BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) NO. 2337 OF 2019

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(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

M/s S.G. Automation
Neminath Indl. Estate No. 06, Gala No. 01,
Navghar, Vasai (E), Dist. Palghar, 401210
.... Operational Creditor

versus

Harish Textile Engineers Pvt. Ltd.
19, Parsi Panchayat Road, Andheri (East),
Mumbai 400069
.... Corporate Debtor

Order delivered on: 03.02.2021

Coram: Hon'ble H.V. Subba Rao, Member (Judicial)
Hon'ble Shyam Babu Gautam, Member (Technical)

Appearance:
For the Petitioner: Adv. Dinesh Rane

Per: Shyam Babu Gautam, Member

ORDER

1. This Company Petition is filed by M/s S.G. Automation, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Harish Textile Engineers Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor in view of the invoices raised by them upon

the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is a Partnership Firm formed under the provisions of the Partnership Act and registered under the Ministry of Micro, Small and Medium Enterprise whereas the Corporate Debtor is a company incorporated on 31/03/2010 and bearing CIN U29119MH2010PLC201521 and having Paid Up Share Capital of Rs.3,33,60,000/-.

3. The counsel appearing on behalf of the Operational Creditor submitted that the Operational Creditor had, from time to time, supplied certain goods i.e. industrial drives to the Corporate Debtor and invoices were raised for the same. The total value of the invoices was Rs.16,10,690/- out of which an amount of Rs.6,25,000/- was received and amount of Rs.9,85,690/- is remained to be paid by the Corporate Debtor to the Operational Creditor. The details of the invoices are reproduced in a tabular format as follows:

Sr. No.	**Invoice Number**	**Date of Invoice**	**Amount (in Rs.)**
1.	113	12.03.2015	57,261/-
2.	084	11.01.2016	3,38,081/-
3.	101	27.02.2016	2,87,312/-
4.	102	27.02.2016	1,02,882/-
5.	004	13.04.2016	6,43,946/-
6.	008	24.04.2017	67,778/-
7.	025	21.06.2017	1,13,430/-
Total			16,10,690/-
Minus the part-payment received on 29.08.2016			6,25,000/-
Balance amount due and payable			**9,85,690/-**

4. The counsel for the Operational Creditor further mentioned that as per the terms of payments, the Company was required to make the payments within a period of 60 days from the date of Invoice. The

goods were duly delivered to the Corporate Debtor for which Form C envisaging the delivery of goods is made. The counsel stated that as there is no communication received on receipt of goods, therefore, it is deemed that the quality is accepted.

5. The counsel for the Operational Creditor stated that as there was no payment received from the Corporate Debtor, the Operational Creditor had addressed a letter dated 17.09.2018 to the Corporate Debtor. Even then the Corporate Debtor failed to make the outstanding payment and therefore, the Operational Creditor through their Advocate sent a Demand Notice under Section 8 of the Code dated 12.03.2019 inter alia demanding payment in respect of unpaid operational debt amounting to Rs.9,85,690/-.

6. The Operational Creditor has annexed the following documents with the petition:
    i. Copy of Invoices dated 12.03.2015, 11.01.2016, 27.02.2016, 27.02.2016, 13.04.2016, 24.04.2017, 21.06.2017 (ANNEXURE A) (Colly);
    ii. Copies of Form C envisaging delivery of the goods (ANNEXURE B);
    iii. Copies of Ledger accounts (ANNEXURE C);
    iv. Copy of the letter dated 27.09.2018 issued by the Operational Creditor to the Corporate Debtor (ANNEXURE D);
    v. Copy of Demand Notice dated 12.03.2019 (ANNEXURE E);
    vi. Copy of the Postal Acknowledgement received by the Operational Creditor's Advocate (ANNEXURE F);
    vii. Authority Letter (ANNEXURE G).

7. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file reply but also failed to make representation before this Bench. Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 04.12.2019. Later the constitution of the Bench was changed, and the Corporate Debtor again was given an opportunity to be present before this Bench and make representation if any on their behalf and the Corporate Debtor did not choose to appear. Heard the counsel

appearing for the Operational Creditor and perused the documents submitted by him. The counsel appearing for the Operational Creditor successfully demonstrated and proved the existence of debt and default. The debt is within limitation. Thus, this Company Petition satisfies all the requirements for admission. Since the Corporate Debtor remained ex-parte even without filing any reply, the claim of the applicant remained unchallenged. This Tribunal upon considering the arguments of the petitioner and the documents, pass the following:

ORDER

(a) The above Company Petition No. (IB) -2337(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Harish Textile Engineers Pvt. Ltd.

(b) Since the applicant has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Devendra Singh** (dev_singh2006@yahoo.com), Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00001/2016-2017/10001having office at A T S Greens Paradiso, Flat No: 02054, Tower-2, Plot No: G H -03, Sector - C H I -04, Greater Noida, Uttar Pradesh, 201308, as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) The Operational Creditor shall deposit an amount of Rs.1 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(d) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(g) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

(j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM **Member (Technical)**	**H V SUBBA RAO** **Member (Judicial)**