

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP(IB) No. 24/Chd/Hry/2020
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

**Sparta Security and Allied Solutions Pvt. Ltd.
(Through Jatinder Rishi Tandon,
Authorised Representative of
Sparta Security and Allied Solutions Pvt Ltd.)
B-6, Sector 44 Noida Gautam
Budda Nagar Uttar Pradesh-201301**

...Petitioner-Operational Creditor

Vs.

**Langley Apparel India Private Limited
B-31, Green Field Colony
Faridabad Haryana-121003
CIN:U18209HR2017PTC068856**

...Respondent-Corporate Debtor

Judgement delivered on: 18.07.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Ms. Pooja Kumari, Advocate
: Mr. Deepam Rajdev, Advocate

For the Respondent-
Corporate Debtor : Proceeded *ex parte* vide order dated 13.02.2023

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Sparta Security and Allied Solutions Pvt. Ltd.**, through Jatinder Rishi Tandon, Authorised Representative (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **Langley Apparel India Private Limited.**, (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, Langley Apparel India Private Limited., is a Company incorporated on 01.05.2017 under the provisions of Companies Act, 1956 with CIN No. U18209HR2017PTC068856 with its registered office at B-31, Green Field Colony, Faridabad Haryana-121003. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main at Page No.5-6.

3. The facts of the case, briefly, as stated in the petition are that on 01.10.2017, the Corporate Debtor entered into service agreement with the Operational Creditor effective from 01.09.2017. In the service Agreement, it was agreed that the Operational Creditor would provide human resource management and consultancy services to the Corporate Debtor in accordance with various terms and conditions as stipulated in the Service Agreement and would accordingly raise and issue the invoices to the Corporate Debtor. Furthermore, Annexure E ("Schedule of Fee") of the Service Agreement clearly stated that after the invoices are raised, the Corporate Debtor would provide payment to the Operational Creditor within

30 days from the date of invoice through Electronic Bank Transfer/Cheque. On the same day, an Addendum to the Service Agreement ("Addendum") was executed wherein it was agreed that in case of a delay beyond 30 days from the date of an invoice, the Corporate Debtor would pay an interest amount calculated at 2% per month i.e. 24% per annum on the invoices issued by the Operational Creditor. In the month of October 2017, the Operational Creditor provided its services to the Corporate Debtor in terms of the Service Agreement and accordingly raised Invoice No. Sparta/17-18/G-81 for an amount of Rs. 24,41,846/- ("Invoice"). The Corporate Debtor failed to clear the said payment within 30 days of the receipt of the invoice and kept avoiding making the payment for reasons best known to them. Subsequently, between January 2018 to March 2018, the Corporate Debtor made several partial payments totalling to Rs. 2,60,000/- towards the Invoice and the balance amount of Rs. 21,81,846/- along with the accrued interest remains unpaid till date. The Corporate Debtor has failed to clear the debt towards the outstanding Invoice and now the Corporate Debtor owes a total of Rs. 31,00,273/- ("Operational Debt") which includes an interest of Rs. 9,18,427/- calculated at 24% per annum from the date of default till date the of the Demand Notice.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 31,00,273/- (Rupees Thirty One Lakhs Two Hundred and Seventy Three Only) which includes an interest of Rs.9,18,427/- (Rupees Nine Lakhs Eighteen Thousand Four Hundred and Twenty Seven Only). The default occurred on 12.11.2017 i.e. considering the payment time of maximum 30 days as per the invoice. Copy of Ledger

Account (Annexure-A2), Service Agreements (Annexure- A5 & A6), and Bank Statement (Annexure-A7) are attached with the main petition.

5. A demand notice dated 13.10.2017 is stated to be issued by the operational creditor. The corporate debtor neither responded to the same raising any dispute nor bothered to credit the legitimate dues of the operational creditor within the period of 10 (ten) days from the date of receipt of the demand notice as specified under Section 8(2) of the Insolvency and Bankruptcy Code, 2016.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of service were filed vide Diary No. 00037/4 dated 25.05.2022. But, neither anyone appeared on behalf of the corporate debtor nor any reply was filed. It is worthwhile to note that vide order dated 20.12.2022 compliance affidavit was filed by learned counsel for the petitioner with a tracking report with copy of the email dated 12.10,2022 informing the next date of hearing to the respondent/corporate debtor Since none appeared on behalf of the respondent/corporate debtor despite repeated notices, therefore, the respondent/corporate debtor was proceeded against ex parte vide order dated 13.02.2022. The short written submissions were filed by the petitioner vide Diary No. 00037/6 dated 11.11.2022.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 dated 02.08.2019 was properly served. sent by the corporate debtor through the speed post, tracking report shows that the demand notice was

duly served (Annexure-A1). No response or any notice of dispute was received from the Corporate Debtor. Therefore, demand notice was duly served upon the corporate debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit under Section 9(3)(b) by the operational creditor that there is no dispute communicated by the corporate debtor for the unpaid debt and no payment had been received during this period. No reply was received to the demand notice within the stipulated 10 days time from receipt of the demand notice. There is no pre-existing dispute between the parties at all with regard to the unpaid operational debt. Therefore, the operational debt was not disputed by the corporate debtor, and the total debt of Rs.31,00,273/-/- is above the threshold limit of rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) is still due.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 02.08.2019 in Form 3 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default on 12.11.2017 i.e. considering the payment time of maximum 30 days as per the invoice. This application was filed on 09.12.2019 vide Diary No. 6956. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 31,00,273/- (Rupees Thirty One Lakhs Two Hundred and Seventy Three Only) which includes an

interest of Rs.9,18,427/- (Rupees Nine Lakhs Eighteen Thousand Four Hundred and Twenty Seven Only) is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of Ledger Account (Annexure-A2), Service Agreements (Annexure- A5 & A6), and Bank Statement (Annexure-A7) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. The entire evidence and assertion of petitioner remained unrebutted as respondent/corporate debtor did not come present and proceeded exparte. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Langley Apparel India Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below :-

13. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Manohar Suman and there is nothing adverse against him. In view of the above, we appoint Mr. Manohar

Suman, Registration No. IBBI/IPA-003/00393/2021-2022/14003, E-mail: manoharsuman10@gmail.com, Mobile No. 8847226162 from the list provided by Insolvency and Bankruptcy Board of India, panel valid from 01.07.2023 to 31.12.2023 (AFA Certification is valid upto 13-02-2024), the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Manohar Suman shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the

Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of

the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report

filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

14. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) 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 Operational Assets and Enforcement of Security Interest Act, 2002;
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

15. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till 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.

17. The petitioner is directed to deposit an amount of Rs.50,000/- (Rupees Fifty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. This petition is accordingly admitted.

sd/-

(Subrata Kumar Dash)
Member (Technical)

July 18 , 2023

SD

sd/-

(Harnam Singh Thakur)
Member (Judicial)