In the National Company Law Tribunal
Kolkata Bench
Kolkata

C.P. (IB) No. 63/KB/2019

In the matter of:

An application 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;

-And-

In the matter of:

M/s. KD Fabrics Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956, having CIN: U18101WB1997PTC083575, and having its registered office at 414, Kalakar Street, Burra Bazar, Kolkata, within the jurisdiction of this Learned Tribunal;

... Operational Creditor

-Versus-

M/s. Sunbeam Dealers Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956, having CIN: U51311JH2013PTC001555 and having its registered office at R.R. Tower, Office No. 311, 3rd Floor, Front Block, Opposite Akashwani Bhawan, Ratu Road, Ranchi – 834 001, Jharkhand, within the jurisdiction of this Learned Tribunal.

... **Corporate Debtor**

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Coram:

1. Shri Jinan K.R., Hon'ble Member (Judicial)

2. Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsels appeared:

1. Ms. Micky Chowdhury, Advocate]

2. Mr. Subhasis Pyne, Advocate] - For the Operational Creditor

Date of Pronouncement of Order: 30th July, 2019.

Per Shri Jinan K.R., Hon'ble Member (Judicial):

1. This is an application filed by KD Fabrics Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (In short, I & B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short, CIRP) against the Corporate Debtor, Sunbeam Dealers Pvt. Ltd. claiming that a principal sum of **Rs. 5,10,600/- (Rupees Five Lakhs Ten Thousand and Six Hundred only)** along with interest thereon calculated at the rate of 18% p.a. is the unpaid operational debt due from the Corporate Debtor and that despite demand, the Corporate Debtor did not pay the amount and hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.

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2. The facts, in brief, as stated by the Operational Creditor, are as follows:-

    i. The Operational Creditor, a Company incorporated under the Companies Act, 1956, in the usual course of business, sold and delivered fabrics to the Corporate Debtor on credit. The sale was made under an oral contract for sale of goods governed by the provisions of Sale of Goods Act, 1930 and the Indian Contract Act, 1872. Various part payments were made from time to time by the Corporate Debtor to the Operational Creditor. After considering all the part payments, a principal sum of Rs. 5,10,600/- is due and payable by the Corporate Debtor to the Operational Creditor on account of price of goods sold and delivered along with interest at the rate of 18% p.a. being the prevalent market rate of lending from the date of invoice till actual payment. Copies of the relevant invoices are collectively annexed and marked as **"Annexure – B".**

    ii. The Operational Creditor sent written communication to the Corporate Debtor demanding payment of the outstanding amount vide letters dated 06.05.2017, 21.08.2017 and 27.10.2017. The Corporate Debtor replied with a letter dated 12.05.2017 containing admission of debt but did not make any payment towards the outstanding amount of Rs. 5,10,600/- which is the principal amount due.

    iii. Subsequently, the Operational Creditor issued to the Corporate Debtor demand notice dated 10.10.2018, under Form 3 as per the

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I & B Code, a copy of which is annexed and marked as **"Annexure – F"** to the application. The Corporate Debtor replied to the statutory notice admitting the debt vide letter dated 22.10.2018, annexed and marked as **"Annexure – G".** As no amount has been paid by the Corporate Debtor towards the unpaid operational debt despite repeated requests and demands made by the Operational Creditor, therefore, the Operational Creditor has filed this application.

3. The Corporate Debtor has failed and neglected to make payment of Rs. 5,10,600/- (Rupees Five Lakhs Ten Thousand and Six Hundred only) to the Operational Creditor towards principal amount and interest thereon at the rate of 18% p.a., in spite of several requests and reminders. In support of the claim of unpaid operational debt, the Operational Creditor has submitted the following documents:-

    a) Copy of the duly acknowledged Ledger Account maintained by the Operational Creditor pertaining to the account of Corporate Debtor, annexed and marked as **"Annexure – A".**

    b) Copies of the Invoices raised pertaining to the transactions, are annexed and collectively marked as "**Annexure – B**" to the application.

    c) Copies of the written communication between the parties, annexed and marked as **"Annexure – C", "D", and "E".**

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d) Copy of the Demand notice dated 10.10.2018 issued to the Corporate Debtor, referred to in the application as "**Annexure – F".**

e) Copy of the Reply dated 22.10.2018 by the Corporate Debtor, annexed and marked as **"Annexure – G".**

f) Statement of Bank Account where deposits are made or credits received normally by the Operational Creditor in respect of the debt of the Corporate Debtor as at 18.12.2018, annexed and marked as **"Annexure – J".**

g) Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of unpaid operational debt, annexed at **Pages 94 to 97** of the application.

4. The Operational Creditor further contends that several reminders, in the form of letters, were sent to the Corporate Debtor, but the Corporate Debtor failed to clear the outstanding principal dues of Rs. 5,10,600/-. Subsequently, the Operational Creditor issued a demand notice, despite receipt of which the Corporate Debtor failed to make payments towards the unpaid operational debt and so the Operational Creditor filed the instant application under Section 9 of the I & B Code for initiating Corporate Insolvency Resolution Process as against the Respondent.

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5. The Respondent/Corporate Debtor did not enter appearance, despite satisfactory service of notice. By abundant caution, the Ld. Counsel for the Operational Creditor was also asked to serve notice by e-mail. However, the Corporate Debtor did not turn up to contest and was called absent and declared *ex parte* vide order dated 22/07/2019.

6. This is an application filed under Section 9 of the I & B Code, 2016 for initiating CIRP as against the Corporate Debtor alleging that the Corporate Debtor, who was in receipt of certain goods being fabrics of different kinds, provided by the Operational Creditor, had failed to make payments for the said goods received, despite demand and had committed default in payment of the unpaid operational debt to the extent of Rs. 5,10,600/- with interest thereon at the rate of 18% p.a., payable by the Corporate Debtor to the Operational Creditor, claiming that the amount is due on the basis of invoices raised between 14.12.2016 to 05.05.2017, copies of which were produced along with the application, marked as **"Annexure – B".** The Operational Creditor has supplied goods to the Corporate Debtor and has duly raised invoices totaling ten (10) against the goods supplied. The Corporate Debtor has made various part payments to the Operational Creditor towards the said invoices from time to time. Thereafter, a principal sum of Rs. 5,10,600/- is due to the Operational Creditor which has not yet been paid by the Corporate Debtor in spite of several reminders, as reflected from

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the Ledger Account maintained by the Operational Creditor in respect of the Corporate Debtor. A copy of the Ledger Account for the period 01.04.2016 to 31.03.2018 is annexed with the application and marked as **"Annexure – A"**.

7. According to the Ld. Counsel for the Operational Creditor, the requirement to be meted out to file an application of this nature by the applicant has been complied with. She has submitted that since the Corporate Debtor did not pay the operational debt due to the Operational Creditor, she has filed this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and deserves to be allowed.

8. A Demand Notice as per Section 8(1) of the I & B Code was issued by the Operational Creditor which has been duly served upon the Corporate Debtor. A reply to the Demand Notice is seen given by the Corporate Debtor, which is annexed and marked as **"Annexure – G"**. In its reply, the Corporate Debtor has acknowledged the dues as claimed by the Operational Creditor in the statutory notice and stated that due to bad market conditions they are unable to pay the dues. To fulfill all requirements under Section 9(3), the Operational Creditor has furnished along with the application, (i) copies of the invoices demanding payment and the demand notice delivered by the operational creditor to the corporate debtor as required under Sec 9(3)(a); (ii) an affidavit to the effect that there is no notice given

by the Corporate Debtor relating to a dispute of the unpaid operational debt as required under Sec 9(3)(b); (iii) statement of bank account showing details of part payments made to the Operational Creditor by the Corporate Debtor towards the operational debt as required under Section 9(3)(c). The Operational Creditor has further submitted copy of the Ledger Account maintained by it for the period 01.04.2016 to 31.03.2018 pertaining to the Account of the Corporate Debtor which adds strength to the contention on the side of the Operational Creditor that the Corporate Debtor has failed to clear the outstanding dues towards the unpaid operational debt.

9. Therefore, the Operational Creditor succeeds in proving that the application is complete, that there is no payment of the unpaid operational debt, also that the demand notice has been delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The applicant, here in this case, succeeds in proving that it has complied with all the requirements to be meted out for filing an application under Section 9(3) of the I & B Code, 2016 and further proves failure on the side of the Corporate Debtor in clearing the debt due to the Operational Creditor, even after receiving the demand notice under Section 8(1) of the Code. Therefore, the application deserves to be allowed.

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10. In view of the above-said discussion, we admit this application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 upon the following orders:-

ORDER

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Sunbeam Dealers Pvt. Ltd.** is hereby admitted.

ii) I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution

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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 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 the possession of the corporate debtor.

v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Since no Interim Resolution Professional is proposed by the Operational Creditor, **Mr. Hulashmal Varma**, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, having **Registration No. IBBI/IPA-001/IP-P00258/2017-18/10487, Telephone No. 9435032630, E-mail: hmvarma@yahoo.co.in** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening meetings of Committee of Creditors for evolving a resolution plan.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the

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Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.

xii) The Operational Creditor is directed to deposit **Rs. 2,00,000/- (Rupees Two Lacs Only) in the ESCROW Account in SBI** to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP.

xiii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

xiv) List the matter on **3rd September, 2019** for filing of the progress report.

xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Harish Chander Suri)
Member (T)

Sd 30/7/19

(Jinan K.R.)
Member (J)

Signed on this, the 30th day of July, 2019.

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