of the Code on and from its commencement on 01.12.2016 till 06.06.2018. That question was examined in the context of Section 238-A inserted in the I & B Code by the self-same Amendment Act of 2018. The Court after adverting to the contents of the report of the Insolvency Law Committee of March, 2018 and other provisions of the Code and other enactments, opined that Section 238-A was clarificatory in nature and being a procedural law, came to hold that it had retrospective effect. The Court held that taking any other view would result in an incongruous situation as the provisions of the Limitation Act would apply in some set of cases to be decided by the same Tribunal and not in other sets of cases. Besides, the Court adverted to the principle that right to sue accrues on the date when default occurs and if the default occurred even three years prior to the date of filing of the application, the same cannot be treated as “debt that is due and payable” or “debt” due.*

- f) It is submitted that the present petition is filed based on Consent Decree, which is not maintainable in view of the provisions of Section 5(21) of the IBC, as the amount due from Consent Decree is not a debt as per Section 5(21) of the IB Code, 2016.



- g) It is submitted that in the present case the cotton bales supplied were of substandard quality and were not marketable goods. It is further submitted that various oral communications took place between the parties regarding the sub-standard quality of goods. Thus, there is a dispute between the parties in regard to the quality of the goods.
10. During the hearing and as recorded in the order dated 08.06.2023, the Applicant took us through salient features of the Application including that the amount of dues exceed the threshold prescribed under Section 4 and that Section 8 notice was issued and was served and a consent decree dated 05.03.2020 was made in favor of the Applicant according to which the amount is due and payable to the Applicant. Thereafter, the learned counsel for the Corporate Debtor stated that the decree is not an operational debt and the application is also beyond limitation. He also stated that goods were of inferior quality. On query by the Bench that whether there is any evidence regarding a dispute relating to quality raised before the issuance of Section 8 notice, the learned counsel fairly admitted that there is no documentary evidence regarding this.
11. As per the order dated 08.06.2023, the liberty was granted to both parties to file written statement not more than 3 pages along with the supporting judgments, if any, within three days.
12. The Applicant filed a written submission on 27.06.2023, and made same



avertment which were made in the application. The Corporate Debtor did not avail the opportunity to file the written statement.

13. Heard submissions and perused the documents on record. The main issue before this Authority is whether the present application filed under section 9 based on consent decree is an operational debt as per Section 5(21) of the IB Code? It is apparent from the record that the applicant supplied goods to the Corporate Debtor under 15 invoices attached with the application during the period from April, 2015 to July, 2015. As per Form V of the application, the total amount of debt is Rs. 5,77,85,361/- and is due and payable by the CD, which includes the principal amount of Rs.3,44,98,716/- and an interest amount of Rs. 2,32,86,645/- but the CD has failed to make payment. The said amount is also reflected in the books of accounts for A.Y. 2016-17 of the Corporate Debtor. Thereafter, the applicant was filed a Special Civil Suit before the Ld. Principal Civil Judge, Rajkot. The said Special Civil suit was settled and consent decree was passed on 05.03.2020. As per the Consent decree the CD was liable to pay an total amount of Rs. 5,77,85,361/- .

In this regard, we refer to the relevant paragraph of the judgement passed by the Hon'ble NCLAT in the case of *Ashok Agarwal vs Amitex Polymers Pvt Ltd* in ***COMPANY APPEAL (AT)(Insolvency) No.608 of 2020*** which is reproduced below:

43. Considering the fact that the Appellant/Operational Creditor in the Company petition in IB 185/ND/2019 before the National



*Company Law Tribunal, the Principal Bench had come out with a plea that the Respondent/Corporate Debtor owes a sum of Rs.8,85,000/- and for which Company Appeal (AT)(Insolvency)No.608 of 2020 a demand notice dated 11.3.2019 was issued to the Respondent/Corporate Debtor for which no reply was issued by the Respondent/Corporate Debtor to the Appellant/Operational Creditor and this Tribunal taking note of the prime fact that the Appellant/Operational Creditor is a 'Decree Holder' as per the 'Consent Decree' passed on 25.10.2018 in Civil Suit No.6912 of 2016 by the Learned Additional District Judge, Saket Court, New Delhi, **this Court comes to an irresistible and inescapable conclusion that a 'Decree Holder' is no way excluded from the purview of the ambit of the term 'Operational Creditor' as per Section 5(20) of The Insolvency and Bankruptcy Code 2016 and the contra view taken by the 'Adjudicating Authority' in the impugned order is clearly held by this Tribunal as an unsustainable one in the eye of Law.***

47. Section 3(10) of The Insolvency and Bankruptcy Code 2016 defines 'Creditor' and even in the said definition a 'Decree Holder' cannot be excluded to file an Application under the Code. Going by the definition 3(10) of 'Creditor', it includes 'Financial Creditor', 'Operational Creditor'.

In view of the above, the present application filed under section 9 of the Code based on the consent decree is maintainable and it is an operational debt as per the above-cited judgment. The present application is filed on 25.11.2022 and the consent decree was passed on 05.03.2020 therefore the application is not barred by limitation and the outstanding debt mentioned in the Form V of the application exceeds the threshold limit prescribed under section 4 of the Code. Accordingly, the present application is complete.

14. In light of the above discussions, it is evident that the debt is due and payable and the default has occurred. The present application is admitted, in terms of



Section 9 (5) (i) of IB Code, 2016.

15. The Applicant has proposed the name of Mr. Vinod Tarachand Agrawal as the Interim Resolution Professional (IRP). Therefore, we hereby appoint Mr. Vinod Tarachand Agrawal, with registration No. IBBI/IPA-001/IP-P00641/2017-2018/11090 subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form-2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed within a period of one week from the date of this order.
16. We direct the Applicant to deposit a sum of Rs. 2.00 lacs (Rupees Two Lacs Only) with the Interim Resolution Professional, namely Mr. Vinod Tarachand Agrawal to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Applicant. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Applicant.
17. As a consequence of the application being admitted in terms of Section 9(5) of IB Code, 2016 moratorium as envisaged under the provisions of Section 14(1)



shall follow in relation to the Corporate Debtor, prohibiting actions as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

18. A copy of the order shall be communicated to the Applicant, IRP and the Corporate Debtor. A copy of order along with complete copy of application be served to IRP by the Applicant within 7 days of order. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the Corporate Debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

-SD-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Swetambary-Steno
Rahul Singh-LRA

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)