

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 28/9/JPR/2021

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

IN THE MATTER OF:

MR. AJAY JAIN
(SOLE PROPRIETOR OF M/S RADIUM FIBRES)

...Applicant/Operational Creditor

Versus

BALDVA TEXTILES PRIVATE LIMITED

...Respondent/Corporate Debtor

MEMO OF PARTIES

Mr. Ajay Jain
(Sole Proprietor of M/s Radium Fibres)
GSTIN: 08AAOPJ6567H1Z6
1, Shree Ram Complex, Pur Road,
Gandhi Nagar, Bhilwara – 311001 (Rajasthan)

...Operational Creditor/ Applicant

Sd-

Sd-

VERSUS

Baldva Textiles Private Limited
CIN: U17124RJ1985PTC003437
4, Keshi Puri,
Bhilwara- 311001 (Rajasthan)

...Corporate Debtor/ Respondent

For the Operational Creditor : Apoorv Khator, Adv.
For the Corporate Debtor : Vishal Hirawat, Adv.

Order Pronounced On: - 11.11.2021

ORDER

Per: Shri Deep Chandra Joshi

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Mr. Ajay Jain, sole proprietor of M/s Radium Fibres ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against Baldva Textiles Private Limited ('Respondent' / 'Corporate Debtor').
2. The Applicant is engaged in trading in wholesale of cotton yarn, spandex yarn and poly texturized yarn, through his sole proprietorship firm with its office at 1, Shree Ram Complex, Pur Road, Gandhi Nagar, Bhilwara-

311001 (Rajasthan). The Application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

3. The Respondent is a private limited Company incorporated under provisions of the Companies Act, 1956 on 29.10.1996, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U17124RJ1985PTC003437 and the Registered Office of the Respondent is at 4, Keshi Puri, Bhilwara- 311001 (Rajasthan). The authorized share capital of the company is Rs. 3,00,00,000/- (Rupees Three Crores Only) and paid up share capital is Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs Only), as per Master Data of the Company. Copy of the master data of the Respondent is at Annexure 3.
4. The facts of the case, briefly, as stated in the Application are that the Applicant is in business with the Respondent for a long period of time, wherein the Respondent purchased goods from the Applicant on a regular basis. In turn, the Applicant raised and issued tax invoices to the Respondent against each and every supply. The Applicant was maintaining current account with the Respondent in respect of transactions done and the payment received from the Respondent has been considered on adhoc basis and adjusted in the ledger in respect of invoices raised on 'First raised and first received basis'.
5. It is also stated by the Applicant that over time, the Respondent started delaying the payments to the Applicant as per agreed terms. The Applicant

requested numerous times, however the Respondent only gave false assurances. Applicant stated that it received the last payment from the Respondent on 17.09.2020 of Rs. 4,70,019/-. Thereafter, no amount against any other invoices has been received from the Respondent in respect of invoices amounting to Rs. 78,43,224/-.

6. The Applicant further stated that as per terms of the invoices, interest on delayed payment is chargeable at the rate of 18% p.a. after 10 days and 21% p.a. after delay of 45 days in payment. However, later it was agreed by both the parties verbally, that the terms of charging interest would be relaxed by extending the payment terms to 60 days and thereafter 21% p.a. interest would be charged from the Respondent. As per these terms, Rs. 1,10,52,163/- is due and payable by the Respondent. On 31.12.2020, the Applicant sent a letter dated 31.12.2020 to the Respondent requesting them to clear the outstanding amount. The Respondent vide its reply dated 08.01.2021 acknowledged the default and requested to grant more time to clear the dues.

7. The Applicant then issued and served a Demand Notice dated 07.04.2021 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule 5 of the Rules at its registered office demanding Rs. 1,10,52,163/- in full, within 10 days of receipt of notice (Annexure- 11). The demand notice was accompanied by computation of interest, copy of invoices and copy of ledger account maintained by the Applicant. Copy of

postal receipt and tracking report of notice sent to the Respondent are Annexure 12 of the Application.

8. The Respondent vide reply dated 12.04.2021 acknowledged its liability towards the claim amount stating the reasons for delay in making the payment were beyond the control of the Respondent. The Applicant has also filed Statement of Bank Account maintained with Canara Bank from 01.04.2019 to 31.03.2021 as Annexure 14 of the Application. It is stated that there is no repayment of unpaid operation debt by the Respondent. Thus, the Applicant filed the present Application under Section 9 of the Code.
9. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 1,10,52,163/- (Rupees One Crore Ten Lakhs Fifty Two Thousand One Hundred Sixty Three Only), as an outstanding amount, as reflected in Part IV of the Form - 5 filed.

PART IV

Particulars of Operational Debt	
Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Total Debt due is Rs. 1,10,52,163/- (Rupees One Crore Ten Lakhs Fifty Two Thousand One Hundred Sixty Three Only)

Amount claimed to be in default and the date on which the default occurred	Total Debt due is Rs. 1,10,52,163/- (Rupees One Crore Ten Lakhs Fifty Two Thousand One Hundred Sixty Three Only) Date of default: 08.08.2019 Details as per Annexure -1.
---	--

10. Notice of this Application was received by the Respondent and it has filed a reply vide Diary No. 1642/2021 dated 19.08.2021. It has been stated in the reply that the said amount is payable by the Respondent but due to bad financial conditions, it is unable to pay the same.

11. The Applicant had filed a rejoinder reiterating its pleadings as mentioned in the Application and praying that the present Application may be allowed.

12. This Adjudicating Authority perused all the relevant papers and found them to be in order. The Registered Office of the Respondent is situated in Bhilwara and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. Also, the matter is within the purview of Law of Limitation as the date of default is stated to be 08.08.2019 and the Application was filed on 03.06.2021.

13. The first issue for consideration is whether the demand notice in Form No.3 dated 07.04.2021 was properly served. The demand notice dated 07.04.2021 was sent through registered post. The postal receipt and

tracking report are found to be attached at Page 85-86 (Annexure-12) of the Application.

14. The next issue for consideration is whether the operational debt was disputed by the Respondent. The Respondent Corporate Debtor has filed reply and admitted the incidence of debt towards the Applicant. Thus, there is no dispute as to the liability of the Respondent Corporate Debtor towards the Applicant Operational Creditor.

15. We have gone through the contents of the Application filed in Form No.5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of 1,10,52,163/- (Rupees One Crore Ten Lakhs Fifty Two Thousand One Hundred Sixty Three Only). It is observed that the Operational Creditor has issued various invoices (Annexure 6) for services provided to the Respondent Corporate Debtor. Applicant Operational Creditor has issued letter dated 31.12.2020 to the Respondent Corporate Debtor for clearing overdue amount of Rs. 1,06,46,034/- (Annexure- 9). The Respondent Corporate Debtor vide reply dated 08.01.2021 acknowledged the amount due towards unpaid operational debt (Annexure- 10). Applicant Operational Creditor has also issued demand notice in Form-3 dated 07.04.2021 (Annexure- 11) which was duly received by the Respondent Corporate Debtor. The Applicant has filed an affidavit under Section 9(3)(b) of the Code to the effect that there is no notice given by the Respondent relating to dispute of the unpaid

operational debt (page 24-25). This Adjudicating Authority has held above that the demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

16. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to initiate CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

17. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor has proposed the name of Mr. Prashant Agrawal to be appointed as IRP. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP, which is annexed as Annexure- 16.

18. In view of this Mr. Prashant Agrawal, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 (email: ippagrawal@gmail.com; mobile no.: +91-9828355000), is hereby appointed as the IRP. The IRP is directed to take

all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.

19. Consequences of initiation of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Prashant Agrawal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his

expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

20. Accordingly, CP No. (IB)-28/9/JPR/2021 is admitted.

Sd-

(Raghu Nayyar)
Technical Member

Sd-

(Deep Chandra Joshi)
Judicial Member