

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

Rst. A (IBC) No. 01/JPR/2022;
CP No. (IB)- 215/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

M/S JINDAL FILAMENTS PRIVATE LIMITED

...Operational Creditor

Versus

M/S INDUS GARTEX PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

M/S JINDAL FILAMENTS PRIVATE LIMITED

5046 Trade Housenr Rushabh Petrol Pump,
Ring Road, Surat, Gujarat-395002

...Applicant

VERSUS

M/S INDUS GARTEX PRIVATE LIMITED

G1-138, EPIP-Garment Zone,
Sitapura Industrial Area
Jaipur, Rajasthan- 322022.

...Respondent

For the Applicant : Dhiren R Dave, Adv.
For the Respondent : Naresh Kumar Sejvani, Adv.

Rst. A (IBC) No. 01/JPR/2022;
CP No. (IB)- 215/9/JPR/2019

Order Pronounced On: -01.06.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application has been filed on behalf of Jindal Filaments Private Limited ('Applicant') to restore Company Petition No. (IB)-215/9/JPR/2019 on account of default in payments of the installments of Memorandum of Understanding ('MOU') dated 11.11.2021.
2. The Applicant submitted that the above-captioned Petition had been withdrawn on the basis of a Memorandum of Understanding for settlement between the parties by this Hon'ble Tribunal *vide* its order dated 22.12.2021.
3. The present Application has been filed by the Operational Creditor to restore the Company Petition against the Corporate Debtor as the terms and conditions of the Memorandum of Understanding dated 11.11.2021 have not been fulfilled by the Corporate Debtor. Copy of the MoU dated 11.11.2021 is attached as Annexure A of the present Application.
4. The Applicant submitted that the Corporate Debtor has breached the terms of the MoU dated 11.11.2021 and an amount of Rs. 92,46,490/- (Rupees Ninety-Two Lakh Forty-Six Thousand Four Hundred Ninety Only) is outstanding and payable as on date to the Operational Creditor, resultantly the Operational Creditor has preferred the present Application.
5. The details of the transactions leading to the filing of this application averred by the Applicant *vide* Diary No. 2588/2022 dated 30.08.2022 are as follows:

- i. The Applicant and Corporate Debtor entered into MOU which was executed on 11.11.2021 and based on said MOU matter was withdrawn *vide* order dated 22.12.2021. Copy of the order dated 22.12.2021 is annexed as Annexure-B of the Application.
- ii. In the said order it was held that *“The Memorandum of understanding of settlement has been filed by both the parties. Both the parties submit that the matter has been settled and they are withdrawing the petition. In the circumstances, CP No. (IB)-215/9/JPR/2019 is dismissed as withdrawn with liberty to revive as mentioned in the said memorandum.”*
- iii. Further it is submitted that Corporate Debtor made the payment as per MOU for a few months and defaulted in making the admitted debt. The details of the amount paid are as follows:

<i>Sr. No.</i>	<i>Amount (Rs.)</i>	<i>Received on</i>
<i>1</i>	<i>75,895/-</i>	<i>13.09.2021</i>
<i>2</i>	<i>5,00,000/-</i>	<i>16.10.2021</i>
<i>3</i>	<i>5,00,000/-</i>	<i>29.11.2021</i>
<i>4</i>	<i>5,00,000/-</i>	<i>24.11.2021</i>
<i>5</i>	<i>5,00,000/-</i>	<i>25.01.2022</i>
<i>6</i>	<i>5,00,000/-</i>	<i>28.02.2022</i>
<i>7</i>	<i>2,50,000/-</i>	<i>07.04.2022</i>
<i>8</i>	<i>2,50,000/-</i>	<i>22.04.2022</i>
<i>9</i>	<i>2,00,000/-</i>	<i>29.07.2022</i>
	<i>32,75,895/-</i>	<i>Total Amount Received</i>

- iv. Despite the voluntary undertaking by the Corporate Debtor only part payment of Rs. 32,75,895/- (Rupees Thirty-Two Lakh Seventy Five

Thousand Eight Hundred Ninety-Five Only) has been paid to the Applicant.

6. Consequent to the filing of the present Application, counsel for the Respondent appeared in the matter however no response has been filed by the Respondent.
7. However, the Respondent has filed written submissions *vide* Diary No. 1235/2023 dated 16.05.2023 and stated the following:

- i. It is pertinent to note that the Applicant did not inform this Tribunal that subsequent to filing the present Application the Applicant has received payments from the Respondent. The detail of the payment as follows:

Sr. No.	Received on	Amount (Rs.)
1.	26.08.2022	1,50,000/-
2.	06.10.2022	2,50,000/-
3.	14.10.2022	2,50,000/-
	Total Amount Received	6,50,000/-

- ii. Additionally, the Respondent relied on the following judgments:
- I. *Gagan Deep Singh Dugal Vs Ninaniya Estates Ltd. in Rest. App. No. 02/7/JPR/2021 dated 19.04.2023*
- II. *Alhuwalia Contracts (India) Ltd. Vs Logix Infratech Pvt. Ltd. dated 03.06.2022 in CP(IB) No. 882/ND/2022*

III. *Mis Delhi Control Devices Pvt. Ltd. Vs Mis Fedder Electric and Engineering Ltd. dated 14.05.2019 in CP(IB) No. 343/ALD/2018*

IV. *Bajaj Rubber Company Pvt. Ltd. Vs Saraswati Timber Pvt. Ltd. in IA No. 3247/ND/2017 in CP(IB) No. 1441 (ND) 2018 dated 11.08.2022*

8. We have gone through the facts of the case, documents placed on record before us, submissions made and arguments advanced and we find that the Operational Creditor in this matter filed an insolvency petition under section 9 of the IB Code against the Corporate Debtor which was withdrawn *vide* order dated 22.12.2021 on the basis of MoU dated 11.11.2021 executed between the parties, wherein the Corporate Debtor agreed to pay a sum of Rs. 60,75,895/- (Rupees Sixty Lakh Seventy-Five Thousand Eight Hundred Ninety-Five Only) to the Operational Creditor. However, the Corporate Debtor did not repay the sum as agreed in the MOU, hence the present Restoration Application is filed by Operational Creditor, *inter alia*, seeking restoration of the main petition.
9. In light of the order dated 22.12.2021, this bench hereby orders as follows:

- a. Rst. A (IB) No. 01/JPR/2022 in CP (IB) No. 215/9/JPR/2019 is hereby allowed in the view of liberty granted in the order dated 22.12.2021.
- b. Consequently, CP (IB) No. 215/9/JPR/2019 is revived, and the Registry is directed to list the matter on 17.07.2023 for further consideration. Issue notices to the Respondent before the next date of hearing.

-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

-Sd-
ATUL CHATURVEDI,
TECHNICAL MEMBER