

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.7
CP(IB) 755 of 2019

Proceedings under Section 9 IBC

IN THE MATTER OF:

Natverlal Dahyabhai Ruwala
V/s
Hari Texweave Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..21/06/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The Bench is constituted as per Rule 150(2) of the NCLT Rules, 2016 and the order is pronounced in open court, vide separate sheet.

-SD-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-SD-
MADAN B GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No. 755 of 2019

[An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s. Natverlal Dahyabhai Ruwala

(PAN: AABFN9929J)

Having office at;

4/3956, Zampa Bazar,

Char Rasta, Surat

..Operational Creditor

Versus

M/s Hari Texweaves Private Limited

(CIN: U17119GJ1989PTC012469)

Having office at;

A2, 149/4 GIDC Phase II,

Narmadanagar, Bharuch, 392015

...Corporate Debtor

Order pronounced on 21.06.2022

Coram: Madan B. Gosavi (Member Judicial)

Ajai Das Mehrotra (Member Technical)

Appearance:

PCS Richa Goyal appeared for the Applicant

Learned Counsel Mr. Vijay Patel appeared for the Respondent

ORDER
[PER BENCH]

1. The present application is filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**IBC 2016**”) by Operational Creditor Mr. Natverlal Dahyabhai Ruwala on 11.10.2019 to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Hari Texweaves Private Limited for the default amount of Rs. 10,40,468/- including principal amount of Rs. 6,77,805/- and interest of Rs. 3,62,663/-.
2. The brief facts of the case are that the Operational Creditor has been supplying yarn to the Corporate Debtor since 2015. The Operational Creditor has raised 11 Invoices having Invoice No. G56356, Invoice No. G56355, Invoice No. G55176, Invoice No. 55175, Invoice No. 53508, Invoice No. 53507, Invoice No. 53077, Invoice No. 53076, Invoice No. 52577, Invoice No. 52576 and Invoice No. 51927 for the total amount of Rs. 6,77,805/-. The Corporate Debtor failed to make the payment of the aforesaid outstanding amount even after several requests and reminders made by the Operational Creditor for the said outstanding amount.

- 3.** The Operational Creditor, thereafter sent a demand notice dated 03.07.2019 to the Corporate Debtor under section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC 2016**”) read with rules 5 of IBBI (Application to the Adjudicating Authority) Rules, 2016 (hereinafter referred to as “**AA Rules**”) in form 3 which was duly delivered to the Corporate Debtor on 10.07.2019.
- 4.** The Corporate Debtor in his reply dated 24.07.2019 to the demand notice has stated that Challan no. 1799, Challan No. 1521, Challan No. 1520, Challan No. 1152 are falsely generated by the Operational Creditor. It is also stated that the Operational Creditor has manipulated and fabricated accounts without any confirmation from the Corporate Debtor with a dishonest intention to get claim from the Corporate Debtor.
- 5.** The Operational Creditor in his rejoinder dated 01.08.2019 stated that the Corporate Debtor was making futile attempts to raise disputes after the issue of demand notice which clearly shows malafide intention of the Corporate Debtor. It is also stated that goods delivered against Challan No. 1799 bears signature in ‘buyers’ column which prove that the materials have been collected by authorized person. Also, the goods delivered against Challan no. 1521 and 1520 were delivered to authorized person from Corporate Debtor’s unit. Lastly, with respect to

disputed Challan no. 1152, the Operational Creditor has produced Challan no. 5716 dated 07.11.2016 for which payment has been duly made by the Corporate Debtor.

6. Since the Corporate Debtor has failed to repay the default amount to the Operational Creditor, the Operational Creditor has filed this present application on 11.10.2019 before this Authority for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**").
7. The counsel for the Operational Creditor appeared and submitted that the Corporate Debtor has availed the services from the Operational Creditor. The Operational Creditor raised 11 Invoices having Invoice No. G56356, Invoice No. G56355, Invoice No. G55176, Invoice No. 55175, Invoice No. 53508, Invoice No. 53507, Invoice No. 53077, Invoice No. 53076, Invoice No. 52577, Invoice No. 52576 and Invoice No. 51927 for the default amount of Rs. 10,40,468/- including principal amount of Rs. 6,77,805/- and interest of Rs. 3,62,663/-.
8. We have heard the learned counsel of the Operational Creditor as well as the Corporate Debtor and perused the material on record. It has been noted that invoices have been raised by the Operational Creditor against which no payment has been made by the Corporate Debtor. A demand notice under section 8 of IBC, 2016 was issued by the Operational Creditor on 03.07.2019

against which reply was given on 24.07.2019 by the Corporate Debtor. However, in reply dated 24.07.2019, the Corporate Debtor has admitted payment of the principal amount of Rs. 2,26,688/- and interest of Rs. 1,23,955/-.

9. The Corporate Debtor made an attempt to create dispute after the issuance of demand notice without providing any evidence thereof. Any attempt to create a dispute after issuance of demand notice under IBC, 2016 does not amount to “existence of a dispute”. The Honorable Supreme Court in **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited** in Civil Appeal No. 9405 of 2017 has clearly held that there should be pre-existing dispute, i.e, there should be a pre-existing dispute before the issue of demand notice. For benevolent reference, the relevant paragraph of the said judgment is reproduced below:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding

relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence.”

10. The present application is defect-free and complies with all the relevant provisions of the IBC 2016. The Operational Creditor has not proposed the name of Interim Resolution Professional (hereinafter referred to as “**IRP**”) in the application, therefore we appoint Mr. Rathin Amishbhai Majmudar having registration No. IBBI/IPA-001/IP-P-02576/2021-2022/13928 as IRP. In view of the above observations the present application is allowed with the following directions:

ORDER

1. The Corporate Debtor M/s Hari Texweaves Private Limited is admitted in Corporate Insolvency Resolution Process (CIRP) under section 9 of IBC, 2016. The moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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 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.*

- 2.** The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under section 31(1) or passes an order for liquidation of Corporate Debtor Company under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- 3.** The Operational Creditor has not proposed the name of IRP in the application, therefore we appoint Mr. Rathin Amishbhai Majmudar having registration No. IBBI/IPA-001/IP-P-02576/2021-2022/13928 and registered mail ID info@carathin.com as IRP.
- 4.** The IRP shall perform all functions as contemplated, *inter-alia*,

by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under section 19 of the IB Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- 5.** This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under section 15 as required by section 13(1) (b) of the Code.
- 6.** It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- 7.** The IRP shall be duty-bound to protect and preserve the value of the property of the Corporate Debtor Company and manage the operations of the Corporate Debtor Company as a going

concern as a part of an obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

8. The Operational Creditor is directed to pay an advance of Rs. 50,000/- to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.
9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.755 of 2019** is admitted and disposed of.

-SD-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-SD-

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Shweta Desai