

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**CP(IB)/244/2022**

*(filed 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* **MARAPPAR TEXTILES PRIVATE LIMITED**

**TCP Limited,**

TCP Sapthagiri Bhavan,  
No.4, Karpagambal Nagar,  
Mylapore, Chennai – 600 004.

*... Applicant / Operational Creditor*

-Vs-

**Marappar Textiles Private Limited,**

(Formerly known as Prithviraj Spinning Mill Pvt. Ltd.)  
S.F. No.653/2 & 654/2,  
Kanjapalli Village, Annur,  
Coimbatore – 641 006.

*... Respondent / Corporate Debtor*

*Order Pronounced on 12<sup>th</sup> June 2023*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor: Mr.Surya Narayanan, Advocate  
Mr.Vishnu Mohan, Advocate*

*For Corporate Debtor: Mr.R.Vidhya Shankar, Advocate*

**ORDER**

(Hearing conducted through VC)

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short "**IBC**") read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **TCP Limited** (herein referred to as



**“Operational Creditor”**) against **Marappan Textiles Private Limited** (hereinafter referred to as **“Corporate Debtor”**) for initiating Corporate Insolvency Resolution Process (**“CIRP”**) against the Corporate Debtor.

2. Part-I of the Application, describes that the Operational Creditor is a limited company having its Registered Office at No.4, Karpagambal Nagar, Mylapore, Chennai – 600 004.

3. Part II of the Application describes that the Corporate Debtor is a private limited company incorporated under the Companies Act on 09.05.2014 with CIN: U17111TZ2014PTC020436 the registered office of the Corporate Debtor is situated at S.F. No.653/2 & 654/2, Kanjapalli Village, Annur, Coimbatore – 641 006.

4. In Part III of the Application, the Operational Creditor has proposed Mr. Ramji Mahadevan having Reg No. IBBI/IPA-001/IP-P-01507/2018-2019/12258 as the Interim Resolution Professional (IRP).

5. In Part-IV of the Application, the Operational Creditor has claimed a sum of Rs.3,39,14,042/- (Rupees Three Crore Thirty-Nine Lakh Fourteen Thousand Forty-Two only) comprising Principal Rs.2,31,78,789/- (Two Crore Thirty-One Lakh Seventy-Eight Thousand Seven Hundred Eighty-Nine) and interest Rs.1,07,35,253/- (One Crore Seven Lakh Thirty-Five Thousand Two



Hundred Fifty-Three) at the rate of 24% p.a. calculated till 31.01.2022. The date of default is mentioned as 07.09.2021.

6. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default.

Following documents have been attached with the application: -

1. Copy of Demand Notice.

2. Copy of Power Purchase Agreement dated 10.05.2018.

3. Copy of Power Purchase Extension Agreement dated 01.03.2019.

4. Copy of invoices issued by Operational Creditor and other supporting documents.

7. It is stated that the Operational Creditor and the Corporate Debtor entered into Power Purchase Agreement (PPA) dated 10.05.2018 for supplying electrical energy generated in the Thermal Power Plant of the Corporate Debtor. Later, they extended the same vide Power Purchase Extension Agreement dated 01.03.2019.

8. Pursuant to that, the Operational Creditor started supplying electrical energy and raised invoices for the period from June 2018 till August 2021.

9. As per the PPA, all the payments were to be made within 7 business days from the date of invoice. In case of any default, the Corporate Debtor is liable to pay interest at the rate of 2% per month.

10. It is stated that the Corporate Debtor defaulted in its payments. After repeated requests, the Corporate Debtor proposed



a payment schedule vide letter dated 29.11.2021. However, the payment schedule was not adhered to. Aggrieved by the inaction of the Corporate Debtor, the Operational creditor issued a Demand Notice under Section 8 of IBC, 2016 on 30.01.2022. In turn, the Corporate Debtor sent replies dated 07.02.2022 and 14.02.2022 acknowledging the debt and default. Since the Corporate Debtor is not in a position to pay its debts the Operational Creditor preferred this application.

11. *Per contra* the Corporate Debtor in the counter statement stated that the default amount is less than Rs.1 crore. The default occurred between 25.03.2020 and 24.03.2021 and is required to be excluded in terms of Section 10A of IBC, 2016. Further stated that the Corporate Debtor had requested to adjust the payments made by it towards the invoices raised in the Pre-COVID period, but, the Operational Creditor deliberately adjusted those payments towards invoices raised during COVID to enhance the outstanding amount of the Pre-COVID period.

12. Further, with respect to the claim of 24% as per the PPA, the Corporate Debtor contended that in the bill of supply raised by the Operational Creditor it is stated wherein "the invoice amount that is due to be paid on the due date and what would be the revised invoice amount that is due to be paid on the due date and what would be the revised invoice amount that has to be paid if the due date of payment is crossed". Therefore, there is novation in the interest and



the Operational Creditor cannot claim any sum over and above the enhanced sum.

13. It is further stated that there is material difference in the Principal amount and interest claimed in Form-3 and Form-5 and therefore any claim for principal or interest which is not forming part of Form-3, cannot be claimed in Form-5.

14. It is further stated that use of words in letter dated 29.11.2021 that "We could not make payment" and the same cannot be taken as an admission. The Operational Creditor has not produced any proof of the Operational debt. There is no proof of delivery of invoice or the supply of energy in terms of the invoice.

15. In addition, it is stated that the Corporate Debtor has paid Rs.5,00,000/- on 30.12.2021, Rs.5,00,000/- in January 2022, Rs.10,00,000/- in February 2022 and Rs.10,00,000/- in March 2022. Acknowledging the payments of the Corporate Debtor 31.03.2022, the Operational Creditor served a demand notice alleging to pay something more than actually due.

16. In response to the above contentions the Operational Creditor in the Rejoinder stated that the Respondent failed to pay the amounts towards various invoices pertaining to the pre-COVID period. Even otherwise, if the other COVID period invoices dated 07.05.2020, 06.06.2020, 13.06.2020 etc., are discounted from



calculating the threshold, the default amount stands as Rs.2,69,28,816/-.

17. It is stated that with respect to interest, clause 14.5.1 of PPA clearly states that interest payable for delayed payments shall be 2% per month. In the invoice, it is mistakenly mentioned as 12.5.1 and it cannot be considered as novation.

18. With respect to differences in the Form-3 and Form-5 the Operational Creditor stated that it has provided a detailed split up of Principal and interest recoverable. The Corporate Debtor has misconstrued that the interest is from a specific date viz., 07.09.2021.

19. It is stated that, the in letter dated 29.11.2021 the Corporate Debtor has expressed its regret for non-payment which is clear admission of debt and default. As to the contention regarding non-appropriation of payment towards interest amount, the Operational Creditor stated that the Corporate Debtor has not followed the statutory mandate of deducting TDS towards the alleged payments as per the Income Tax Act, 1961 and hence it is not eligible to be appropriated towards the interest payments.

20. Having cautiously heard the submission of the parties we find the following issues to be answered,

1. Whether there is material difference between Form-3 and Form-5, if so is it curable?



2. Whether the sum claimed by the Operational Creditor exceeds the threshold limit of Rs.1 crore after excluding 10A period invoices?

3. Whether the Corporate Debtor admitted its debt and Default undisputedly?

21. In so far as 1<sup>st</sup> and 2<sup>nd</sup> issues are concerned in Form-3 dated 31.01.2022 the Principal and the interest component have been mentioned as follows,

PARTICULARS OF OPERATIONAL DEBT	
1. Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Total Amount comprising of Rs.3,25,16,607/- i. Principal : Rs. 2,17,13,293/- ii. Interest : Rs. 1,08,03,314/- The debt has arisen on account of non-payment for supply of power in terms of the PPA dated 10.05.2018. The debt fell due on 07.09.2021.
2. Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of default in tabular form)	The principal amount due is Rs. 2,17,13,293/- and an interest at 2% per month is leviable from 07.09.2021 till the date of actual payment in terms of the Power Purchase Agreement (PPA). The invoices raised in this regard are attached in Annexure-A.

And in Form-5 dated 31.03.2022 the Principal and interest have been recorded as below,

**PART IV**

**PARTICULARS OF OPERATIONAL DEBT**

1. TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE.	Principal Sum	Rs.2,31,78,789/-
	Interest (calculated at the rate of 24% p.a. calculated till 31.01.2022)	Rs.1,07,35,253/-
	Total Amount Due	Rs.3,39,14,042/-



On juxta posing Form-3 and Form-5, we see that there is around Rs.14.6 lakh difference in the Principal amount and around Rs.68,000/-(approx.) difference in the interest amount. In both the Forms the date of default is mentioned as 07.09.2021. It is also noted that in para 13 of the Rejoinder, Operational Creditor has stated '*there is an arithmetical error in the Form-3 notice and the same has not caused any prejudice to the Corporate Debtor*'.

22. At this juncture it is relevant to refer to the decision of the Hon'ble Appellate Tribunal in ***Rajendra Bhai Panchal Vs. Jay Manak Steels and Ors [2020 SCCOnline NCLAT 730]***, wherein it was held,

*"40. It is to be borne in mind that the additional affidavit dated 23.08.2019 filed before the 'Adjudicating Authority' in C.P. (IB) 227/NCLT/AHM/2018 was filed only to cure certain defects relating to part V of the Form V and the amendment was not of the character of changing the debt amount and that the same was allowed as per order dated 14.10.2019 and that the amended Form V of the petition formed part and parcel of the proceedings.*

***41. It is to be remembered that a mistake in a 'Demand Notice' does not necessarily mean that it is defective. If a 'Corporate Debtor' wants to question the validity of the demand it is for it to show that the prejudice was suffered by it as a result of defect.***

*42. If there is a mistake in the demand but the creditor is clearly owed the statutory minimum figure or more, the fact that the debt is mis stated may not automatically invalidate the demand as per decision Cardiff Preserved Coal & Coke Co. v. Norton, 36 LJ Ch 451. Further, the Court will take into account whether any injustice was caused to the 'Debtor' and even a grossly overstated statutory demand may not automatically be set aside as per decision Re a Debtor (No 490/SD/1991), (1992) 2 All ER 664 (ChD)."*



Be that as it may, in the instant case, the arithmetical error was admitted by the Operational Creditor. Moreover, this difference in the figures does not bring down the mentioned claim amount below the threshold of Rs.1 crore and hence no prejudice will be caused to the Corporate Debtor.

23. Adverting to the next contention it is seen that in the invoices raised by the Corporate Debtor, the interest component is recorded as below,

*"As per PPA Ref. No.12.5.1, Amount payable after due date is ..."*

In clause 14.5. of the Power Purchase Agreement dated 10.05.2018 it was agreed between the parties as follows,

*"14.5. Payment delay or default.*

*14.5.1. Late Payments, after due date of payment, shall carry for the period of delay, interest at 2% per month, calculated for the period of delay expressed in number of days on the unpaid amount of the invoice till the recovery of all dues including interest on delayed payment. Any payment received shall first be appropriated towards interest on overdue payment.*

*14.5.2. In case payment is not affected by the Due Date, the Power Producer will have the right to summarily discontinue the supply forthwith."*

On viewing the above, the submission of the Operational Creditor that the mention of "PPA Ref. No.12.5.1" instead of "14.5.1" in the invoices are inadvertent typo is considerable to a certain extent. On the other hand, the argument of the Corporate Debtor that the interest component mentioned in the invoices are novation and





overriding the Clause 14.5.1 of the PPA which is the primary contract is unacceptable.

24. Further, in the payment statement provided in the counter statement some of the invoices (extracted and highlighted hereunder) are alleged to be raised in the 10A period / COVID exemption period i.e. raised between 25.03.2020 and 25.03.2021.

					09/03/2022	170,647		
29	03/09/2020	341	1,666,679	1696679.00	26/02/2022	329,353	1,329,353	337,326
					09/03/2022	500,000		
					29/03/2022	500,000		
30	30/09/2020	372	2,223,020	2267480.40				2,223,020
31	31/10/2020	402	2,243,783	2288658.66				2,243,783
32	30/11/2020	432	2,308,003	2354183.06				2,308,003
33	31/12/2020	462	2,200,014	2244014.28				2,200,014
34	31/01/2021	492	2,081,231	2122855.62				2,081,231
35	28/02/2021	521	1,790,388	1826195.78				1,790,388
36	31/03/2021	552	1,908,844	1947020.88				1,908,844
37	30/04/2021	582	2,316,185	2362508.70				2,316,185
38	31/05/2021	612	1,562,580	1593831.60				1,562,580
39	30/06/2021	642	323,806	330282.12				323,806
40	31/07/2021	672	1,163,921	1197199.42				1,163,921
			62,894,174	63,890,403		42,167,196		20,459,101

S.No 29 to 35 are Covid Period invoices .Dated from 25/03/2020 to 25/03/2021

Total Invoice Amount	62,894,174
Total Payable after due date after as per 12.5.1	63,890,403
Total Payment made	42,167,196
Balance to be paid	21,723,207
Covid Period Outstanding	13,183,765
*Total payable (Less Covid Period Outstanding)	8,539,442

The Total payable after the due date as per PPA 12.5.1 is calculated as Rs.6,38,90,403/- in the above statement. Since there is no such clause 12.5.1 in the PPA dated 10.05.2018, we wonder on what basis the interest is calculated in the statement provided by the Corporate Debtor. In such case, we rely on the statement produced by the Operational Creditor wherein interest is calculated at the rate of 24% per annum which is as per clause 14.5.1 of PPA and the interest itself is above the threshold of Rs.1 crore. Moreover, it is seen from the reply letter to the demand notice dated 07.02.2022 that the





Corporate Debtor never raised this contention instead proposed a payment schedule to settle the dues. In view of the above discussions, we conclude that the claim amount is more than the threshold prescribed in Section 4 of IBC, 2016 even after excluding the invoices raised in the COVID period.

25. In so far as the 3<sup>rd</sup> issue is concerned, it is seen that the Corporate Debtor sent letters dated 07.02.2022 and 14.02.2022 to the Operational Creditor after receiving the Demand Notice. Wherein, the Corporate Debtor has not disputed anything about the interest rates or claim amount rather requested only an extension. The letter dated 14.02.2022 is reproduced below,

This is further reference to our letter dated 7.2.2022 which the undersigned handed over to your office on 8.2.2022 in person.

Sir, I repeat my request not to go for NCLT due to the following reason.

- 1) We were paying the amount at least part amount regularly. We have paid Rs 5,00,000 even on 31.01.2022 and Rs 5,00,00 on 11.02.2022 and note to pay at least Rs 10,00,000 before 28.02.2022.
- 2) We have already given an undertaking to you dated 29.11.2021 committing a payment of at least Rs 65 lacs before the end of April.
- 3) It is a tiny industry established by hard work and disposing of properties owned by the promoters.
- 4) First time entrepreneurs neither have social backing nor well understanding bankers.
- 5) No other resources or properties so as to sell and pay you sizeable.
- 6) Since industrial scenario is good, we earn and have started to pay operational creditors.

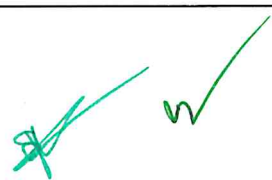
Our bank (secured creditors) outstanding as on date is around Rs 26 crores. Value of the industry will be lesser than loan outstanding if we go for pressure sale. Collateral security may fetch around Rs 3 crores in forced sale.

Operational creditors outstanding is approximately Rs 4 crores including TCP. Your good self is well aware, that by moving to NCLT operational creditors may have share proportionately only after closure of secured creditors. It may be even less than 10 to 15 % of outstanding.

But our intention is clear that our operational creditors should not lose anything. Considering our good intention, request you please not go for NCLT. **This is a humble request of a tiny industry before a Giant Organization.**

With regards

  
M. Shanmugham





Reading the above clarifies that the corporate debtor has clearly admitted its debt and default.

26. Taking into consideration the facts and circumstances of the case as well as the position of Law, the Application, as filed by the Operational Creditor, is admitted under Section 9(5) of the IBC, 2016. As proposed by the Operational Creditor **Mr. Ramji Mahadevan** with Registration Number **[IBBI/IPA-001/IP-P-01507/2018-2019/12258]** (E-mail ID:- **yahooramji@gmail.com**) has been appointed as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

27. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including the 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

**Explanation.**-For the purposes of this subsection, 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 or a similar grant or right during moratorium period;

28. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.



(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.

29. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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.

30. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. Based on the above terms, **CP(IB)/244(CHE)/2022** stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with a copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**SANJIV JAIN**  
MEMBER (JUDICIAL)