IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH - I

KOLKATA

C.P. (IB) No. 583/KB/2020

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Rajesh Kumar Parasrampuria proprietor of Utex Corporation

... Operational Creditor

-Versus-

P.M. Garments Exports Private Limited [CIN : U18109WB2011PTC160972]

... Corporate Debtor

Date of Hearing: 24.05.2022

Date of pronouncing the order: 07.06.2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Operational Creditor **:** Mr. Pankaj Agarwal, Advocate

ORDER

Per Balraj Joshi, Member (Technical):

1. This Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ('***the Code***') by Rajesh Kumar Parasrampuria proprietor of Utex Corporation ('***Operational Creditor***'), having its registered office at 232, Chittaranjan Avenue, 5th Floor, Suite No. 5A/1, Kolkata - 700006 seeking to initiate Corporate Insolvency Resolution Process ('***CIRP***') against P. M.

Garments Exports Private Limited(‘***Corporate Debtor***’), having its registered office at 4, Ahmed Mamuji Street, Liluah - 711204 .

3. The present petition was filed on 20 February, 2020, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.17,01,424/- (Rupees Seventeen Lakh One Thousand Four Hundred Twenty Four only). The date of default is ***09 September, 2019***.

4. As per part II of the Form, the Authorized Share Capital of the Corporate Debtor is Rs. 2,00,00,000/- (Rupees Two Crore only) and Paid-up Capital of Rs. 2,00,00,000/- (Rupees Two Crore only).

5. ***Submission by the Ld. Counsel appearing on behalf of the Operational Creditor***

5.1 The Operational Creditor carries a business of Hosiery Yarn. The Corporate Debtor approached the Operational Creditor and represented that they require Cotton Hosiery Yarn of various sizes and specifications ***(‘goods’)***.

5.2 Thereafter, the Operational Creditor used to supply and delivery goods to Corporate Debtor and raised various invoices against the supply of such goods. The Corporate Debtor accepted the goods without any dispute and made part payments against the invoices.

5.3 The Operational Creditor had raised nine number of invoices against the Corporate Debtor, totaling to a sum of Rs.47,65,551/- (Rupees Forty Seven Lakh Sixty Five Thousand Five Hundred Fifty One only). Out of the total invoice amount the Operational Creditor has received a sum of Rs.30,64,127/- (Rupees Thirty Lakh Sixty Four Thousand One Hundred Twenty Seven only), leaving a sum of Rs.17,01,424/- (Rupees Seventeen Lakh One Thousand Four Hundred Twenty Four only) as due and payable.

5.4 The Operational Creditor made several request to the Corporate Debtor to clear the remaining amount but the Corporate Debtor failed to do so. Therefore, the Operational Creditor issued a statutory notice dated 03 February, 2020 under section 8 of the Code to the Corporate Debtor; and the same was delivered on 06 February, 2020 *(at page 62 of the Petition)*. Inspite of receipt of the demand notice under section 8 of the Code, the Corporate Debtor failed to clear the outstanding dues.

Analysis and Finding

6. Heard the Ld. Counsel appearing on behalf of the Operational Creditor and perused the record. No reply has been filed by the Corporate Debtor. It is pertinent to mention that several opportunities were given to the Corporate Debtor[1] but none appeared on behalf of the Corporate Debtor after 01 October, 2021.

7. Further, on the 10 December, 2021 when the matter was called for hearing, the Ld. Counsel appearing on behalf of the Operational Creditor submitted that out of total outstanding i.e., Rs.17,01,424/- (Rupees Seventeen Lakh One Thousand Four Hundred Twenty Four only) the Corporate Debtor has paid a sum of Rs.6,00,000/- (Rupees Six Lakh only) during the pendency of this instant petition, leaving a balance of Rs.11,01,424/- (Rupees Eleven Lakh One Thousand Four Hundred Twenty Four only).

8. From the above facts and circumstance we are of the view that the Corporate Debtor has defaulted in the payment of the debt outstanding. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor. Also as per the available record, it is apparent that the Corporate Debtor had never raised any dispute with respect to the services of the Operational Creditor.

9. Further, this application was filed on 20 February, 2020 and as submitted by the Operational Creditor the date of default is 09 September, 2019. Hence, the application falls within the limitation period of three years.

10. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition

[1] 26 April, 2022, 15 March, 2022, 27 January, 2022, 10 December, 2021

establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.

11. It is, accordingly, hereby ordered as follows:-

a. The application bearing ***C.P. (IB) No. 583/KB/2020*** filed by Rajesh Kumar Parasrampuria proprietor of Utex Corporation, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against P. M. Garments Exports Private Limited, the Corporate Debtor, is ***admitted***.

b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. ***Mr. Rakesh Dugar,*** registration number ***IBBI/IPA-001/IP-P-01654/2019-2020/12892,*** email: ***card190376@gmail.com,*** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

g. The IRP/RP shall submit to this Adjudicating Authority progress reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h. The Operational Creditor shall deposit a sum of ***Rs.2,00,000/- (Rupees Rupees Two Lakh only)*** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

12. ***C.P. (IB) No. 583/KB/2020*** to come up on ***27 July, 2022*** for filing the progress

13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI
Digitally signed by BALRAJ JOSHI
Date: 2022.06.07 17:14:47 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V K
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Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 07th day of June, 2022

SA, LRA