

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

C.P. (I.B) No.185/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)  
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 17.03.2021

Name of the Company:

APL Corporation Pvt Ltd  
V/s  
Saffron Poly Threads Pvt Ltd

Section:

9 of the Insolvency & Bankruptcy Code, 2016

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

  
(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

  
(MADAN B. GOSAVI)  
MEMBER (JUDICIAL)

Dated this the 17th day of March, 2021.

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**CP (IB) 185/9/NCLT/AHM/2019**

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

**In the matter of:**

**M/s. APL Corporation Private Limited**

Having address at:

22-23 Super Yarn Market,  
Zampa Bazar, Surat.

.....Operational Creditor.

Versus

**M/s. Saffron Poly-Threads Private Limited**

Having address at:

B-101, Central Park, GIDC,  
Pandésara, Surat,  
Gujarat-394210

.....Corporate Debtor.

Order Reserved on: 09.03.2021  
Order Pronounced on: 17.03.2021

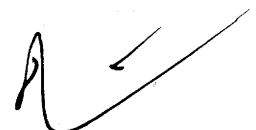
**Coram: MADAN B. GOSAVI, MEMBER (J)**

**VIRENDRA KUMAR GUPTA, MEMBER (T)**

**Appearance:**

Learned Counsel Mr. Pavan S Godiawala appeared for Operational Creditor.

Learned Counsel Ms. Natasha Dhruvan Shah appeared for the Corporate Debtor.



**ORDER****[Per: VIRENDRA KUMAR GUPTA, MEMBER (T) ]**

1. This application has been filed by Operational Creditor, namely, M/s APL Corporation Private Limited under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Corporate Debtor, namely, M/s Saffron Poly Threads Private Limited. The amount in dispute has been claimed at 14,06,131/- (Rupees Fourteen Lac Six Thousand One Hundred and thirty one only) plus interests thereon.
2. The facts, in brief, are that the Operational Creditor supplied the goods to the Corporate Debtor from time to time and raised the invoices. The amount as stated hereinbefore remained outstanding even after various requests and reminders; the Corporate Debtor did not pay the outstanding dues. Hence, the Operational Creditor issued Demand Notice under Section 8 of IBC, 2016 r.w. rule 5 of IBBI (Application to the Adjudicating Authority)

Rules, 2016 to the Corporate Debtor on 10.12.2018. The Corporate Debtor replied to the said demand notice and stated that there was a pre-existing dispute as the goods supplied by the Operational Creditor were of inferior quality and these were not as per requirements.

**Submissions made by the Operational Creditor**

3. Learned Counsel for the Operational Creditor appeared and submitted that Corporate Debtor approached to Operational Creditor for supply of goods. Operational Creditor supplied the goods from time to time. Payments were also made by the Corporate Debtor. It was also claimed that there were regular transactions between the parties. Thus, according to learned counsel, considering this relationship a legal notice had been issued on 28.07.2018 requesting the Corporate Debtor to make the payments of goods supplied through invoice no. 313 dated 14.04.2016 and invoice no. 1249 dated 09.05.2016 and interests thereon. It was also contended that in the said notice it was mentioned that the Corporate Debtor made number of promises and in spite of that failed to make the payment. In response to that Corporate Debtor replied that

there was a turnover of Rs. 4.5 Crores between the parties for which payment had been made regularly. It was also claimed that some of the goods were defective, hence, not consumed and payment was also not made. It was also claimed that for these reasons, the Corporate Debtor was neither liable to pay principal amount as well as interest. It was also claimed that the Corporate Debtor did not make any promise to make payment; hence, such claims were falsely made in notice of Operational Creditor. The learned counsel for the Operational Creditor, thereafter, submitted that having regard to this situation, the Operational Creditor was left with no option but to issue notice of demand under Section 8 of IBC, 2016 which was issued on 10.12.2018 and delivered to the Corporate Debtor to which reply was given by the Corporate Debtor. The learned counsel for the Operational Creditor, thereafter, drew our attention on all supporting material and documents filed along with the application in support of its various claims. Our attention was also drawn to the purchase register wherein supplies made to Corporate Debtor had been recorded. It was specifically pointed out that disputes

which were pertained to supplies made in 2015 and even in those supplies there were no defect as the goods were not returned. It was claimed that the invoices remaining unpaid pertain to Financial Year 2016-2017. It was also claimed that merely because goods were supplied for the value of more than Rs. 4.5 Crores and payment had been made, hence, there could not be any fault on the part of the Corporate Debtor to make the payment in respect of said invoices could not be satisfied logic to avoid payment. It was also claimed that issue of inferior quality was an instance of after thought as the Operational Creditor was not responsible for any fault, being committed during the dyeing process done at the end of the Corporate Debtor.

#### **Submissions of Corporate Debtor**

4. Learned Counsel for the Corporate Debtor initiated her arguments by stating that the goods supplied in 2015 had one lot of goods of inferior quality which was not consumed and same was still lying in the premises of Corporate Debtor. It was also contended that payment of the invoice related to such goods had been made immediately on receipt of goods from Operational Creditor. Learned

Counsel also emphasized on the fact that it was mutually decided that the amount relating to inferior quality of goods would be adjusted in the supplies made by the Operational Creditor in the next bill. It was also contended that respondent had specifically intimated the Operational Creditor that such goods of inferior quality could be collected from the premises of the Corporate Debtor. She further argued that Operational Creditor never bothered to raise the issue regarding non-payment of invoices. Thus, there was a case of pre-existing dispute and for this proposition she relied on the following judicial decisions:

1. *Mobilox Innovations vs. Kirusa Software*
2. *R.S Cottmark India Pvt. Ltd. V. Rajiv Industries*
3. *Ahluwalia contracts v. Raheja Developers*
4. *Saurabh Jain v. Excel Tubes and Anr.*
5. *Sumilon Polyester Vs. Parikh Packaging*

5. Thereafter, it was submitted that affidavit under Section 9(3)(b) of IBC, 2016 had not been filed. It was also claimed that the issue, in fact, pertained to the invoices of 2015 which had become time barred because of the payment terms which were in cash on delivery, hence, this methodology was adopted to recover a time barred debt.

**Submission of Operational Creditor in Rejoinder**

6. The Learned Counsel for the Operational Creditor, in the rejoinder, contended that all the claims made by the Corporate Debtor pertain to the supplies made in 2015 and, hence, without admitting the fact of defect as the goods were not returned, dispute as regard to that could not be considered as an instance of pre-existing dispute in respect of invoices of 2016, hence, decisions relied on by the Corporate Debtor were not of any help.

**Our Conclusion**

7. We have considered the submission made by both the sides and material available on record. It is not in dispute that there is supply of goods between parties since 2011. Substantial turnover has been achieved between the parties. The transactions have been done in a regular manner. The Corporate Debtor has also made payment and, in case of delay, the Corporate Debtor has also paid interest in regard to other transactions. It is noted that there appears to be some dispute as regard to some supplies made in 2015 which pertains to inferior quality.

However, the Corporate Debtor has itself admitted that the payment could be adjusted against the supplies to be made by the Operational Creditor in future. Hence, nothing was to be paid in respect of such bills. However, no material has been brought on record to show that it was so consented by the Operational Creditor. The goods claimed to be defective have not be returned. Thus, claim of adjustment being agreed upon by and between the parties remains without any evidence being brought on record, therefore, such plea, in our view, does not help the cause of the Corporate Debtor. It is also noted from messages exchanged between the patties that the dispute pertains to supplies made in 2015, hence, the same cannot be used as a case of pre-existing dispute in respect of invoices under claim before us. Hence, we are of the view that decisions relied on by the Corporate Debtor do not help the cause of the Corporate Debtor. It has also been claimed that there is no agreement as regard to interests but by its own admission, the Corporate Debtor has paid interest in the past, hence, by conduct, this claim of the Corporate Debtor gets rejected on its own . As far as the aspect of supplies is

concerned, from the communication exchanged between the parties, it is apparent that supplies of goods at any point of time cannot be disputed. As far as non-filing of affidavit under Section 9(3)(b) is concerned, the same is not an incurable defect and considering overall facts and circumstances of the present case, the non-filing of such affidavit does not vitiate the claims made by the Operational Creditor in any manner nor it leads to an inference of non-disclosure material facts.

8. Thus, considering the fact and legal position that when there is a debt which is due and payable and a default has occurred, an application under Section 9 of IBC, 2016 can be admitted provided there is not pre-existing dispute. It has already been established that there is no pre-existing dispute as far as supplies of two invoices under question are concerned.
9. Accordingly, the name of IRP has not been proposed which is not mandatory in case of an application filed under Section 9. Hence, we shall appoint an IRP from the list approved by IBBI. The petition is otherwise complete and defect free.

10. Accordingly, the application is admitted and we order as under:

**ORDER**

1. The application is admitted and 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 sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

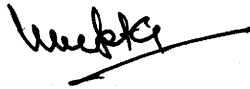
3. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. Kaushik Jayantilal Shah having Registration No: IBBI/IPA-002/IP-N00143/2017-18/10379** and having Email Address: **kjshahco@yahoo.com** to act as an IRP under Section 13(1) (c) of the CODE.
4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code 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 IRP, do not assist or Co-operate. IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing

an appropriate order.

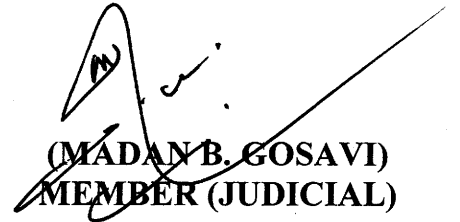
5. This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.
6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty 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 obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 50,000/- (Rupees Fifty Thousand Only)** 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.
8. The Registry is directed to communicate a copy of

this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

11. Accordingly, CP (IB) No. 185/9/NCLT/AHM/2019 is allowed.



**(VIRENDRA KUMAR GUPTA)**  
**MEMBER (TECHNICAL)**



**(MADAN B. GOSAVI)**  
**MEMBER (JUDICIAL)**

Signed on this, the 17<sup>th</sup> March, 2021.

Rajeev Sen/Stenographer