



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**COURT - II**

**CP (IB) 222/NCLT/AHM/2020**

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

**In the Matter of:**

**Jayatma Industries Ltd.**  
(Formerly known as  
Santaram Spinners Limited)

**Applicant/  
Operational Creditor**

**Versus**

**Gujarat Hy-Spin Limited**

**Respondent/  
Corporate Debtor**

**Order Pronounced on: 20/12/2022**

**Coram:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER(JUDICIAL)  
AJAI DAS MEHROTRA  
HON'BLE MEMBER (TECHNICAL)**



**MEMO OF PARTIES**

**Jayatma Industries Limited**

(Formerly known as Santaram Spinners Ltd.)

259, 3<sup>rd</sup> Floor, New Cloth Market

Outside Raipur Gate

Raipur

AHMEDABAD 380 002

... **Applicant/Operational Creditor**

**Versus**

**Gujarat Hy-Spin Limited**

P.O. Box No. 22,

Gundala Road

Gondal

Rajkot 360 311

Gujarat State

... **Respondent/Corporate Debtor**

**Appearance:**

For Applicant : Mr. Harsh Parekh, Advocate

For the Respondent : Mr. Sharvil Majmudar, Advocate



## ORDER

1. This application is filed on 12.03.2020 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Mayank Thaker, authorised signatory of M/s. **Jayatma Industries Limited** (for brevity 'Applicant') authorised vide Board Resolution dated 07.02.2020, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. **Gujarat Hy-Spin Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a limited company incorporated under the Companies Act, 1956 having CIN L17110GJ1983PLC006462 and having office at 259, 3<sup>rd</sup> Floor, New Cloth Market, Outside Raipur Gate, Raipur, Ahmedabad 380 002. The applicant is engaged in the business of manufacturing and trading of cotton bales and yarn.



3. The corporate debtor is a limited company, incorporated under the provisions of Companies Act, 1956 on 01.02.2011 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: L17110GJ2011PLC063898, having registered office P.O. Box No. 22, Gundala Road, Gondal, Rajkot 360 311, Gujarat State. The authorised share capital of the corporate debtor is Rs. 16,75,00,000/- and paid up share capital is Rs. 16,75,00,000/-. The corporate debtor is engaged in the business of sale and purchase of cotton bales and yarns.
4. It is submitted by the applicant that a total sum of Rs. 1,83,99,265/- is due and payable by the corporate debtor towards the invoices raised during the period between 29.07.2018 and 30.08.2018 towards supply of cotton bales.
5. On not getting the payments, the applicant issued demand notice dated 10.02.2020 under Section 8 of the Insolvency & Bankruptcy Code read with Rule 5 of the Insolvency and Bankruptcy Regulations, 2016 calling upon the corporate debtor to pay an aggregate amount of Rs. 1,83,99,265/- from the date of demand notice.



6. The applicant has submitted copy of track consignment report of the Postal Department evidencing that the notice under Section 8 of the IB Code was delivered to the corporate debtor at its registered office address on 26.02.2020 available in the MCA portal. No reply was received from the corporate debtor to the notice issued by the applicant.
  
7. Thereafter, the applicant filed the instant application on 12.03.2020 under Section 9 of the Insolvency and Bankruptcy Code, 2016.
  
8. The corporate debtor filed affidavit in reply stating that:
  - Each supply of cotton was a separate transaction and was a separate and independent contract as evidenced by generation of separate and independent invoice. Value of each invoice is below the threshold value as notified by Central Government, therefore the application is not maintainable.
  
  - The present Insolvency Proceedings have been initiated beyond the prescribed period of limitation of three years from the date of default.
  
  - The application suffers from delay and laches.
  
  - The applicant has included interest in its claim of operational debt which is not permissible.



- There are several pre-existing disputes pending between the parties and such disputes were duly raised and brought to the notice of the applicant in reply to the demand notice dated 15.03.2020 which was sent to the corporate debtor on 17.06.2020
  - The cotton supplied by the applicant was of inferior quality and disputes regarding the same were communicated immediately after delivery and testing of the bales supplied.
  - Photographs taken on site after delivery of goods annexed to the reply shows that the cotton had high quantity of dirt.
  - Applicant is neither a creditor much less an operational creditor within the meaning of Section 5 (20) of the IBC.
9. The applicant filed rejoinder on 18.10.2019 inter alia stating that:
- The corporate debtor vide email dated 06.04.2019 had accepted the outstanding amounts due to it. The applicant has also attached relevant documents from the bank establishing that the corporate debtor has not paid outstanding amounts to the applicant.
  - The contention that each invoice ought to be treated as separate and independent is completely baseless. The invoices pertain to purchase orders placed from time to time in the course of their ongoing business



relationship. The total aggregate amount of outstanding invoices in the instant case clearly exceeds the threshold value of Rs. 1 crore.

- The allegation is that the application suffers from delay or laches is denied.
- There was no pre-existing dispute. There was no response to the demand notice within the statutory period of 10 days. The reply was sent after more than three months without elaborating upon the same.

10. The applicant filed written submissions inter alia stating that:

- (a) The applicant had supplied cotton bales to the corporate debtor from time to time, the evidence of which is placed on record in the application in the form of delivery receipts for goods supplied.
- (b) Copies of outstanding invoices and debit notes raised from time to time against supply of cotton bales have been annexed with the application.
- (c) The corporate debtor's own account statement at page No. 60-67 confirms the outstanding amount owed to the applicant from 01.04.2018 to 31.03.2019.



- (d) The applicant has furnished statement from bank confirming the outstanding amount due to it from the corporate debtor.
- (e) The existence of a pending complaint under Section 138 of the Negotiable Instruments Act against the directors of the corporate debtor and the issuance of non-bailable warrants against the directors in pursuance of the said complaint clearly establishes the veracity of the debt and non-payment of dues by the corporate debtor.
- (f) The outstanding debt is admitted and undisputed.
- (g) The claim was raised within the period of limitation.
- (h) Each supply was not a separate and independent contract as sought to be alleged by the corporate debtor.

11. Corporate debtor filed written submissions inter alia stating that:

- (a) Pursuant to order dated 14.09.2022 issued by the Bench, the corporate debtor had sent revised proposal dated 19.09.2022 of Rs. 72,61,323/- as full and final settlement of all claims which was not acceptable to the applicant as per its letter dated 21.09.2022.



- (b) The applicant has included interest in its claim which is not permissible as there is no agreement as to interest which even otherwise cannot be claimed under Section 9 application.
- (c) There is no contractual basis for the applicant's claim as the corporate debtor has never issued any contract.
- (d) The demand notice is ex-facie illegal, defective and not in the prescribed form.
- (e) The alleged debt is far below the threshold value.
- (f) The present application is time-barred.
- (g) The corporate debtor has produced copy of the following judgements in support of its arguments:

Sr. No.	Judgements	Important paragraphs
1	<i>Brand Realty Services Ltd. v. Sir John Bakeries (India) P. Ltd.</i>  [2022] 136 taxmann.com 230 (NCLAT-New Delhi)	12 & 13
2	<i>Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) P. Ltd.</i>  [2021]129 taxmann.com 133 (SC)	13, 31, 32 and 33
3	<i>Neeraj Jain v. Cloudwalker Streaming Technologies P. Ltd.</i>  [2022] 114 taxmann.com 589 (NCLAT)	75
4	<i>International Road Dynamics South Asia (P) Ltd. v. Reliance Infrastructure Ltd.</i>  [2018] 99 taxmann.com 159 (NCLAT)	13
5	<i>Transmission Corportion of Andhra Pradesh Ltd. v. Equipment Conductors &amp; Cables Ltd.</i>  [2018] 98 taxmann.com 375 (SC)	10 and 15



12. As per the order of the bench dated 30.03.2022, the applicant filed the following additional documents:
- (a) Case status of Criminal Cases No. 46804/2019, 46813/2019, 46814/2019, 46819/2019, 233/2019 & 234/2019 filed against the Corporate Debtor under Section 138 of the Negotiable Instruments Act for cheques which were issued by the corporate debtor and which were returned unpaid.
  - (b) Copy of the cheques and copy of cheque return memo.
  - (c) Certificate of Incorporation pursuant to change of name.
13. The corporate debtor filed additional affidavit to bring on record the following documents:
- (i) Copy of cotton testing guidelines and testing methods.
  - (ii) Copy of order dated 21-22.09.2021 issued by the Government of India, Ministry of Textiles.
  - (iii) Copy of contract issued by NCX – Metal & Energy.
14. The corporate debtor filed additional affidavit to bring on record the following documents:
- (i) Copy of Commercial Suit No. 333 of 2021 filed by the applicant before Commercial Court in City Civil Court at Ahmedabad



along with documents produced therewith and a copy of the summons issued by the Commercial Court.

It is submitted by the corporate debtor that the applicant has deliberately suppressed the filing of Commercial Suit.

15. As per part IV, Form 5 total amount of debt is Rs. 1,83,99,265/- (Rupees One crore eighty-three lacs ninety-nine thousand two hundred sixty-five only). Since the last payment was received on 29.05.2019, date of default is 29.05.2019. The application filed on 12.03.2020 which is within limitation and not barred by law.

16. Registered office of the corporate debtor is situated in Gondal, Rajkot District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

17. Heard submissions and perused the documents on record. The arguments of both sides are dealt with as under:

(a) *Each supply of cotton was a separate transaction and was a separate and independent contract as evidenced by generation of separate and independent invoice. Value of each invoice is*



*below the threshold value as notified by Central Government, therefore the application is not maintainable.*

The supply made and invoices raised during the period from 29.07.2018 to 30.08.2018. The instant application is filed on 12.03.2020. Since the default arising in the present application is prior to the cut-off date of 24.03.2020, IBC (Amendment) Ordinance, 2020 is also not applicable. Thus argument of corporate debtor raising objection on the issue of threshold limits is also not applicable.

- (b) *The present Insolvency Proceedings have been initiated beyond the prescribed period of limitation of three years from the date of default. The application suffers from delay and laches.*

As stated earlier, the claim raised by the applicant is towards the supply made and invoices raised during the period from 29.07.2018 to 30.08.2018 and the instant application is filed on 12.03.2020 which is well within limitation period.



- (c) *The applicant has included interest in its claim of operational debt which is not permissible.*

On perusal of the record it is found that the operational creditor had sent interest debit notes from time to time to the corporate debtor and the same has never been disputed by the corporate debtor. It is a settled law that interest can be claimed as a part of operational debt in case of mutual understanding between the parties. The said issue of raising demand of interest is not disputed by the corporate debtor which amounts to deemed acceptance. Even ignoring the interest component, the debt exceeds the threshold.

- (d) *There are several pre-existing disputes pending between the parties and such disputes were duly raised and brought to the notice of the applicant in reply to the demand notice dated 10.02.2020. Reply of the corporate debtor dated 15.03.2020 was sent to the applicant on 17.06.2020.*

The corporate debtor has not brought on record any document in support of its claim that there was a pre-existing dispute prior



to issuance of demand notice. As there was no response to the demand notice dated 10.02.2020 within the statutory period of ten days, it clearly establishes the debt and rightful claim of the applicant and non-existence of any dispute. As per the documents produced by the corporate debtor, reply to demand notice dated 10.02.2020, was delivered to the applicant on 20.06.2020, more than three months after the issuance of demand notice. The said reply refers to pre-existing disputes between the parties without elaborating upon the same, meaning thereby that the said reply seeks to raise a hypothetical and illusory dispute, which cannot be considered to be evidence of existence of a genuine dispute.

- (e) *The cotton supplied by the applicant was of inferior quality and disputes regarding the same were communicated immediately after delivery and testing of the bales supplied. Photographs taken on site after delivery of goods annexed to the reply shows that the cotton had high quantity of dirt.*

Claim of the corporate debtor that the cotton supplied by the applicant was of inferior quality is not supported by any valid



document except the fibre test report dated 30.06.2018, annexed to the application and marked as Annexure 'A'. On perusal of the record it can be seen that the claim under reference is related to the goods supplied during the period from 29.07.2018 to 30.08.2018, whereas, the test report so submitted by the corporate debtor is dated 30.06.2018 which clearly indicates that the report submitted pertain to the goods supplied prior to the claim under reference. The photographs furnished by the corporate debtor in support of its defence that the goods supplied by the applicant had high quantity of dirt, is not supported by any document to validate its claim that the photographs are of the goods supplied by the applicant, for the period for which the present debt is claimed to be in default.

- (f) *Applicant is neither a creditor much less an operational creditor within the meaning of Section 5 (20) of the IBC.*

The delivery of goods and the invoices raised has never been denied by the corporate debtor. Therefore, the argument that there is no debtor-creditor relationship between the parties is unfounded. Moreover, the delivery receipts, transport bills and



the invoices generated from time to time serve as a strong evidence as to the business relationship between the parties. Therefore, the applicant would clearly fall within the meaning of “operational creditor” as per the provisions of the IB Code.

18. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is complete, within limitation and meets the threshold, and hence is admitted, in terms of section 9 (5) of IBC, 2016.
  
19. The applicant has not proposed the name of the Interim Resolution Professional (IRP). Therefore, we hereby appoint Mr. Samir Ganeshbhai Marathe, (S.G. Marathe & Co., Chartered Accountants) 1<sup>st</sup> Floor, Sumati Avenue, Bhairavnath Road, Opp. Rajkamal Bakery, Maninagar, Ahmedabad 380 008 with registration No. IBBI/IPA-001/IP-P-00830/2017-18/11415 and having email ID casgmarathe@gmail.com as IRP of the corporate debtor subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 be filed within a period of one week from



the receipt of this order.

20. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Samir Ganeshbhai Marathe to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
  
21. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.



22. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

*Nair/Mansi*