

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-II

CP (IB) No. 747/MB/2024

[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:

Shree Hari Yarns Private Ltd.

House No.5975, Gat No.A1/A-3,
Laxmi Process Road, Behind M.S.E.B. Office
Ichalkaranji – 416 115, Maharashtra.

...Operational Creditor

V/s

Ahuja Synfab Private Limited

Registered Office: 401 D1A/D1/D2,
Shri Raj Laxmi Hi-Tech Park, Sonale
Village, Thane, Bhiwandi, Maharashtra,
India, 421302.

...Corporate Debtor

Pronounced: 05.10.2026

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI BANWARI LAL MEENA, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Viraj Parikh a/w Adv. Poorva Garg

Corporate Debtor: Adv. Avinash Khanolkar a/w Adv. Krish Shah

ORDER***[PER: ASHISH KALIA, MEMBER (JUDICIAL)]*****1. BACKGROUND**

1.1 This C.P. (IB) No.747/MB/2024 (Application) was filed on 27.09.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Shree Hari Yarns Private Ltd., the Operational Creditor (OC), through Mr. Ravi Shankar Panchloriya, Director, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Ahuja Synfab Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.1,41,98,849/- (Rupees One Crore Forty-One Lakhs Ninety-Eight Thousand Eight Hundred Forty-Nine Only), on 20th April, 2024, which comprises of principal amount of Rs. 1,10,42,055/- and interest amount of Rs. 31,56,794/. The eight unpaid invoices are annexed with the Petition. Each of the invoices contains a clause that interest will be charged on delayed payment@18% p.a. The record of default has also been notified to the Information Utility and Record of Default is annexed with the Petition.

1.3 Before filing the present Petition, the Petitioner has issued various emails and demand notices to the Respondent including. These notices have been accompanied with details of the pending invoices, debit notes and interest calculations. At no point in time has the Respondent replied to any of these notices including the Section 8 Demand Notice raising any disputes whatsoever.

1.4 The date of default mentioned in Part-IV of the Application is 20.04.2024 i.e., the date on which the first invoice No.12660 was raised by the OC. Further, the OC placed invoices dated 07.11.2022 to 11.01.2023 on record, showing due dates of payment for each unpaid invoice. Since the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

2. CONTENTIONS OF OC

2.1 It is submitted that the Shree Hari Yarns Private Ltd. is a yarn merchant and commission agent i.e. procures yarn from manufacturers and supplies yarn to textile companies.

2.2 It is submitted that at the request of the Corporate Debtor, the Applicant procured from manufacturers and supplied various types and quantities of yarn to Corporate Debtor from November 2022 to January 2023 for which the Applicant raised Invoices aggregating to Rs.1,32,63,935. For some Invoices raised in the aforementioned period, the Corporate Debtor made payment of Rs.22,21,880 much after the due date of payment stipulated in the Invoice. The Corporate Debtor has not paid till date for Invoices aggregating to Rs.1,10,42,055. Apart from the outstanding principal amount of Rs.1,10,42,055, the Applicant is claiming Rs.31,56,794 towards interest for delayed payment at 18% as per the terms of the Invoice raised by the Applicant.

2.3 The Applicant reminded the Corporate Debtor several times for making the payment however the Corporate Debtor has not paid till date as per

several emails and letters annexed to the present Petition. The Corporate Debtor seems to have huge liabilities/loans as per the charges mentioned in the master data of the Corporate Debtor.

2.4 Since the Operational Creditor's Advocate has issued the Demand Notice dated 20th April 2024 to the Corporate Debtor (received on 22nd April 2024), the Operational Creditor has not received any payment from the Corporate Debtor with regards to their claim.

2.5 Pertinently, the Respondent was always aware of the way payments were being appropriated and never objected to the same. Contemporaneously, the Respondent was sent outstanding reports by the Petitioner reflecting the outstanding invoices (as claimed in the present Petition) and the Respondent never disputed the same. In this regard, this Hon'ble Tribunal is requested to note the Petitioner's letters dated 4th September 2023 and 15th December 2023 and various emails sent by Petitioner from 2nd February 2023 till 12th March 2024 with automatically generated outstanding report as on that date and, legal notice dated 18th March 2024 sent by Petitioner.

2.6 Accordingly, an amount of Rs.1,41,98,849/- is due and payable to the Operational Creditor from the Corporate Debtor as of 20th April 2024. Hence the present Application.

3. CONTENTIONS OF CD

No mention of date of Default in Demand Notice

3.1 a) The Petitioner's Demand Notice dated 20th April 2024 ("Demand Notice"), purportedly issued under section 8 of the IBC, does not set

out a date of default. On page 3 of the aforesaid Demand Notice, Petitioner makes abstruse statements to say that the date on which debt fell due is statement of account giving computation and details is enclosed without disclosing date of default.

3.2 Also, in the Part IV (Particulars of operational debt) of the subject Petition, Petitioner has not provided any date of default and relies upon statement of account giving computation enclosed without disclosing actual date of default.

3.3 Respondent submits that the date of default recorded in form 'D' of NeSL at **Annexure 22** is completely unreasonable and without any basis.

3.4 For the reasons aforementioned the Respondent respectfully submits that the aforesaid purported Demand Notice is not a fit demand notice as required was 8 of IBC and therefore the same is bad in law.

Not produced Certificate from financial institution

4.1 Respondent states that Demand notice u/s 8 was received on 22nd April, 2024. Applicant has filed the subject Petition without producing copy of certificate from financial institution after service of the demand notice.

4.2 Applicant has produced bank certificate at Annexure 5 Page 25 and Annexure 6 Page 86, certifying untrue and misleading information by stating that applicant has received only sum of Rs.22,21,180/- from 18th January 2024 to 29th February 2024.

4.4 Respondent disputes that the Applicant has not received any payment on 16th February 2024. Respondent states that they have made payment through 2 (two) cheques of Rs.2,00,000/- each, aggregating to Rs. 4,00,000/- towards unpaid operational debt.

4.6 Respondent submits that subject petition has failed to comply with mandatory provision of the code, therefore the subject Petition deserves to be dismissed at this very threshold for failure to comply with Section 9(3)(c) of the Code.

Material Suppression:

5.1 (a) The subject Petition bifurcates the alleged claim amount of Rs. 1,41,98,849/- into Principal amount of Rs.1,10,42,055 and Interest of Rs. 31,56,794/-. At the outset, it is submitted that there is no agreement/ contract between the parties for the purchase of goods based on which the invoices are raised by the Applicant. Therefore, only the principal amount can be treated as debt.

Subject Petition is not Maintainable: Claim amount is less than Rs. 1 Crore.

6.1 a) The subject Petition bifurcates the alleged claim amount of Rs. 1,41,98,849/- into Principal amount of Rs. 1,10,42,055 and Interest of Rs. 31,56,794/-. At the outset, it is submitted that there is no agreement/ contract between the parties for the purchase of goods based on which the invoices are raised by the Petitioner. Further, there is no agreement for interest on delayed payment between the parties. Therefore, only the principal amount can be treated as debt.

6.3 Respondent states that outstanding unpaid operational debt till filing of the subject Petition is Rs. 1,41,98,849. Therefore, without prejudice to respondents' rights and grounds to dispute the interest amount on the alleged invoices, even if total outstanding as computed by applicant is considered, total outstanding amount till date of filing the subject Petition comes to Rs.50,24,416/- which is below the threshold limit of Rs.1 Crore. Therefore, the subject Petition deserves to be rejected at this very threshold u/s 4 of the Code.

Abuse of Provisions of Code:

7.1 Respondent states that there is no agreement between the parties for rate at which invoice was made and interest on delayed payment to be charged. Such questions are disputed question of claims which has to be tried by a civil court of competent jurisdiction. Applicant cannot abuse the provisions of the Code to trigger corporate insolvency resolution process against the respondent to raise triable issues for recovery of monies before this adjudicated authority.

7.2 From the above, it is clear that Firstly the Subject Petition is below the threshold limit of Rs. 1 Crore. Secondly it does not disclose earlier payments made to the Applicant operational creditor. Thirdly, there is no existing agreement between the parties ascertaining values of goods and payment of interest for delayed payment and debit notes as alleged is disputed, Fourthly Demand notice at Annexure 3 fails to disclose date of default and Fifthly computation of outstanding claim at Annexure 4 is faulty and disputed. Therefore, in light of aforesaid this

Petition ought to be dismissed. It is a well settled law that a person by clever drafting and by raising untenable claims cannot confer jurisdiction on this Hon'ble Tribunal.

9. For all of the aforesaid reasons, it is respectfully submitted that the subject Petition be dismissed with costs.

ANALYSIS AND FINDINGS

4.1 The Applicant Company had supplied various types of yarn to the Corporate Debtor/Respondent during the period from November 2022 to January 2023, against which the Applicant raised various invoices aggregating to Rs. 1,32,63,935/-. Against the said invoices, the Respondent made payments aggregating to Rs. 22,21,880/-, which were made much after the respective due dates of payment.

4.2 It is further stated that, till date, the Corporate Debtor has failed to make the full and final payment of the outstanding principal amount of Rs. 1,10,42,055/-, along with interest amounting to Rs. 31,56,794/- calculated at the rate of 18%.

4.3 The Operational Creditor issued a Demand Notice dated 20.04.2024. However, till the date of filing of the present Petition, the Applicant had not received any payment from the Corporate Debtor. Accordingly, the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, has been filed for an amount of Rs. 1,41,98,849/-. Notice was issued to the Respondent, who has filed its reply. In the reply, the Respondent has submitted that no specific date of default has been mentioned in the Demand Notice. It is further submitted that the date

of default reflected in the NeSL record is completely unreasonable and has been stated without any basis.

4.4 It is further submitted that the said demand notice dated 22.04.2024 has filed present petition without having any copy of certificate from the financial institution.

4.5 It is further submitted that the Applicant has not filed a certificate from the financial institution has mandated under Section 9 (3) (c). However, the Applicant is submitted that there is a certificate annexed with the bank disputed the amount said therein.

4.6 It is further stated there is a suppression of fact regarding to the payments made by the Corporate Debtor/Respondent to the tune of Rs.31,56,794/- if this amount is deducted then present petition would not falls within the threshold of Rs.1 Crore. Hence, it is further stated that the present petition is not maintainable for the same.

4.7 As far as present application is concerned statement of outstanding amount claimed has been annexed as annexure-4 page 24 from certificate from Axis Bank has also annexed.

4.8 Upon perusal of the statement of account produced by the Petitioner, it transpires that the payments made by the Respondent/Corporate Debtor have been duly reflected in the books of account. This indicates that the amount claimed by the Petitioner has been arrived at after duly deducting the payments received from the Respondent/Corporate Debtor.

- 4.9 In order to prove this case Applicant has shown invoices starting from 23 collectively which shows that after due date that is 30 days and interest say chargeable at the rate of interest. and is an admitted fact Applicant did charge the interest rate on the delayed payment by the Respondent.
- 4.10 Ld. Counsel has drawn our attention to the statement at page 90 (Additional Affidavit) where the amount is duly, On the contrary, Ld. Counsel has taken stand the debit case issued by the Respondent while going through the statement annexed with the Additional Affidavit filed by the Petitioner company there are certain debit notes issued between 23.11.2023 to 15.01.2024 which is disputed by the Respondent company as they have not received these replies.
- 4.11 However, no such stand we have seen in the reply they have taken even on being asked by this Tribunal whether they have raised any dispute in regards to the notice issued under Section 8 of the IBC.
- 4.12 Ld. Counsel Mr. Khanolkar has submitted that no such reply has been submitted by the Respondent after going through the pleadings and legal position stated herein above. We have considered the rival contentions as per the Section 9 ***Meghraj Vs. Bayabhai, (1969) 2 SCC 274, paras. 5, 6)***

5. *In Venkatadri Appa Row and Others v. Parthasarathi Appa Row the Judicial Committee of the Privy Council observed that upon taking an account of principal and interest due, the ordinary rule with regard to payments by the debtor unappropriated either to principal or*

interest is that they are first to be applied to the discharge of interest. Lord Buchmaster delivering the judgment of the Board observed: "There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one, side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is (i.rst applied in payment of interest and then when that is satisfied in payment of the capital. That rule is referred to by Rigby, L. J., in the, case of Parr's Barking Co. v. Yates-[1898 2 O.B. 460] in these words : "The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract."

6. *Counsel for the appellant contended that in Venkatadri Appa Row's case there was no specific appropriation by the debtor, whereas in the present case there is specific direction by the debtor. But the normal rule is that in the case of a debt due with interest any payment made by the debtor is in the (i.rst instance to be applied towards satisfaction of interest and thereafter to the principal. It was for the mortgagors to plead and prove an agreement- that the amounts which were deposited in Court by the mortgagors were accepted by the mortgagees 5 subject to a condition imposed by the mortgagors. In the present case there is no evidence which supports the contention raised by counsel for the appellant.*

4.13 The Petitioner has filed this petition has to prove there should be an end to be supply of goods and payment is demanded by way of tax invoices the same has been complied with and there is a default in the payment of the dues Section 9 of the IBC allows an operational creditor to start

a Corporate Insolvency Resolution Process (CIRP) against a company that fails to pay for goods or services.

4.14 The requirement of Section 9 has since been completed we have not convinced the reply is given by the Respondent counsel for none receipt of debit notes more particularly when in each and every invoice there is a clause of interest at the rate of interest 18% is mentioned has not been disputed by the Respondent ever even after issuing the notice under Section 8 also thus, present petition is liable to be admitted as Petitioner company has proved debt and default against invoices as Operational Creditor.

4.15 Thus, Present application under Section 9 deserves to be allowed hence allowed.

ORDER

This Application bearing C.P. (IB) No.747/MB/2024 under Section 9 of the IBC, filed by Shree Hari Yarns Private Ltd., the OC, for initiating CIRP in respect of Ahuja Synfab Private Limited, the CD is **admitted.**

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

a) institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Alok Kumar Murarka**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-001/IP-P-01934/2019-2020/13006** and **e-mail- ipalok.murarka@gmail.com** having valid Authorisation for

Assignment up to **30.06.2027** as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

- VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**BANWARI LAL MEENA
MEMBER (TECHNICAL)**

Sd/-

**ASHISH KALIA
MEMBER (JUDICIAL)**

//Shubham //