



DIVISION BENCH
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**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP(IB) No. 375/KB/2021

**CORAM: 1. HON'BLE MEMBER(J), SHRI ROHIT KAPOOR.
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 18TH NOVEMBER, 2022, 10:30 A.M

IN THE MATTER OF	Shib Shankar Rungta Proprietor of S.S.Rungta & Company Vs. Weaverly Jute Mills Private Limited
UNDER SECTION	Sec. 9 IBC

Appearance (physically)

Mr. Swarup Ghosh, IRP

ORDER

1. This matter is not on Board today and it was taken upon mentioning.
2. In the CP(IB) No. 375/KB/2021 Mr. Swarup Ghosh was appointed as IRP. However, in the order dated 15.11.2022 the email address of Mr. Swarup Ghosh has been mentioned as swaroopghosh@yahoo.co.in erroneously.
3. It has been brought to our notice that correct email of Mr. Swarup Ghosh is as follows:
“swarupghosh1@yahoo.co.in”
4. The correct email address of Mr. Swarup Ghosh shall accordingly stand substituted and registry is directed to send the order of CIRP which was pronounced on 15.11.2022 to the concerned IRP.
5. Other parts of the order dated 15.11.2022 shall remain unchanged.

**Balraj Joshi
Member (Technical)**

**Rohit Kapoor
Member (Judicial)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No. 1)
KOLKATA**

C.P (IB) No. 375/KB/2021

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.

In the matter of:

Shib Shankar Rungta Proprietor of S.S. Rungta & Company

...Operational Creditor

Versus

Weaverly Jute Mills Private Limited[CINU17125WB2011PTC161596], a
5, Clive Row 2nd Floor, Room No-51 Kolkata - 700001.

...Corporate Debtor

Date of Hearing: 15.09.2022

Date of pronouncing the order: 15.11.2022

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through Video Conferencing/physical hearing)

For the Operational Creditor:

Ms. Swapna Choubey, Adv.

Mr. Udit Agarwal, Adv.

For the Corporate Debtor:

Mr. Reetobroto Kumar Mitra, Adv.

Ms. Urmila Chakroborty, Adv.

Ms. Debolina Dey, Adv.



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ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Shib Shankar Rungta Proprietor of S.S. Rungta & Company (*‘Operational Creditor’*), for initiation of Corporate Insolvency Resolution Process (*‘CIRP’*) against Weaverly Jute Mills Private Limited (*‘Corporate Debtor’*).
3. The present Petition was filed on **07 October, 2021** before this Adjudicating Authority. The total amount claimed in default is Rs.1,79,56,941/- (Rupees One Crore Seventy Nine Lakh Fifty Six Thousand Nine Hundred Forty One only) as on 31 March, 2021. The date of default is stated to be as on **04 December, 2019**.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs. 2,00,00,000/- (Rupees Two Crore only) with subscribed share capital of Rs.1,80,80,000/- (Rupees One Crore Eighty Lakh Eighty Thousand only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Corporate Debtor approached the Operational Creditor for supply of raw material i.e., raw jute for jute goods production. The Operational Creditor duly raised invoices towards supply of goods after delivery and acceptance of the goods by the Corporate Debtor. The invoices were raised for the period 14 June, 2019 to 25 September, 2019 for the total sum of Rs.1,73,94,816/- (Rupees One Crore Seventy Three Lakh Ninety Four Thousand Eight Hundred Sixteen only).
 - 5.2 However, the Corporate Debtor has made part payment of Rs.31,60,899/- (Rupees Thirty One Lakh Sixty Thousand Eight Hundred Ninety Nine only)



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against the invoices but did not clear up the full payments. The last payment made by the Corporate Debtor was of Rs.3,82,514/- (Rupees Three Lakh Eighty Two Thousand Five Hundred Fourteen only) on 08 August, 2020 [Bank Statement - Annexure – I].

- 5.3 The Corporate Debtor has also issued 26 (Twenty-Six) post-dated cheques against the invoices raised by the Operational Creditor. The Operational Creditor thereafter sent a letter dated 16 December, 2019 to the Corporate Debtor, wherein, the letter contained the details of all post-dated cheques issued by Corporate Debtor. It was also agreed between the parties that interest @ 18% per annum shall be charge from the date of Bill with grace period of 70 days [Annexure – J]
- 5.4 Out of total 26 (Twenty-Six) post-dated cheques, the Operational Creditor had deposited 4 (four) cheques for encashment but the same was returned by the bank of Operational Creditor for reasons of “EXCEEDS ARRANGEMENT”. After adjusting the part payment of Rs.31,60,899/- (Rupees Thirty One Lakh Sixty Thousand Eight Hundred Ninety Nine only), a sum of Rs. 1,42,33,917/- remains due and outstanding from the Corporate Debtor to the Operational Creditor.
- 5.5 In spite of several requests and reminders to make payment of the outstanding sum, the Corporate Debtor failed and neglected to make the payment of the same on some pretext or the other. The Corporate Debtor is under contractual obligation to fulfill the terms of the service and pay off the amount mentioned in the invoices as agreed between the parties.
- 5.6 The Operational Creditor on 13 April, 2021 issued a notice dated under Section 8 of the Insolvency and Bankruptcy Code 2016 to the Corporate Debtor, which was duly delivered upon the Corporate Debtor on 17 April, 2021 [Annexure – M]. After receiving the said notice, a bare denial reply was received from the Corporate Debtor on 26 April 2021 [Annexure – N].



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6. *Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor.*

- 6.1 This instant application is a claim of a broker claim for price of goods for brokering supplies. The price of goods has already been paid to the suppliers and hence, the real suppliers are not before this Adjudicating Authority. The same will appear from the documents annexed to the company petition itself filed by the Operational Creditor from pages 26 onwards, where the Operational Creditor has described itself as ‘Broker- SELF’. At page 27 of the petition, one Amal Agarwal is described as the ‘Principal’. Hence, it is evident that the Operational Creditor is only a broker and that he cannot claim the price of goods.
- 6.2 Further, there are pre-existing disputes with regard to the quality, quantity and the price of goods supplied to the Corporate Debtor. From the Mill Receipts at pages 27, 29, 31 onwards of the petition, it will appear that jute fiber and bales were short supplied and were of inferior and sub-standard quality in deviation of the specifications given in the purchase orders. Due to such quality issues, the Corporate Debtor was compelled to return the goods.
- 6.3 Further, the Operational Creditor has forged and fabricated documents and by force, duress and coercion obtained signatures on blank sheets of papers and cheques from the senior officers of the Corporate Debtor.
- 6.4 Pre-existing disputes will be further evident from a complaint dated November 16, 2020 (*page 97 of the Supplementary Affidavit filed by Corporate Debtor*) lodged by Corporate Debtor before the Jagatdal Police Station against the Operational Creditor. The said complaint is lodged much prior to the issuance of the purported Demand Notice dated April 13, 2021. In the said complaint it was categorically stated that inferior quality of jute was made over at inflated price by the petitioner. This shows the existence of disputes with regard to the quality, quantity and price of goods supplied. It is clarified that in the list of parties annexed to the complaint, the name of the petitioner has wrongly gone



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down as ‘Suresh Rungta’ in place of Shib Shankar Rungta though the name of the proprietorship concern is correctly stated as "S. S. Rungta & Co."

- 6.5 Further, the Corporate Debtor has also duly replied on April 23, 2021 [at page 290 of CP] to the Form 3 demand notice dated April 13, 2021 [at page 189 of CP]. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* reported in 2018) 1 SCC 353 para 51.
- 6.6 The purported petition is filed through an alleged power of attorney holder purportedly on behalf of the petitioner [at pages 297, 301 & 302 of CP]. As such, the purported petition is filed without any authorization as it is a well settled principle of law that a Power of Attorney Holder cannot file and/or institute any insolvency proceeding under the Code.

7. **Issues**

- 7.1 Is there any Pre-existing dispute?

Analysis & Findings

8. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor and perused the record.
9. Upon perusal, it is seen that the bone of the contention of the Corporate Debtor is that there was pre – existing dispute between the parties, reliance has also been placed on, as follows;
- i.* A complaint dated November 16, 2020 (page 97 of the Supplementary Affidavit filed by Corporate Debtor) lodged by Corporate Debtor before the Jagatdal Police Station against the Operational Creditor.
 - ii.* Mill Receipts [at pages 27, 29, 31 onwards of the petition], it will appear that jute fiber and bales were short supplied and were of inferior



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and sub-standard quality in deviation of the specifications given in the purchase orders.

10. With respect to the first contention, the Corporate Debtor had lodged a complaint before the Jagatdal Police Station and in the said complaint they did mention about the quality and quantity of the goods delivered to them by the Operational Creditor (Page 23 of the Reply). But the moot question that arises is did they ever communicated about the quality and quantity of the goods to the Operational Creditor?. Because there are no correspondences on record which would substantiate the fact, that the dispute with regard to the quality and quantity of the goods was ever communicated or brought into the notice of the Operational Creditor.
11. The Hon'ble Supreme Court in a catena of Judgments has laid down the Principle that in an Application under Section 9, the Corporate Debtor can point out any 'Pre-Existing Dispute' raised prior to the issuance of Demand Notice under Section 8, IBC, 2016.
12. The Hon'ble Apex Court in '*K. Kishan*' Vs. '*Vijay Nirman Co. (P) Ltd.*'¹ has observed as follows:

*"51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, **the adjudicating authority must reject the application under Section 9(5)(ii)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.** It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is -25- Company Appeal (AT) (Insolvency) No. 332 of 2020 whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact*

¹ (2018) 17 SCC 662



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unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

(emphasis implied)

- 13.** It is also pertinent to bring into record the complaint dated 28 January, 2021 *(at page 24 of the Reply)* of the Corporate Debtor, wherein, they have clearly admitted that the Operational Creditor is among the few raw jute material supplier, who willingly supplied the materials to the Corporate Debtor before the lockdown. But due to lock down balance could not be paid to them as the Corporate Debtor was in financial difficulties.
- 14.** However, for the second contention it is appropriate to mention that as per the mill receipt *[at page 27 of the Petition]*, the Corporate Debtor had kept 4 (four) barrels and had returned the rest because of poor quality. This indicates that they had kept the barrels which passed the quality check, and for which they should have cleared the dues.
- 15.** In light of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
- 16.** It is, accordingly, hereby ordered as follows:-
 - a) The application bearing ***CP (IB) No. 375/KB/2021*** filed by Shib Shankar Rungta Proprietor of S.S. Rungta & Company, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency



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&Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Weaverly Jute Mills Private Limited**, is *admitted*.

- b) There shall be a moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016, and moratorium prohibits the following:
- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



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- e) *Mr. Swarup Ghosh*, Registration number *IBBI/IPA-001/IP-P01010/2017-2018/11661* email: *swaroopghosh1@yahoo.co.in* is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. 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.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Operational Creditor shall deposit a sum of **Rs. 3,00,000/- (Rupees Three Lakhs)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.



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- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 17. CP (IB) No. 375/KB/2021** to come up on **30 December, 2022** for filing the periodical report.
- 18.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 15th day of November, 2022
SA [LRA]