

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 23.03.2021

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)204/2020	For hearing on IA 92/2021	Sec 7 of I&B code 2016	M/s Algae apparels represented by Dhana-lakshmi Reddy	Kondishetty Dushyanth a Kumar, PCS	Swe Fashions Pvt Ltd	Chethan Kumar

ADVOCATE FOR PETITIONER/s:

K. DUSHYANTH KUMAR  
9341223932  
PCS

Dushyanth

ADVOCATE FOR RESPONDENT/s:

Chethan [K. CHETHAN KUMAR]  
Adv. for Respondent  
9902925762

**ORDER**

Heard Shri K. Dushyantha Kumar, PCS for the Petitioner, and Shri K. Chethan Kumar, learned Counsel for the Respondent.

I.A.No.92/2021 is disposed of by separate order.

C.P(IB)No.204/BB/2020 is admitted by separate order. Post the case for report of the IRP on **26.04.2021**.



**MEMBER (T)**



**MEMBER (J)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

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

**Between:**

M/s. Algae Apparels  
*Rep. by its Proprietrix*  
Mrs. Dhanalakshmi Reddy  
Plot No.32 & 39,  
Apparel Export Part, Autonagar,  
Visakhapatnam – 530 012 - Petitioner/Financial Creditor

**AND**

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

**Date of Order: 23<sup>rd</sup> March, 2021**

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

**Parties/Counsels Present:**

For the Petitioner : Shri K. Dushyantha Kumar, PCS  
For the Respondent : Shri K. Chethan Kumar

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.204/BB/2020 is filed by M/s. Algae Apparels (Petitioner/Financial Creditor), U/s.7 of IBC, 2016, R/w. Rule 4 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency

  
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Resolution Process (CIRP) in respect of M/s. SWE Fashions Private Limited (Respondent/Corporate Debtor), on the ground, that it has committed default for total amount of Rs.2,48,95,572.83/- (Rupees Two Crores Forty Eight Lakhs Ninety Five Thousand Five Hundred and Seventy two and Eighty Three paise only) which includes principal amount and interest @ 10% p.a.

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

- (1) M/s. Algae Apparels (hereinafter referred as Petitioner/Financial Creditor), having registered office situated at Plot No.32 & 39, Apparel Export Part, Autonagar, Visakhapatnam – 530 012. It is involved in the business of manufacturer of white shirts, apparel fabric & fabric in Visakhapatnam, Andhra Pradesh.
- (2) M/s. SWE Fashions Private Limited (hereinafter referred as Respondent/Corporate Debtor), is a Private Limited Company was incorporated on 04.10.2013, under the provisions of the Companies Act, 1956 bearing CIN: U1729KA2013PTC071285. Its Authorized Share Capital is Rs.7,50,00,000/- and Issued, Subscribed and Paid-up Share Capital is Rs.7,11,07,140/-. It is involved in Manufacture of other textiles.
- (3) The Financial Creditor had given loan to the tune of Rs.2,50,00,000/- and a Loan Agreement was executed on 30.12.2018 between the parties. The Corporate Debtor had expressed inability to pay the installments as to the loan due to its financial difficulties. The default of the Corporate Debtor amounts to Rs.2,48,95,572.83/- to the Applicant which includes principal amount and interest @10%. Hence, the instant Petition is filed for seeking to initiate CIRP in respect of the Corporate Debtor.



3. The Respondent has filed Reply dated 15.01.2021, by inter alia contending as follows:

- (1) The Corporate Debtor is not able to successfully carry out business as enumerated in its Memorandum of Association and is also not in a position to honour its financial commitments and the revenue generation is not at an expected rate. Further, the assets of the Corporate Debtor are not sufficient to pay off its liabilities. The assets of the Company as at 31.03.2019 amounting to Rs.23,18,85,269/- are not sufficient to meet the existing liabilities 31.03.2019 amounting to Rs.29,50,35,092/-. As such there is a deficit of Rs.6,31,49,823/-.
- (2) The following is the major Financial Creditor of the Respondent, to whom the Respondent owes an amount of approximately Rs.15,00,00,000/-.

Sl. No	SRN	Charge ID	Charge Holder name	Date of Creation	Date of Modification	Date of satisfaction	Amount	Address
1	G3529 6409	1051184 6	State Bank of India	22.7.2014	12.1.2017	-	151200000	SME Branch, ITI Ancillary Industrial Estate, Whitefield Road, Mahadevapura, Bengaluru

(3) The following are the details of the liabilities of the Company in elaborated manner:

Sl. No.	Nature of Liability/Debt	Amount
1	Secured Loans:	
	• SBI Bank Term Loan 1	6,08,58,376
	• SBI Bank Term Loan 2	1,06,93,140
	• SBI Corporate Loan	1,00,00,000
2	Unsecured Loans	
	• Mrs. Dhanalakshmi Loan A/c.	10,80,000
	• Mr. Manoj.N	6,00,000
	• Mr. Princeton S Loan A/c.	6,37,93,922
	• Priamvada Princeton	34,57,234

	• Algae Apparels	2,46,74,507
3	Deferred Tax Liability	3,35,694
4	Short Term Borrowings	
	• Cash Credit Loan SBI A/c.	5,86,69,334
5	Trade payables (Sundry Creditors)	3,20,70,422
6	Other Current Liabilities	
	• Statutory Liabilities	85,20,106
	• Salaries Payable	27,77,168
	• Expenses Payable	16,92,032
	• Audit Fee	8,74,062
	• Advance From Customers	1,52,74,789

- (4) The Corporate Debtor is not in dispute with the claim of Rs.2,48,95,572.83/-. The Corporate Debtor is indeed due to the Applicant and the same is outstanding in the books of the Corporate Debtor as at 31.03.2019 (Audited Financial Statements) and as on 31.03.2020 (which are yet to be audited). The Corporate Debtor has passed a Board Resolution dated 27.12.2018 for the purpose of obtaining loan from the Petitioner and further a Loan Agreement was also entered thereof. 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. Hence, there is no objection to initiate CIRP as prayed for.
4. Heard Shri K. Dushyantha Kumar, PCS for the Petitioner, and Shri K. Chethan Kumar, learned Counsel for the Respondent. We have carefully perused the pleadings of the Parties and extant provisions of the Code and the rules made thereunder and Law on the subject.
5. Shri K. Dushyantha Kumar, learned PCS for the Petitioner, while pointing out various averments made in the Company Petition and IA No 92 of 2021, has further submitted that the debt and default in



question are admittedly not in dispute and the Respondent failed to adhere to the orders passed by the Adjudicating Authority. And the instant Petition is filed in accordance with law, and also suggested a qualified Insolvency Professional namely Shri Venkata Subbarao Kalva, with Reg. No.IBBI/IPA-002/IP-N00179/2017-18/10655, who has filed his written Consent in Form-2 on 06.10.2020, by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore, he has urged the Adjudicating Authority to restore the case and admit the case as prayed for.

6. Shri K. Chethan Kumar, learned Counsel for the Respondent, while reiterating the averments made in the Reply, as briefly stated supra, has further submitted that the debt in question is not in dispute. The Corporate Debtor is not in a position to repay the loan amount to the Petitioner 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. Therefore, he has no objection to initiate CIRP against them.
7. As the Respondent was willing to settle the claim of the Petitioner, the Company Petition was earlier disposed of by an Order dated 18.01.2021, by directing the Parties to settle the issue amicably between themselves failing liberty was granted to the Petitioner to approach the Adjudicating Authority with appropriate Petition. Accordingly, the Respondent vide its letter dated 25.01.2021 by inter alia stating that it could not pay its outstanding liabilities due to cash crunch. However, the Respondent failed to pay its admitted debt despite its best efforts and thus filed IA No. 92 of 2021 by seeking to initiate CIRP as prayed for.



8. As stated supra, the Debt and Default in question are not disputed by the Respondent. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and also suggested a qualified Insolvency Professional namely Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, who has filed his written Consent in Form-2 on 06.10.2020, by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency; he is currently serving as Liquidator in One (01) Liquidation Proceedings. Therefore, he is provisionally eligible to be appointed as IRP. Hence, the Instant Company Petition is fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.
9. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s.9(5)(i) and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.204/BB/2020** by initiating CIRP in respect **M/s. SWE Fashions Private Limited**, the Respondent/Corporate Debtor, with the following consequential directions:
- (1) Shri Venkata Subbarao Kalva, bearing Reg.No.IBBI/IPA-002/IP-N00179/2017-18/10655, e-mail [subbaraocs@gmail.com](mailto:subbaraocs@gmail.com), Bengaluru – 560 011, who is qualified Insolvency Professional, is hereby appointed as IRP, in respect of the Corporate Debtor namely M/s. SWE Fashions Private Limited, to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
  - (2) The following moratorium is declared prohibiting all of the following, namely:
    - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Securitisation and Reconstruction of Financial 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;
  - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
  - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- (4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation



to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

- (5) The Registry is directed to forward a copy of this order immediately to both the Parties and IRP.
- (6) Post the case for submission of report of the IRP on **26.04.2021.**



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A.No.92 of 2021 in  
C.P.(IB)No.204/BB/2020  
R/w. Rule 11 of NCLT Rules, 2016

**Between:**

Mrs. Dhanalakshmi Reddy  
R/a. D2 Block 1,  
Samhita Castle Apartments,  
Rahathbagh, C.V.Raman Nagar,  
Bengaluru – 560 093 - Applicant/Petitioner

**AND**

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

**Date of Order: 23<sup>rd</sup> March, 2021**

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

**Parties/Counsel Present:**

For the Applicant : Shri K. Dushyantha Kumar, PCS  
For the Respondent : Shri K. Chethan Kumar

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (Judicial)

1. I.A.No.92 of 2021 in C.P.(IB)No.204/BB/2020 is filed by Mrs. Dhanalakshmi Reddy ('Applicant'), R/w. Rule 11 of NCLT Rules, 2016, by *inter-alia* seeking to allow this Application filed by the Applicant to initiate CIRP in respect of the Respondent/Corporate Debtor; to declare a moratorium for the purposes referred to in Section 14 of the Code etc.

2. Heard Shri K. Dushyantha Kumar, learned PCS for the Applicant/Petitioner and Shri K. Chethan Kumar, learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and Rules made thereunder.
3. Since the Adjudicating Authority, while disposing of the earlier Petition, has granted liberty to file appropriate Petition, in case the Respondent failed to settle the claim, the Present Application is filed seeking to initiate CIRP. As the Respondent concedes the prayer of Petitioner to initiate CIRP, a separate order dated 23.03.2021 was passed by initiating CIRP as prayed for. Hence, this Application has become infructuous.
4. In result, I.A.No.92 of 2021 in C.P.(IB)No.204/BB/2020 is hereby disposed of as infructuous.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**

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