IN THE NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

COURT - II

CP (IB) 208/NCLT/AHM/2021

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

In the Matter of:

Kirtida Silk Mills (Proprietor Rameshwar Textile Mills Limited) … Applicant/ Operational Creditor

Versus

Bindal Fashion Private Limited … Respondent/ Corporate Debtor

Order Pronounced on: 08/07/2022

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Kirtida Silk Mills
(Prop. Rameshwar Textile Mills Limited)
Plot No. 435, Road No. 4
Near Sagar Hotel, GIDC, Sachin
Surat 394 230
Gujarat State … **Applicant/Operational Creditor**

Versus

Bindal Fashion Private Limited.
Plot No. 102, Bindal House,
Nr. Sahara Darwaja, Fudinawadi
Ring Road
Surat 395 002
Gujarat State … **Respondent/Corporate Debtor**

Appearance:

For the Applicant : Mr. Sanjay Majmudar, PCA
For the Responden : None

ORDER

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') on 06.10.2021 by one Mr. Sanjay Sudrania of M/s. Rameshwar Textile Mills Ltd. authorised

vide Resolution passed at the meeting of the Board of authorised representatives of the company held on 01.08.2021, with a prayer to initiate the Corporate Insolvency process against Bindal Fashion Private Limited (for brevity 'Corporate Debtor').

2. The Applicant has submitted that M/s. Kirtida Silk Mills is a proprietary firm of the company – Rameshwar Textiles Mills Ltd. which is registered under the Companies Act, 1956, bearing corporate identity number U17110MH1988PLC048546, having its office at 435, Road No. 4, Near Sagar Hotel, GIDC, Sachin, Surat. Kirtida Silk Mills is engaged in job work like printing of textile items. (For brevity Kirtida Silk Mills referred as 'KSM' and Rameshwar Textiles Mills Ltd. as 'RTML').

3. The corporate debtor, a Private Limited Company, incorporated on 24.05.1995, under the provisions of The Companies Act, 1956, duly registered with Registrar of Companies, Gujarat, Ahmedabad with CIN: U24231GJ1995PTC026040 and having registered office at Plot No. 102, Bindal House, Near Sahara Darwaja, Fudinawadi, Ring Road, Surat. The Authorized share capital of the Respondent is Rs. 50,00,000/- and Paid up share capital of the company is Rs. 37,52,000/-. The corporate debtor is manufacturer of textiles.

4. It is submitted by the applicant that the corporate debtor had continuous business relationship with KSM since long and was getting the processing work done from KSM on regular basis. Since 10.12.2020, the corporate debtor had stopped paying any amount due to the KSM and a total amount of Rs. 1,24,38,900/- (Rupees one crore twenty-four lacs thirty-eight thousand nine hundred only) towards processing charges and interest thereon is due and payable by the corporate debtor as per the computation annexed to the application being the corporate debtor's ledger account for applicant in the name of Kirtida Silk Mills.

5. It is further submitted that on not receiving the outstanding debt from the corporate debtor, demand notice in Form 3 under Section 8 of the IB Code dated 13.08.2021 was issued under the provisions of the IB Code by KSM. The applicant has filed affidavit stating that the said demand notice was sent through registered post and, thereafter, the same notice was also sent through hand delivery which was received by the corporate debtor on 04.09.2021. Copy of demand notice dated 13.08.2021 which is annexed to the application bears seal and signature of the corporate debtor with remark that "received on 04.09.2021". The corporate debtor neither paid the dues nor raised any dispute. Further, the demand notice was also sent to the corporate debtor through email on 04.10.2021, however, no reply was

received from the corporate debtor. Therefore, the KSM filed an application under Section 9 of the Code through authorised signatory Mr. Sanjay Sudrania who has signed as a director of Rameshwar Textile Mills Limited.

6. The corporate debtor filed an affidavit in reply stating that:

- Post GST and post Covid 19 the financial position of textile industry in general has become precarious and there is a liquidity crunch faced by entire textile industry including the corporate debtor;
- Considering long relationship with KSM, the corporate debtor proposed in the reply to make the payment of dues in a period of 4-5 years or to make the payment of 1% of the old dues along with full current dues, provided, the applicant continue doing job work for the corporate debtor;
- The corporate debtor does not deny that the principal amount due as stated in the application is around Rs. 1,07,07,000/-, however, the interest amount was not finalised;

7. As per part IV Form 5 an amount of Rs. 1,24,38,900/- (Rupees one crore twenty-four lacs thirty-eight thousand nine hundred only) is due and payable to KSM by the corporate debtor and the debt fell due on 10.12.2020.

8. The registered office of the corporate debtor is situated in Surat District, Gujarat State and therefore this Tribunal has jurisdiction to entertain and try this application.

9. As stated by the applicant in Part IV, Form 5, the debt fell due on 10.12.2020, which is the date of the first invoice raised by KSM on the corporate debtor and the application is filed on 06.10.2021 which is within limitation and not barred by Law.

10. The corporate debtor has neither replied to the demand notice dated 13.08.2021 nor made any payment. The KSM filed affidavit in compliance of Section 9 (3) (b) of the IB Code.

11. On perusal of documents on record it is observed that the documents filed in support of application are bank statement of UCO Bank reflecting name of account holder as only "Kirtida Silk Mills" for the year 2021 which surprisingly nowhere reflects name as proprietor of (M/s. Rameshwar Silk Mills Private Limited). The copies of invoices annexed with the application mentions Kirtida Silk Mills (Prop. Rameshwar Silk Mills Limited). The copies of ledger account maintained by the corporate debtor also reflects name as Kirtida Silk Mills but not as a proprietor of M/s. Rameshwar Silk Mills Private Limited.

12. The explanation of the operational creditor that "Kirtida Silk Mills" is the trade name and the status of the operational creditor is that of a company is accepted after going through the explanation and Master Data of Ministry of Corporate Affairs annexed with the affidavit.

13. The corporate debtor in its reply filed on 10.05.2022 has accepted that principal amount of Rs. 1,07,07,000/- is payable to Kirtida Silk Mills (Prop. Rameshwar Silk Mills Limited). The debt is within limitation period. The corporate debtor is asking a period of 4-5 years for payment of the said debt, which is apparently not acceptable to the operational creditor.

15. The present application is complete, the debt is admitted and the application is within limitation period. Therefore, we admit the application under Section 9 of the IB Code.

16. The applicant has proposed the name of the Interim Resolution Professional (IRP) to be appointed, namely, Mr. Shreyansh Jain who is hereby appointed as IRP of corporate debtor having address at 505, Silver Coin Apartment, Behind Aakashwani, Paota C Road, Jodhpur – 342 001, Rajasthan with registration No. IBBI/IPA-001/IP-P-01683/2019-20/12727 and having communication address at B-706, Everest Chamber, Near Marol Station, Marol, Andheri, Mumbai 400 059, having branch office at 208, Shree Shyam Chamber, Opp. Sub

Jail, Ring Road, Surat 395 002, having email ID ca.shreyansh@gmail.com, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is filed which is on record.

17. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Shreyansh Jain to meet the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1)

of the Code. However, during the pendency of the moratorium period, terms of Section 14 (2) to 14 (4) of the Code shall remain in force.

19. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Sd/-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

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