



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) -729(ND)/2022**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. SANATHAN TEXTILES LIMITED

(Formerly Known as M/s. Sanathan Textile Private Limited)

Having Its Registered Office at:

SRV No. 187/4/1/2, Near Surangi Bridge,

Surangi Dadra & Nagar Haveli,

Silvassa Dadra & Nagar Haveli – 396230

Through Its Director/ Authorised Representative

Mr. Ajay Kumar Dattani

..... Operational Creditor

VERSUS

M/s. VEBHAV YARNS PRIVATE LIMITED

Having Its Registered Office at:

401, Sharp Bhawan, 2nd Floor, B-2/3,

Nani Wala Bagh, Commercial Complex,

Azadpur, New Delhi-110033.

..... Corporate Debtor

Order Pronounced On: 18.10.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Kunal Godhwani, Mr. Anuj Tiwari, Mr. S.
Nanda Advs.

(IB) - 729(ND)/2022
Date of Order: 18.10.2023

For the Respondent : Mr. Kamal Agarwal, Adv.



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by M/s. Sanathan Textiles Limited, the Applicant/Operational Creditor on 08.09.2022, before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”) against M/s. Vebhav Yarns Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 1,29,86,276/- (Rupees One Crore Twenty Nine Lakh Eighty Six Thousand Two Hundred Seventy Six Only) including principal amount of Rs. 72,23,860/- along with interest of Rs. 57,62,416/- @ 24% as set out in the invoices. The Date of Default in the present matter is 28.07.2021.
2. The Corporate Debtor had approached the Operational Creditor for the supply of different types of yarns such as textured yarn, fully drawn yarn, twisted yarn, air texturized yarn, etc. The debt is on the account of non-payment (the supply of different types of yarns such as textured yarn, fully drawn yarn, twisted yarn, air texturized yarn, etc. details of which are set out in detail in the invoices). The said supply has been provided to the Corporate Debtor in accordance with their instructions and the same has been duly accepted by the Corporate Debtor.
3. The Corporate Debtor has admitted and acknowledged that the claim amount to be paid to the Operational Creditor from time to time and made part payments. The Operational Creditor has

(IB) – 729(ND)/2022
Date of Order: 18.10.2023



maintained a running account of the Corporate Debtor in its books of accounts. The invoices are payable forthwith and the date of the invoice is the date on which they fall due. The Corporate Debtor has made part payments of debts which was received on 28.07.2021.

4. The Operational Creditor issued a demand notice dated 22.06.2022 under Section 8 of the Code against the Corporate Debtor at its registered office address vide a registered speed Post dated 22.06.2022 and vide email dated 22.06.2022 of the Respondent Company under the provisions of the Code as evident from the proof of service filed. There was no response from the side of the Corporate Debtor to the demand notice dated 22.06.2022 under Section 8 of the Code.
5. The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and stated that the present Application is barred by limitation. In Part IV of Form 5 of the Application, the Applicant has mentioned and attached the copy of the computation of the outstanding amount as set out by way of Exhibit-D at page 27 and in support of the same the copy of all unpaid invoices are annexed as Exhibit -E at page 28- 51. It is evident from the Exhibit -D at page 27 that in total 24 invoices are shown as pending and the total of these 24 invoices are shown as 57,62,416/-. These 24 invoices shown as pending are issued between 12.01.2019 till 17.02.2019. If these invoices were due on the date on which they were issued then the same are barred by limitation as being unpaid for more than three years with no acknowledgement of debt within the period of limitation.
6. It is the case of the Respondent that the Applicant has concealed the material fact that in between the Applicant and the Corporate Debtor, there is a *del credere agent* namely M/s. Vikram Threads Private Limited, responsible for making payment to the Applicant/Operational Creditor for sales made to the Corporate



Debtor. In view of the above, the Applicant has no right to proceed against the Corporate Debtor for outstanding debts (if any) as it has insured itself by selling the material through M/s Vikram Threads Private Limited and any legal recourse for recovery of unpaid dues can be taken against M/s Vikram Threads Private Limited only.

7. The Corporate Debtor mentioned that there have been no business transactions between the parties after 29.05.2019 wherein a payment of Rs 17,94,791/- (Rupees Seventeen Lakh Ninety Four Thousand Seven Hundred Ninety One Only) is made in the account of the Operational Creditor and until 27.07.2021. It is significant to note that in the interim and for two years, there is no demand raised by the Applicant until 28.05.2021.
8. We have heard the Ld. Counsels for both parties and also perused the documents available on record.
9. The scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment/re-payment.
10. We find it relevant to mention that in the present Application, the Operational Creditor is claiming the unpaid debt amount which is liable to be paid by the Corporate Debtor. As per the Legal Notice dated 28.5.2021, the Corporate Debtor was liable to pay Rs. 1,12,23,860/- as on 31.03.2019. After the receipt of the said Legal Notice, the Corporate Debtor has paid the sum of Rs. 40,00,000/- to the Operational Creditor on 27.07.2021, which also deemed to be an acknowledgment of debt. The Operational Creditor has deducted the said Rs. 40,00,000/- paid by the Corporate Debtor from the unpaid debt amount. The Operational Creditor has filed the present petition against the Corporate Debtor for the unpaid debt amount of Rs. 1.29.86.276/- as on date.
11. The Respondent/Corporate Debtor has raised a Preliminary Objection as to the maintainability of the present application filed under Section 9 of the Code on the ground that the amount



claimed is below the threshold limit as the interest component cannot be clubbed with the principal amount for meeting the threshold of Rs. 1,00,00,000/- as envisaged under Section 4 of the Code or not and whether this Application is barred by Limitation Period or not.

12. As submitted by the Ld. Counsel for the Applicant, the Invoice No. 1810101659 dated 25.01.2019 clearly mentioned that in the event of failure on the part of the Corporate Debtor to pay the invoiced amount, the Applicant was entitled to interest @ 24% per annum on the overdue unpaid bills which is read as follows:

“TERMS & CONDITIONS: Interest will be recovered @ 24% p.a. on overdue unpaid bills. Claims of any nature whatsoever will lapse unless raised in writing within 3 days from date of invoice, Goods once bought cannot be returned and/or exchanged. We reserve to ourselves the right to demand payment of this bill at”

In the present case, the Invoice No. 1810101659 dated 25.01.2019 provides that interest will be charged in the case of delayed payment which has been agreed by the parties.

13. In this regard, we rely on the Judgment passed by the Hon'ble NCLAT in the matter of **Prashant Agarwal v. Vikash Parasrampuriah & others** dated 15.07.2022, Company Appeal(AT)(INS) No. 690/2022 in which the Hon'ble NCLAT held that if the invoices clearly stipulate a provision for interest in the delayed payment, the interest and principal both can be taken into account to compute or reach minimum threshold limit of Rupees One Crore.

Hence, we observe that the Interest can be clubbed together to reach the threshold limit of Rs. 1,00,00,000/-.

14. It is noted that the Corporate Debtor has paid the sum of Rs. 40,00,000/- to the Operational Creditor on 27.07.2021 which shows that the Corporate Debtor acknowledged the debt within the period of three years from the date of default of the outstanding



amount in terms of Section 18 of the Limitation Act, 1963 and paid amount/due to the Operational Creditor within the period of three years in terms of Section 19 of the Limitation Act, 1963 which can enhance the limitation period to initiate the CIRP against the Corporate Debtor as laid down by the Hon'ble Supreme Court in **C. Shivakumar Reddy and Anr. Vs. Dena Bank (now Bank of Baroda)** Civil Appeal No. 1650 of 2020.

Article 137 of the Limitation Act, 1963 prescribes a limitation period of three years. Thus, if such a period is calculated from the date of the last payment dated 27.07.2021, its limitation will expire on 26.07.2024, but the present application was filed on 08.09.2022 which is within the period of three years.

In view of the above, we are of the considered view that the present claim under Section 9 of the Code is not barred by the limitation period.

15. We find it relevant to mention that the bills on the basis of which this Insolvency Application is filed, are raised in the name of the Corporate Debtor (Refer: Bills at Page No. 28-51 of the Application). The name of the Corporate Debtor in the present application is M/s. Vebhav Yarns Private Limited while the bills have been raised in the name of M/s. Vebhav Yarns Private Limited itself.

Hence, we are of the considered view that the allegations made by the Corporate Debtor regarding the conduct of the Operational Creditor to raise invoices other than in the name of the Corporate Debtor is baseless and thus this Adjudicating Authority is of the view that the invoice is in the name of the Corporate Debtor.

16. We find that the debt arises out of the invoices raised by the Operational Creditor to the Corporate Debtor. The said amount is a debt disbursed against the consideration owned by the Operational Creditor, hence it is covered under the definition of "Operational Debt" as defined under Section 5(21) of IBC, 2016 and the Applicant



will be treated as "Operational Creditor" as defined under Section 5(20) of IBC, 2016.

17. From the bare perusal of the definition of "Operational Debt", it is amply clear that for a debt to be classified as an Operational debt, the claim amount should be in respect of sales of any goods or rendering of contractual services or employment. Admittedly, the claim made by the Applicant is in respect of the provision of goods or services. Accordingly, the debt be treated as an "Operational Debt" as defined under section 5(21) of the Code.

18. A bare perusal of the present application stated that it does not indicate any pre-existing dispute. Further, there are no other documents on record to show that any pre-existing dispute was raised by the Respondent/Corporate Debtor prior to the issuance of the demand notice under Section 8 of IBC, 2016.

We, therefore, accept the submissions that there was not a pre-existing dispute between the Respondent/Corporate Debtor and the Applicant/Operational Creditor.

19. On a conspectus of the case, we have found that the Corporate Debtor has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective. The Operational Creditor has established that he has supplied the goods/material to the Corporate Debtor and the Corporate Debtor has failed to make the payments due to the Operational Creditor.

Therefore, we are of the view that the present application under Section 9 of the IBC, 2016 ought to be admitted.

20. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Application fulfills the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -

- a) The Application bearing **IB-729/ND/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the



Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted**.

- b)** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- i. *“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;*
 - ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - iii. *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 Financial Assets and Enforcement of Security Interest Act, 2002;*
 - iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit,



registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

- c) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- d) Since Section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional (IRP) for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Rabindra Kumar Mintri, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI. The registration number of the IRP is IBBI/IPA-001/IP-P00707/2017-2018/11194, the address of the IRP is JD-18-B, Near Ashiana Chowk, Pitampura, National Capital Territory of Delhi, New Delhi -110034 and the e-mail id of the IRP is mintri_ca@rediffmail.com. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.
- Accordingly, Mr. Rabindra Kumar Mintri is appointed as IRP.



- e) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i) The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- j) In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and



by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

- k)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**