NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT 1)
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, NATIONAL COMPANY LAW TRIBUNAL HELD ON 28.01.2021 at 02.15 P.M. THROUGH VIDEO CONFERENCING.

PRESENT : SHRI R. VARADHARAJAN MEMBER – JUDICIAL
SHRI ANIL KUMAR B. MEMBER - TECHNICAL

APPLICATION NUMBER	:	
PETITION NUMBER	:	IBA/160/2020
NAME OF THE PETITIONER(S)	:	Chitra Devi
NAME OF THE RESPONDENT(S)	:	Prostar Textiles Mill Pvt Ltd
UNDER SECTION	:	Sec.9 Rule 6 of IBC

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/160/2020

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Prostar Textile Mill Pvt Ltd.,***

Ms. CHITRA DEVI,

Sole Proprietrix,

Mars Colours,

45/14, Vivekanathar Salai,

Vettukattu Valasu,

Nasiyanoor Road,

Erode – 638 011.

... *Operational Creditor*

-Vs-

M/s. PROSTAR TEXTILE MILL PRIVATE LTD.,

112/3a2, 3a3, No.113/2b, Reddipalayam Village,

Behind TNCSC Godown,

Vijayamangalam Main Road,

Uthukuli,

Tirupur – 641 607.

... *Corporate Debtor*

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Ms. Prerna Khatri, Advocate for M/s. A.K. Mylsamy & Associates LLP

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Heard and dictated in open Court on 28.01.2021

Ld. Counsel for Operational Creditor Ms. Prerna Khatri, is present through video conferencing mode. None present for the Corporate Debtor.

2. This is an Application filed by Ms. Chitra Devi, Sole Proprietor of **M/s. Mars Colours** in the capacity of an Operational Creditor in relation to **M/s. Prostar Textile Mill Private Ltd.,** being arrayed as a Corporate Debtor seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) under the Provisions of *Section 9* of Insolvency and Bankruptcy Code 2016 (*in short, 'I&B Code, 2016'*) read with attendant Rules and Regulations

3. Perusal of the Application shows that, Part - I of the Application deals with the particulars of the Applicant. Part – II of the Application discloses the details given of the Corporate Debtor, from which, it is evident that the date of incorporation of the Corporate Debtor is stated to be 29.10.2015 and the Corporate Identification Number (CIN) is disclosed as U18101TZ2015PTC021917 and the Registered Office of the Corporate Debtor is stated to be situated at 112/3a2, 3a3, No.113/2b, Reddipalayam Village, Behind TNCSC Godown,

Vijayamangalam Main Road, Uthukuli, Tirupur – 641 007. The Paid-Up Share Capital of the Corporate Debtor is stated to be Rs.3,78,50,000/-.

4. Part-III of the Application discloses that no Interim Resolution Professional has been proposed by the Applicant. Part - IV of the Application discloses that a total sum of Rs.41,14,521/- is claimed under 48 invoices, which according to the Petitioner are due and payable against the supply of chemicals to the Corporate Debtor. The amount of Rs.41,14,521/- is also stated to be, entitled to interest at the rate of 24% per annum from the due date of the respective invoices, till 31.07.2019.

5. Part – V of the Application discloses that a copy of the invoices along with the written confirmations, which has been issued by the Corporate Debtor acknowledging the liability as well as computation of the default along with the copy of the ledger account has been enclosed to establish the claim of the Operational Creditor vis-à-vis the Corporate Debtor. The Statement of Bank account has also been enclosed, where normally the Operational Creditor receives the credits.

6. Despite repeated notice to the Corporate Debtor, it is seen that the Corporate Debtor has chosen to remain absent in relation to the proceedings pending before this Tribunal, in the circumstances, this Tribunal vide Order dated 06.01.2021 was constrained to proceed with the matter in the absence of the Corporate Debtor.

7. In the circumstances, the Ld. Counsel for the Operational Creditor was heard today i.e. 28.01.2021. During the course of the submissions made by the Ld. Counsel for the Operational Creditor, it is pointed out by the Ld. Counsel for Operational Creditor that invoices which has been enclosed from Page No.17 to 127 of the typed set of documents in relation to which, payments are due and which forms the basis of claim as submitted before this Tribunal vide its Application.

8. Ld. Counsel for the Operational Creditor also points out that the Corporate Debtor is engaged in textile manufacturing business and that chemicals were supplied for dyeing purposes.

9. Ld. Counsel for the Operational Creditor also points out that from time to time confirmation of balance was also given by the Corporate Debtor to Operational Creditor and in relation to the same, the confirmation of the accounts circulated and the balance due from the

Corporate Debtor to the Operational Creditor has also been enclosed as *Annexure – II (3)*. Perusal of the same discloses that the Corporate Debtor has confirmed balance in a sum of Rs.33,93,061/- as the amount due for the period between from 1st April 2018 to 31st March 2019.

10. Ld. Counsel for the Operational Creditor also points out the summary of the invoices which had been given by the Operational Creditor and points out the balance which is stated to be due is in a sum of Rs.33,24,388/- and interest calculated @ 18% per annum on the said amount to the extent of Rs.7,92,132.52 aggregating in all to Rs.41,14,520.52/-. It is also pointed out by Ld. Counsel for Operational Creditor that Demand Notice was duly issued to the Corporate Debtor which has been enclosed as *Annexure – I* to the Typed Set of the Petition and Ld. Counsel for the Operational Creditor also points out that the reply which has been issued by the Corporate Debtor to the said demand notice dated 30.09.2019 filed as *Annexure-II(1)*.

11. Perusal of the said *Annexures*, points out of an acknowledgement issued by the Corporate Debtor that the Corporate Debtor is due in a sum of Rs.33,24,388/- to the Operational Creditor and has sought for some time to make the payments and also to waive the interest part

as claimed by the Operational Creditor. Since the sums due to the Operational Creditor were not forthcoming, it is submitted that this Application has been filed before this Tribunal as already stated, seeking for initiation of the CIRP in relation to the Corporate Debtor.

12. This Tribunal has perused the records as pointed out and *Annexed* along with the Application and is convinced that the sum as claimed by the Operational Creditor is due from the Corporate Debtor and their exist a 'debt' as defined under Section 3(11) of IBC, 2016 of which a default has also been committed as evident from the records.

13. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years. The registered office of the Corporate Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

14. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the Date of Default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

15. Thus, this Tribunal is perforce to initiate CIRP in relation to the Corporate Debtor by admitting this Petition under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India for the period from January – June, 2021 appoints **Mr. Subramaniam S,** Reg. No. *IBBI/IPA-001/IP-P00946/2017-2018/11566* (email id:- *suvidhaoman@gmail.com)* as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,

2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

> a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

16. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

> (2) 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.
>
> (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of

goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) 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.

17. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-***(Rupees Two Lakhs Only)* to the Interim Resolution Professional upon the Interim Resolution Professional filing the

necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-	-SD-
(ANIL KUMAR B)	**(R.VARADHARAJAN)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

ks/raymond