SI No. 60

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.(IB)No.204/BB/2020
U/s. 7 of the IBC, 2016
R/w Rules 4 of I&B (AAA) Rules, 2016

Between

M/s. Algae Apparels
Plot No. 32 & 39, Apparel
Export Part, Autonagar,
Visakhapatnam – 530 012 ... FinancialCreditor

And

M/s. SWE Fashions Private Limited
Plot No. W-12, & W-13 (P),
KIADB Apparel Park, Doddaballapur
Industrial Area,
Bangalore Rural,
Bangalore – 561 203 ...Corporate Debtor

Date of Order: 18th January, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Petitioner :Mr. K. Dushyantha Kumar, PCS

For the Respondent : Mr. Chethan Kumar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.204/BB/2020 is filed by M/s.Algae Apparels ('Financial Creditor'), U/s. 7of the IBC, 2016,R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. SWE Fashions Private Limited, on the ground that it has committed default for total amount of Rs.2,48,95,572.83/-(Rupees Two Crore Forty Eight Thousand Ninety Five Thousand Five Hundred and Seventy Two and Eighty Three Paise only).

1. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

   (1) M/s. Algae Apparels ('Financial Creditor') having its registered office situated at Plot No. 32 & 39, Apparel Export Part, Autonagar, Visakhapatnam – 530012 and the Company's date of registration is 2015.

   (2) M/s. SWE Fashions Private Limited (Respondent/ Corporate Debtor) was incorporated on 04th October, 2013, having CIN: U17291KA2013PTC071285 and having registered office situated at Plot No. W-12 & W-13 (P) KIABD Apparel Park, Doddaballapur Industrial Area, Bangalore Rural, Bangalore - 561203. Its Authorised Share Capital is Rs.7,50,00,000/- divided into 75,00,000 Equity Shares of Rs.10/- each andIssued, Subscribed and Paid Up Share Capital is Rs.7,11,07,140/-.

   (3) It is stated that Financial Creditor had given loan to the tune of Rs.2,50,00,000/- and a Loan Agreement was executed on 30th December, 2018 between the Applicant and the Corporate Debtor. The Corporate Debtor had expressed inability to pay the instalments as to the loan due to its financial difficulties. The Default of the Corporate Debtor amounts to

Rs.2,48,95,573.83 which includes principal and interest @ 10%

3. Heard Mr. K. Dushyantha Kumar, learned PCS for the Petitioner and Mr. Chethan Kumar learned Counsel for the Respondent, through Video Conference. We have carefully perused the pleadings of the Parties and extant provisions of the Code and the rules made thereunder and the Law on the issue.

4. Shri K. Dushyantha Kumar, learned PCS for the Petitioner, while reiterating the various averments made in the Petition , as mentioned supra, has further submitted that the debt and default in question is in dispute and the instant application is filed in accordance with law. Therefore, he has urged the Tribunal to initiate CIRP.

5. Shri Chethan Kumar, on the other hand, has submitted that they have filed Reply dated 15.01.2020 by interalia contending that Debt in question is not in dispute. The Corporate Debtor is indeed due to the Applicant and the same is outstanding in the books of the Corporate Debtor as at 31st March, 2019 (Audited Financial Statements) and as on 31st March, 2020(which are yet to be audited). The Corporate Debtor had passed a Board Resolution dated 27th December, 2018 for the purpose of obtaining loan from the Applicant and further a Loan Agreement was also entered therof.the Corporate Debtor does not deny the existence of such agreement and also does not deny the advancement of loan amount to the Corporate Debtor by the Applicant. The Corporate Debtor could not repay the loan amount as agreed in the Loan Agreement due to the financial constraints so faced by the Corporate Debtor.In the present scenario, it is not in a position to repay the loan amount to the Applicant and also the Corporate Debtor has many statutory and

non-statutory liabilities in existence, which the Corporate Debtor is not in a position to extinguish all the liabilities. However, they are willing to settle the claim of the Petitioner and thus urged the Tribunal to grant some more time for the same.

6. Since the Respondent admits the debt and default in question and expressed its willingness to settle the claim, it would be just and proper to grant time to the Respondent by disposing of the Petition, instead of keeping the case pending, which would not serve any purpose.

7. In the result, **C.P (IB) No.204/BB/2020** is hereby disposed of by directing the Parties to settle the issue amicably between themselves, within a period of six weeks from the date of receipt of copy of this Order, failing which, the Petitioner is entitled to approach this Adjudicating Authority by filing appropriate Petition in accordance with law, for the same cause of action. The Registry is directed to forward a copy of this order to both Parties. No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Brunda

National Company Law Tribunal
Bengaluru Bench

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for Deputy/Asst. Registrar 28/10
National Company Law Tribunal
Bengaluru Bench
Rajeshwari M