

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 300/Chd/Hry/2019

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

Karma Holdings Private Limited

having its registered office at
D-9/3, Okhla Industrial Area,
Phase-2, New Delhi-110020

...Petitioner/Operational Creditor

Versus

BR Knitwears Private Limited

having its registered office at
672, Pace City-II,
Sector 37, Gurgaon,
Haryana-122001

...Respondent/Corporate Debtor

Judgement delivered on: 21.11.2019

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the petitioner-Operational Creditor : Mr. Vipul Joshi, Advocate

For the respondent-corporate debtor : Mr. Vibhu Agnihotri, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**') by Karma Holdings Private Limited (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of BR Knitwears Private Limited (**Corporate Debtor**). The Identification Number of the operational creditor is U67120DL2010PTC210021 and the address of its registered office is D-9/3, Okhla Industrial Area, Phase-2, New Delhi-110020. The petitioner-operational creditor has authorized Mr. Aayush Goenka, Director of the petitioner company to file petition on its behalf. The copy of the Board Resolution passed by the Board of Directors of the company is annexed at Page Nos. 95-96 and the Power of Attorney is at Page No. 97 of the petition. There is also an affidavit in support of the contents of the application. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. BR Knitwears Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹2,00,00,000/- and paid up share capital of ₹1,96,52,000/-. The CIN of the respondent-corporate debtor is U18109HR2011PTC041892 and its registered office is situated in Gurgaon in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at page No. 63 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the corporate debtor had placed an order for supply of knitted leggings/socks (**goods**) upon the operational creditor. In March 2019, the operational creditor complied with the orders supplied the goods and raised invoices in that regard. However, the corporate debtor, defaulted in the payment of invoice

No.KHUP/18-19/426 dated 09.03.2019 breached the terms agreed between the parties. It is stated that the operational creditor sent a letter dated 11.03.2019 upon corporate debtor to make good its outstanding debt of INR 4,88,607.00 payable in respect of the supply of goods. The corporate debtor sent a letter on 13.03.2019 duly acknowledging debt and promised to make goods the same on or before 25.03.2019. However, the corporate debtor failed to pay the amount till date. The copies of the invoices are attached as Annexure II/A (Colly) of the petition.

4. It is stated that the respondent-corporate debtor has failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor despite various reminders.

5. The demand notice in Form No. 3 is stated to be issued on 30.03.2019 (Annexure I of the petition). The demand notice was accompanied by the duly issued invoices in the name of the corporate debtor alongwith the computation of the debt and default in tabular form. The corporate debtor vide this demand notice was called upon to pay an amount of ₹4,88,607/- within a period of 10 days from the receipt of the notice.

6. Notice of this petition was issued to the Corporate Debtor on 04.07.2019. Mr. Vibhu Agnihotri, the learned counsel filed memo of appearance on behalf of the respondent-corporate debtor.

7. The respondent has filed written statement/reply vide Diary No. 4377 dated 27.08.2019, wherein it is stated that the respondent is in default of payment of operational debt and is under severe financial stress. It is also

submitted that the respondent intends to pay the entire outstanding of the operational creditor.

8. On the last date of hearing, learned counsel for the respondent submitted that though reply has been filed by the respondent, the CP may be admitted as the respondent/corporate debtor is unable to pay the debt.

9. We have carefully considered the submissions of the learned counsel for the operational creditor and have also perused the records.

10. The first issue for consideration is whether the demand notice in Form No. 3 dated 30.03.2019 was properly served. The demand notice dated 30.03.2019 was sent at the address as per the master data at Page No. 63 of the petition in which the registered office is shown as Plot No. 672, Pace City-II, Sector 37, Gurgaon, Haryana-122001. The demand notice was duly acknowledged by Mr. R.C. Kajaria (Page No. 20 of the petition). Therefore, the statutory demand notice was duly delivered upon the corporate debtor.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by the operational creditor that no reply or notice of dispute has been received from the corporate debtor to the demand notice dated 30.03.2019 issued by the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

12. The provisions of Section 9(5)(i) of the Code are as follows:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—
- (a) the application made under sub-section (2) is complete;
- (b) there is no payment of the unpaid operational debt;
- (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
- (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

13. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017***, held as under:-

“51. 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)(ii)(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. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above.

So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

14. We have gone through the contents of the application filed in Form No. 5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹4,88,607/-. Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.03.2019 to 31.03.2019 [(Annexure-II/E) of the petition] has been filed showing recoverable amount of ₹4,88,607/-. The copies of invoices have been filed at Annexure-II/A (colly) of the petition. Moreover, demand notice in Form No. 3 was also sent on 30.03.2019 stating that the amount due from the corporate debtor to the operational creditor is ₹4,88,607/-. The corporate debtor has chosen not to reply to the statutory notice dated 30.03.2019. The respondent also in its written statement/reply has admitted its liability towards the operational creditor and cited financial distress for its inability to release the debt of the operational creditor. As a statutory requirement under Section 9(3)(c) of the Code, an affidavit dated 29.04.2019 has been placed by the operational creditor stating that no reply or notice of dispute has been received from the corporate debtor to the demand notice dated 30.03.2019 issued by the operational creditor. There are also statement of bank accounts of the operational creditor maintained with IDBI Bank and Vijaya Bank (Annexure-III of the petition), wherein it can be seen that the banker has not received any payment from the corporate debtor during the period of 01.03.2019 to 31.03.2019. We have held above that the demand notice in form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

15. It has been proved beyond doubt that the corporate debtor has failed to make payments of the aforesaid amount due as mentioned in the statutory notices till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. The above-iterated chronology of developments makes it abundantly clear that the corporate debtor by refraining from clearing their dues towards the operational creditor is deliberately not adhering to the terms and conditions contained in the invoices. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

16. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor M/s BR Knitwears Private Limited and direct moratorium and appointment of Interim Resolution Professional as below.

17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational 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.

18. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

20. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also, the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for Corporate Insolvency Resolution Process is made by an operational creditor and –

- “a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;
b) x x x x x”*

21. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

22. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Mr. Naresh Kumar Goel appearing at Serial No. 56 of the panel to be appointed as Interim Resolution Professional.

23. The Law Research Associate of this Tribunal has checked the credentials of Mr. Naresh Kumar Goel and there is nothing adverse against him. In view of the above, we appoint Mr. Naresh Kumar Goel, Registration No. IBBI/IPA-002/IP-N00696/2018-2019/12323, Mobile No. 98991-02276, E-mail: nkg1964@rediffmail.com as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Naresh Kumar Goel shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under

Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee;
and

- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member(Judicial)

November 21st, 2019
Yashpal