

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

C.P. (I.B) No.153/9/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 05.04.2021

Name of the Company:

Mohit Industries Ltd
V/s
Kankesh Exims Pvt Ltd
(Formerly known as Harsh Yarn 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 5th day of April, 2021.

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

CP (IB) No. 153/9/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. Mohit Industries Limited

601-B, "A" Wing, International Trade Center,
Maguragate Crossing, Ring Road,
Surat- 395002, Gujarat, India

..Operational Creditor

Versus

**M/s. Kankesh Exims Private Limited
(CIN NO. U17120GJ2009PTC057808)**

Having an address at:
223, Bhavani Chambers,
Nani Begumwadi, Salabatpura,
Surat- 395003, India

...Corporate Debtor

Order reserved on 17.03.2021

Order pronounced on 05.04.2021

Coram: MADAN B. GOSAVI, MEMBER(J)

VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Ld. PCS Mr. Dhiren Dave appeared for the Operational Creditor.

Ld. Counsel Ms. Garima Malhotra appeared for the Corporate Debtor.

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

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IB Code**") by Operational Creditor M/s Mohit Industries Limited to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Kankesh Exims Private Limited for the default amount of Rs. 5,83,420.62/- including interest and the date of default is 28.02.2017.
2. The Operational Creditor has submitted that the yarn had been supplied to the corporate debtor and seven (7) invoices were raised against the said supply. First invoice was raised by the operational creditor on 27.02.2016 and the last invoice was raised on 20.07.2016. Out of the total amount of raised invoices, the corporate debtor paid Rs. 28,867/- on 28.02.2017. Rs. 5,83,420.62/- is outstanding including interest of Rs. 1,96,445.62/-. Three (3) debit notes have been raised by the operational creditor for the said interest amount. It is further submitted by the Operational Creditor

that the payment of the respective invoices was to be made on the date of raising the invoices.

3. Thereafter, no payment was made by the corporate debtor for the supplied goods even after several reminders. It is stated by the operational creditor that the demand notice dated 21.11.2018 was sent in form 3 under section 8 of IB Code read with rule 5 of IBBI (Application to the Adjudicating Authority) Rules, 2016 on 04.12.2018 to the corporate debtor for the outstanding amount of Rs. 5,71,429.61/-, and the same was delivered to the corporate debtor on 06.12.2018. But, no reply has been made by the corporate debtor to the said demand notice.

4. The operational creditor, thereafter, filed the present application before this Authority for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor. The corporate debtor filed the reply to the present application and submitted that the present application is not maintainable on the ground that the present application has been filed by Mr. Manish Narayan Saboo claim to be the director of the operational creditor,

however, no board resolution authorizing him to file any such application has been produced on record.

5. The corporate debtor further submitted that the present application is barred by limitation as the invoices/ debit noted was raised in the year 2015-16, and the present application has been filed in the year 2019.
6. It is stated by the corporate debtor that debit notes at serial no. 1 and 2 are concerned, the same have been issued in respect of interest but it has not been disclosed that against which bill the said debit note have been issued and no debit notes have received by the corporate debtor. Moreover, there is no agreement between the corporate debtor and operational creditor for the interest, though, the corporate debtor always paid the interest on delayed payment.
7. It is also stated by the corporate debtor that Rs. 4,00,000/- had been adjusted against the amount of invoices raised by the operational creditor as the goods purchased from the operational creditor by the corporate debtor were supplied to one M/s General Politex Pvt. Ltd. (hereinafter referred to as

“M/s General Politex”) which were defective and due to the defective supplied goods by the operational creditor, M/s General Politex had been raised the debit note dated 19.03.2018 for Rs. 4,00,000/- upon the corporate debtor and adjusted the aforesaid amount against the amount of other invoices for goods supplied by the corporate debtor to the M/s General Politex. Thereafter, the corporate debtor raised the debit note dated 30.04.2018 for the same amount upon the Operational Creditor. The corporate debtor tried to handover the said debit note to the operational creditor but the operational creditor refused to receive the debit note dated 30.04.2018. The amount under invoice no. 3 to 9 of Rs. 2,55,505/- which has been adjusted by the corporate debtor against the total amount of debit note of Rs. 4,04,113/- including TDS. Now, Rs. 1,48,608/- is payable to the corporate debtor by the operational creditor. Hence, nothing remains due to be paid to the operational creditor by the corporate debtor. Further, the corporate debtor stated that the debit note raised at Sno. 10 against the bill at sr. No. 3 to 9 is wrong as the amount of invoices of said serial nos. had already been adjusted.

8. The operational creditor filed the rejoinder to the reply of the corporate debtor and rebutted the contentions raised by the operational creditor in the reply on the ground that if there was any pre-existing dispute then that must be raised before the date of delivery of demand notice. The corporate debtor purchased the goods from the operational creditor and sold to same General Politex. The goods supplied to the M/s General Politex were yarn that is perishable and if there was any defect that must have been notified within one or two months from the date of supply. But, the corporate debtor claiming that supplied goods were defective after 24 months, hence, it does not have any merit.

9. The debit note raised by the corporate debtor is false and not related to the goods supplied by the operational creditor. The bill no. of the corporate debtor is different for debit notes raised by the M/s General politics. It is also admitted fact that said debit note has never been handed over to the operational creditor. The defense raised by the corporate debtor that said the debit note was attempted to be handed over but the operational has denied accepting the same is also concocted as other modes are also available for sending

the debit notes which could have been availed. The operational creditor has further rebutted the contention of the corporate debtor in respect that Mr. Manish Saboo through whom the present application has been filed is not authorized by the board of the company on the ground that the said person has already been authorized vide board resolution dated 03.11.2018 for filing this present application.

10. We heard both counsels operational as well as corporate debtor and gone through the records. Contention raised by the corporate debtor in respect that Mr. Manish Narayan Saboo is not authorized by the board of the corporate debtor for filing the present application is not valid. As per the board resolution produced with the rejoinder by the operational creditor, the said person has been authorized to sign the paper, affidavits and all other relevant documents for proceedings with this present application vide board resolution dated 03.11.2018.

11. The contention of the corporate debtor in respect that the present application is barred by limitation is also not valid.

The first invoice was raised on 27.02.2016, and the last invoices raised on 20.07.2016, and the present application was filed before this authority on 14.02.2019 which is well within the limitation. i.e. 2 years 11 months, and 18 days. It is also noted that the ground raised by the corporate debtor that there is a pre-existing dispute because goods supplied by the operational creditor to the corporate debtor were defective as alleged. This ground is baseless as there being no supporting documents. If there was any pre-existing dispute that must be raised before filing this present application. In the present application, no other document is produced on record by the corporate debtor to prove the pre-existing debt. Moreover, it is also baseless to suggest that the operational creditor had denied receiving the debit note as there are other modes are also available for delivery of the debit note. The inference is going against the submission of the corporate debtor in respect that Rs. 4,00,000/ has been adjusted against the amount of debit note dated 30.04.2018 raised by the corporate debtor for the supply of defective goods, and now the operational creditor is liable to pay the Rs. 1,48,610/. If there was such a due amount by the

operational creditor toward the corporate debtor then why demand/claim was not made by the corporate debtor for said outstanding amount before receiving the notice of demand under section 8 of IB Code by the corporate debtor. It is also noted that goods alleged to be defective have been sold by the corporate debtor. Thus, raising of such debit notes appears to be an afterthought to avoid its liability. Further, there can so many reasons for rejection of goods by a third party and there is no such condition between Operational Creditor/Corporate Debtor that payment would be refunded only after goods are accepted by the client of Corporate Debtor. The corporate debtor further relies upon the letter issued by the M/s General Polytex on 24.09.2019 which has been issued after filing the present application in respect that the goods supplied by the operational creditor were defective. It is also not indicated that the alleged facts were communicated to the operational creditor. An averment made by the operational creditor can't be sustained without any cogent evidence. Hence, this contention of the corporate debtor is also rejected. We observe that contentions of the corporate debtor in respect to the interest component are not

required to be discussed as it is not relevant for the present application. The amount claim under this application meets the threshold limit for filing the present application as envisaged under section 4 of the IB Code.

12. The present application is defect-free and complies with the relevant provisions of the IB Code and Rules formed thereunder. The name of Resolution Professional is not mandatorily to be recommended by the operational creditor in the instant application, and the operational creditor has also not recommended the Resolution Professional to appoint as an IRP. We will appoint IRP from the IBBI Panel of Insolvency Professionals.
13. In view of the above facts and legal position, we allow the present application with the following directions:

ORDER

- I. The instant 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.*

II. 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 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.

III. The operational creditor has not recommended any Resolution Professional to appoint as an IRP, hence, we hereby **appoint Mr. Rajendra Jain, having registration No. IBBI/IPA-002/IP-N00732/2018-2019/12353, e-mail -iprajendrajain@gmail.com, Mob No. 9323935181** to act as an IRP under Section 13(1) (c) of the Code.

- IV. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under Section 19 of the IB 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 the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- V. This Adjudicating Authority directs the IRP to make a public announcement for 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.
- VI. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be

terminated or suspended, or interrupted during the moratorium period.

VII. The IRP shall be under duty-bound 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 an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

VIII. The Operational Creditor is directed to pay an advance of **Rs. 25,000/- (Rupees Twenty Five 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.

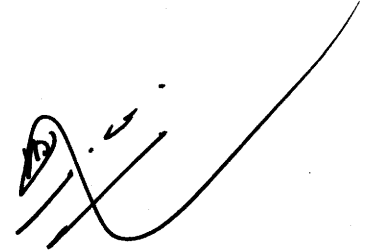
IX. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately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

the order.

X. Accordingly, CP(IB) No. 153/9/NCLT/AHM/2019 is allowed and disposed of.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

Dated this the 5th day of April, 2021

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