

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.03.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP (IB) No.73/9/AMR/2020		9 of IBC	Khetulal Pugalia and Sons (HUF) Vs Sri Lakshmi Srinivasa Jute Mills Pvt Ltd

Counsel for Petitioner(s):

<small>Ries</small>			
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

<small>Ries</small>			
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP (IB) No.73/9/AMR/2020 is admitted, vide separate orders.


**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD**

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CP (IB) No. 73/9/AMR/2020

**Petition 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
AND**

**In the matter of
M/s. SRI LAKSHMI SRINIVASA JUTE MILLS PRIVATE
LIMITED**

Between

M/s. Khetulal Pugalia and Sons (HUF),
#11, Clive Row, Room No.103,
Kolkata -700001.

... Operational Creditor

AND

M/s. Sri Lakshmi Srinivasa Jute Mills Private Limited,
Reg.Office at Bobbili Road,
Rajam, Srikakulam District,
Andhra Pradesh – 532 127.

... Corporate Debtor

Date of pronouncement of orders: 16.03.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. M.S.Srinivasa Iyengar, Advocate.

For Corporate Debtor : Mr.G.Sai Prasen, Advocate

Handwritten signature in green ink

ORDER

1. This Application is filed by M/s. Khetulal Pugalia and Sons (HUF) (“hereinafter referred to as Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process in respect of M/s. Sri Lakshmi Srinivasa Jute Mills Private Limited (“hereinafter referred to as Corporate Debtor”) alleging that the Corporate Debtor committed default in discharging debt of Rs.2,49,48,879.65/- (Principal Amount Rs.2,45,80,177/-+ Interest Amount Rs.3,68,702.65/-) towards invoices raised against the goods supplied. Hence petition under Section 9 of Insolvency and Bankruptcy Code, 2016 (referred to as “Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Insolvency Resolution Professional (IRP) as prescribed under the Code and Rules thereon.
2. Briefly the facts as stated in the Petition are as follows:
 - a) The Operational Creditor is engaged in the business of sale and distribution of jute. Pursuant to the representations and assurances of the Corporate Debtor, the Operational Creditor supplied and sold raw jute amounting to a total of Rs.1,91,61,177/- which was received by the Corporate Debtor



without any demur and the Operational Creditor raised invoices from time to time. The Operational Creditor filed a Company Petition for winding up, since the Corporate Debtor failed to pay the debt. During the pendency of the said proceedings, Corporate Debtor prevailed upon the Operational Creditor to enter into an Memorandum of Understanding (MoU). As such an MoU dated 31.08.2018 was entered into wherein the Corporate Debtor agreed to pay a sum of Rs.61,18,400/- and in default agreed to pay the entire amount. The Company Petition was withdrawn as per the terms of MoU. However, the Corporate Debtor failed to honour the terms of the MoU.

- b) The Operational Creditor was therefore constrained to file a Petition under Section 9 of IBC before the NCLT, Hyderabad and the said Petition was admitted. But once again the Corporate Debtor prevailed upon the Operational Creditor and entered into an MoU dated 21.11.2019 agreeing to repay Rs.60 Lakhs on or before 31.01.2020 with the first instalment to be paid on or before 31.12.2019 and in the event of any default, to pay the entire due amount of Rs.2,45,80,177/-. The Corporate Debtor again defaulted in adhering to the terms of the MoU and has not paid any amount. Hence this Petition, seeking to initiate CIRP.

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- c) The Operational Creditor issued demand notice under Section 8 of the Code in Form 3 on 25.01.2020 to the Corporate Debtor. But no payment was made towards the demanded debt.
3. The Corporate Debtor filed counter, denying the averments in the petition and contending that a disputed transaction arising out of an agreement is outside the confines of an Operational Debt and is unamenable to the jurisdiction of this Tribunal. As per the MoU only Rs.60 Lakhs is to be paid by the Corporate Debtor, but now the Operational Creditor is claiming Rs.2,45,80,177/- which is not permissible. The Corporate Debtor is a jute manufacturing enterprise engaged in the business of manufacturing and trading of jute yarn and jute twine. The Operational Creditor supplied jute until 2016. The Corporate Debtor was due an amount of Rs.2,45,80,177.03 Ps., as of the year 2016. The Corporate Debtor admits the filing of the Company Petition and withdrawal on the basis of the MoU agreeing to pay Rs.61,18,400/- and states that approximately Rs.28,12,520/- was paid by way of cheques and the Corporate Debtor was unable to complete the payment as agreed. He also admits that later a Company Petition under Section 9 of IBC was filed and an MoU was entered agreeing to pay Rs.60,00,000/- in two instalments. It is contended that alleging noncompliance of the said agreement the present petition is filed.

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4. A rejoinder is filed contending that the present Company Petition is not being filed due to noncompliance of the MoU, but as an operational debt still exists and hence the Operational Creditor's right to file the present Petition is derived from the unpaid debt towards the goods supplied to the Corporate Debtor.
5. Heard both the counsel. The admitted facts are that earlier a Company Petition was filed claiming the same debt and seeking to windup the Company of the Corporate Debtor and the same was withdrawn on the basis of MoU entered into agreeing to pay a specified amount. The Corporate Debtor's contention is that part of the amount is paid under the said MoU. In support of the same, Bank Account Statements and payment receipts are stated to have been filed. But the Counsel does not choose to explain as to how the payments are made. In fact the payment receipts are also not explained and are not found in the record.

The fact that the 2nd MoU was entered during the pendency of the Petition under section 9 of IBC filed before NCLT, Hyderabad is also not disputed. The failure to pay the said instalments specified under the said MoU is also not denied.

The contention that this Petition is not maintainable as it is based on the failure of the settlement agreement can be dismissed on the premise that the operational debt is still due to be paid by the Corporate Debtor. Though, in the counter a citation is

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mentioned, the details of the said citation are not given. Moreover, I do not find the said judgments passed by the NCLT, Allahabad Bench as persuasive, since the operational debt i.e., admittedly due to the Operational Creditor still exists and stands undischarged.

Hence I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Operational Creditor filed memo suggesting Mr. Maligi Madhusudhana Reddy as Insolvency Resolution Professional (IRP) and sought the Tribunal to appoint an IRP.

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. Mr. Maligi Madhusudhana Reddy, (Reg No: IBBI/IPA-001/IP-P00843/2017-2018/11427), M M R Lion Corp, HSR Eden, Beside Cream Stone, Road No. 2, Banjara Hills, Hyderabad, Telangana – 500034, Mobile No: 9848271555, E-mail: mmreddyfca@gmail.com, mmreddyandco@gmail.com, is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He is directed to file his written consent in Form No. 2 forthwith.



- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.


JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu