

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

In CP No. (IB) 275/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

M/s Sangam (India) Ltd.

...Operational Creditor

VERSUS

M/s Suzuki Textiles Ltd.

...Corporate Debtor

MEMO OF PARTIES

M/s Sangam (India) Ltd.

CIN: L17118RJ1984PLC003173

Office: Atun, Chittorgarh Road,
Bhilwara-311001 (Rajasthan)

...Applicant / Operational Creditor

VERSUS

M/s Suzuki Textiles Ltd.

CIN: U17124RJ1986PLC003784

Office: Village Gudda, P.O. Mandal,
Bhilwara-311001 (Rajasthan)

...Respondent/Corporate Debtor

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For the Applicant : Brij Kishore Sharma, PCS
For the Respondent : Mitul Jain, Adv
Rohan Mittal, Adv.

Order Pronounced On: 31.01.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Mr. Anil Kumar Jain, Chief Financial Officer of M/s Sangam (India) Limited ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s Suzuki Textiles Limited ('Respondent' / 'Corporate Debtor').
2. The Applicant having its registered office at Atun, Chittorgarh Road, Bhilwara- 311001 (Rajasthan), is involved in the manufacturing of spinning of PV Yarns, weaving of Grey Fabrics and also finished Textile Products and sale thereof to various customers. The Application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.
3. The Respondent is a public limited Company incorporated under provisions of the Companies Act, 1956 on 07.11.1986, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U17124RJ1986PLC003784 and the Registered Office of the Respondent is at Village Gudda, P.O. Mandal,

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Bhilwara- 311001 (Rajasthan). The authorized share capital of the company is Rs. 35,00,00,000/- (Rupees Thirty-Five Crores Only) and paid-up share capital is Rs. 28,60,57,630/- (Rupees Twenty-Eight Crore Sixty Lakh Fifty-Seven Thousand Six Hundred Thirty Only), as per Master Data of the Company. Copy of the master data of the Respondent is at Page 31-32 of the Application.

4. The facts of the case, briefly, as stated in the Application show that the Applicant has been conducting business with the Respondent from time to time, wherein the Respondent purchased PV Yarns from the Applicant on a regular basis. In turn, the Applicant raised and issued invoices in favour of the Respondent for each and every such sale.
5. The Applicant submitted that over time, the Respondent started delaying the payments to the Applicant in contravention to the agreed terms. The Applicant further submitted that the last payment received from the Respondent was to the tune of Rs. 2,46,961/- as on 07.03.2017 against the Bill No. 900696891. Thereafter, the Respondent has failed to make any further payment with respect to the other invoices amounting to a total debt of Rs. 2,13,16,728/-.
6. The Applicant further submitted that as per the customs and usage of the business, the Applicant provides maximum of 4 days for making payment on the sale transaction and in default of the payment within the said credit period the interest @ 18% per annum is charged on outstanding invoices. As per the

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abovesaid terms, a total of Rs. 2,13,16,728/- is due and payable by the Respondent to the Applicant.

7. The Applicant issued and served a Demand Notice dated 06.08.2019 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule 5 of the Rules at its registered office demanding a sum of Rs. 2,13,16,728/- along with further interest @18% per annum on the invoices from 01/07/2019 until full payment, within 10 days of receipt of notice vide e-mail dated 07.08.2019. The demand notice was accompanied by computation of interest, details of invoices and relevant dates of default. Copy of Demand Notice dated 06.08.2019 and postal receipt along with e-mail of notice dated 07.08.2019 sent to the Respondent are annexed at Annexure 8 and Annexure 9 of the Application respectively. The said demand notice was neither replied to nor disputed by the Respondent till the filing of the present petition.
8. The Applicant has also filed Statement of Bank Account maintained with State Bank of India from 19.08.2019 to 20.09.2019 at Annexure 6 of the Application. It is stated that there is no repayment of unpaid operational debt by the Respondent. Thus, the present Application under Section 9 of the Code.
9. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs.2,13,16,728/- (Rupees Two Crore Thirteen Lakh Sixteen Thousand Seven Hundred and Twenty-Eight Only), as an outstanding amount, as reflected in Part IV of the Form - 5 filed with the Application.

PART IV

Particulars of Operational Debt	
Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Total Debt due is Rs. 2,13,16,728/- (Rupees Two Crore Thirteen Lakh Sixteen Thousand Seven Hundred Twenty-Eight Only) as on 30/06/2019 along with further interest @18% per annum on the Invoices from 01/07/2019 until full payment/realization thereof.
Amount claimed to be in default and the date on which the default occurred	Total Debt due is Rs. 2,13,16,728/- (Rupees Two Crore Thirteen Lakh Sixteen Thousand Seven Hundred Twenty-Eight Only)

10. Notices were issued in the aforesaid application and the Respondent filed a reply *vide* Diary No. 375/2020 dated 18.02.2020. It has been submitted that the said amount is not payable by the Respondent due to the dispute concerning the shortfall in supply and the quality of goods from the year 2015 and onwards, however, no evidence in this regard has been produced. Moreover, it has been submitted that the affidavit filed by the Applicant does not affirm to mandate of Order XIX Rule 3 of the CPC and that the statement of account of the Bank which have been filed by the Applicant are not accompanied by a certificate from the banker confirming that there is no payment of the debt by the corporate debtor.

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11. It is further submitted that the Applicant's claim is barred by limitation as the last annexed invoiced is dated 30.12.2015. Therefore, making alleged date of default as 03.01.2016, because of the mercantile practices of the business providing four days of free line of credit after the supply of goods. The Respondent has stated in the reply that the Applicant has suppressed the communication between the parties in the intervening years between the default and the filing of the petition. Lastly, it has been submitted that the Respondents did not receive the demand notice issued by the Applicant.
12. The Applicant thereby filed a rejoinder denying the abovesaid allegations. It has been submitted that the affidavit in support of the Application has been prepared as per Rule 34 Clause 4 of the NCLT Rules, 2016 and signed by the Chief Financial Officer having all the information and facts relating to the matter. The Applicant has submitted the acknowledgment of debt up to 31.03.2016 which is dated 05.11.2019 *vide* Diary No.2592/2019 as Annexure-1. In light of the same communication, supply was reinstated from 23.12.2016.
13. The Applicant has further submitted that the last supply of goods by the Operational Creditor to the Corporate Debtor was made on 30.01.2017 *vide* bill no 900696891 for Rs. 2,46,961 which fell due on 04.02.2017, however last payment of same amount was made by the Respondent on 07.03.2017 as reflected through Ledger on Page 638 of the Application. The account of corporate debtor is a running account and thus the date of last payment is

07.03.2017 and therefore, the present application is not barred by limitation as per Article 137 of the Limitation Act, 1963. The Applicant has, vide diary No. 2717/2019 dated 20.11.2019, submitted an affidavit under Section 9(3)(c) of the Code undertaking that “the Operational Creditor has not received any sum or any part of the outstanding/dues, any manner of satisfaction nor security whatsoever, from the Corporate Debtor during the period”.

14. This Adjudicating Authority has perused all the relevant papers and found them to be in order. The Registered Office of the Respondent is situated in Bhilwara and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. Also, the matter is within the purview of Law of Limitation as the last payment as stated was made on 07.03.2017 and the Application was filed on 15.10.2019. It is a settled principle that when payment on account of a debt is made before the expiration of the prescribed period, a fresh period of limitation shall be computed from the time when the payment was made. Therefore, the present application has been filed within limitation.

15. The first issue for consideration is whether the demand notice in Form No.3 dated 06.08.2019 was served upon the Respondent. The demand notice dated 06.08.2019 was sent via registered post and email on 07.08.2019 to the corporate debtor and its directors. The postal receipt and tracking report are found to be attached at Page 647-652 (Annexure-9) of the Application.

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16. The next issue for consideration is whether the operational debt was disputed by the Respondent. The Respondent Corporate Debtor has filed reply and argued that they had been dissatisfied with the supply and the quality of the goods however they have not submitted any communication to substantiate the same. Thus, as per documents placed on record with the adjudicating authority, there is no dispute as to the outstanding liability of the Respondent Corporate Debtor towards the Applicant Operational Creditor.
17. We have gone through the contents of the Application filed in Form No.5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 2,13,16,728/- (Rupees Two Crore Thirteen Lakh Sixteen Thousand Seven Hundred Twenty-Eight Only) and the Applicant has further claimed 18% per annum interest from 01/07/2019 until full payment thereof. It is observed that the Operational Creditor has issued various invoices (Annexure 4) for goods supplied to the Respondent Corporate Debtor. Applicant Operational Creditor has issued demand notice in Form-3 dated 06.08.2019 which was duly served on the Respondent Corporate Debtor. The Applicant has filed an affidavit under Section 9(3)(b) of the Code to the effect that there is no notice given by the Respondent relating to dispute of the unpaid operational debt (Page 653-655 of the Application). This Adjudicating Authority has held above that the demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

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18. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
19. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor has proposed the name of Mr. Prashant Agrawal to be appointed as IRP. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP, which is annexed as Annexure- 3.
20. In view of this Mr. Prashant Agrawal, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 (email: ippagrwal@gmail.com; mobile no.: +91-9828355000), is hereby appointed as the IRP. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.

21. Consequences of initiation of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Prashant Agrawal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this

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Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

22. Accordingly, CP No. (IB)-275/9/JPR/2019 is admitted.

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(Raghu Nayyar)
Technical Member

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(Deep Chandra Joshi)
Judicial Member