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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – I, CHENNAI**

CP/IB/63(CHE)/2023

*(Filed under Section 8 & 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 **Loocust Incorp Apparel Export Private Limited***

Himalaya Intertrade Private Limited

Registered Office Address:

No.202, Poonam Complex, 2nd Floor,
179, 3rd C Road, Sardarpura,
Jodhpur, Rajasthan – 342 003.

And having branch office at:

Flat-A, 2nd Floor, New No.130/11,
Old No.106/11, Veperiy High Road,
Veperiy, Chennai – 600 007

... Operational Creditor

-Vs-

Loocust Incorp Apparel Export Private Limited

28/13, M.G.R. Nagar, 4th Street,
Tirupur, Coimbatore,
Tamil Nadu – 641 602.

...Corporate Debtor

Order Pronounced on 10th July 2023

Present:

For Operational Creditor : S.Dhakshnamoorthy, Advocate

For Corporate Debtor : V.Jayachandran, Advocate

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)



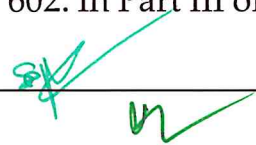
ORDER

(Hearing Conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

Under Adjudication is CP/IB/63/(CHE)/2023 which has been filed by **Himalaya Intertrade Private Limited** (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Loocust Incorp Apparel Export Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Operational Creditor. It is stated that the Operational Creditor is a Private Limited Company incorporated under the Companies Act, 1956. As per Part II of the application, the Corporate Debtor is a Private Limited Company incorporated under the Companies Act, 2013 with Corporate Identification Number U17111TZ2015PTC022074 and the registered office of the Corporate Debtor is at No.28/13, M.G.R.Nagar, 4th street, Tirupur, Coimbatore, Tamil Nadu-641 602. In Part III of the application,

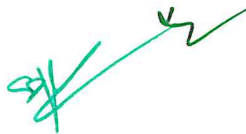


application, the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

3. Part IV of the application signifies the amount of debt to the tune of Rs.1,21,03,656 /- (Rupees One Crore Twenty One Lakh Three Thousand Six Hundred and Fifty Six only) as the outstanding dues that is payable by the Corporate Debtor. The total payable amount as per decree and judgment passed in C.S (Comm. Div.) No.47 of 2022 by Corporate Debtor to operational creditor is Rs.1,21,03,656/- (Rupees One Crore Twenty One Lakhs Three Thousand Six Hundred and Fifty Six only) as on 01.02.2023.

4. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as below:

- i) Demand Notice sent as per Form – 3
- ii) Registered post receipt and acknowledgement card
- iii) Judgment & Decree dated 14.10.2022 passed by Hon'ble High Court of Judicature at Madras in C.S. (Comm.Div.) No. 47 of 2022
- iv) Computation of default and interest



FACTS OF THE CASE:

5. It is averred in the application that as per decree and judgement dated 14.10.2022 in C.S.(Comm Div) No.47 of 2022 passed by Hon'ble High Court of Judicature at Madras:-

The corporate debtor M/s.Loocust Incorp Apparel Export Private Limited is liable to pay FROM WHICH a sum of Rs.1,18,43,333/- (Rupees One FELL DUE Crore Eighteen Lakhs Forty Three Thousand Three Hundred and Thirty Three only) together with interest at 6% per annum on Rs.76,01,583/- from the date of order (i.e. 14.10.2022) till the date of realization, along with cost/tax a sum of Rs.1,22,870/-, to the operational creditor M/s.Himalaya Intertrade Pvt. Ltd.

6. The date of default mentioned in Part –IV of the application is 14.10.2022. The applicant has enclosed the computation of default as follows;

Decreed amount in C.S.(Comm.Div) No.47 of 2022	Rs.1,18,43,333/-
Add Interest calculated @ 6% on 76,01,583/- from 14.10.2022 to 01.02.2023	Rs.1,37,453/-
Add Cost of the suit	Rs.1,22,870/-
Total amount in default as on 01.02.2023	Rs.1,21,03,656/-

7. It is submitted by the Learned Counsel for the Operational Creditor that since no payment was forthcoming from the Corporate Debtor, the Operational Creditor issued a Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 01.02.2023, which was delivered to the Corporate Debtor on 03.02.2023. The Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 stating that the Corporate Debtor after the receipt of the Demand Notice neither paid any amount nor gave any reply notice disputing unpaid operational debt to the applicant. Under such circumstances, the Operational Creditor has filed the present Application on **06.03.2023** seeking initiation of CIRP as against the Corporate Debtor.

REPLY FILED BY THE CORPORATE DEBTOR:

8. The Corporate Debtor has filed a reply vide *S.R.No.2635* dated **26.06.2023**. It is stated that the Applicant/Operational Creditor had filed a suit, bearing CS (Com. Div) No. 47/2022 by invoking Commercial Courts Act and obtained an ex-parte judgement and decree dated 14.10.2022 as against the respondent/ corporate debtor.

9. It is stated that the respondent/Corporate Debtor upon knowing the ex-parte judgement and decree dated 14.10.2022, filed an application, seeking to condone the delay of about 66 days in filing the said



application, along with an application to set aside the ex-parte judgement and decree dated 14.10.2022, including an application for stay of all further proceedings pursuant to the said ex-parte judgement and decree along with written statement. Therefore, the Respondent is seeking dismissal of the present application.

FINDINGS OF THIS TRIBUNAL:

10. Heard the submissions of both the parties and perused the documents placed on record.

11. It is seen from the records that the corporate debtor has not replied to the demand notice. Therefore, there is no pre-existing disputes between the parties.

12. It is manifestly clear from the facts that the Hon'ble Madras High Court has passed a Judgement and decree dated 14.10.2022 for a sum of Rs. 1,14,72,522/-, together with interest at 6% per annum on Rs.76,01,583/- from the date of presentation of the plaint (i.e., on 21.12.2021) till the date of realization.

13. During the hearing, the learned counsel for the Corporate Debtor has stated that the Corporate Debtor has filed an application before the Hon'ble Madras High Court challenging the ex-parte decree dated

14.10.2022. Such contention of the Corporate Debtor does not hold water in the present case, since the same would not amount to pre-existing dispute.

14. Thus, the Operational Creditor has proved that there is an 'operational debt' and 'default' on the part of the Corporate Debtor.

15. Taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the application, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. We order accordingly. In the present case, the Operational Creditor has not named the Insolvency Resolution Professional in Part – III of the Application and accordingly this Tribunal appoints **Mr. Mutharasapuram Ganesan Chandrasekaran** with *Registration No: IBBI/IPA-003/00337/2021-2022/13620 (email id: sekaranirp@gmail.com)* who is having Authorization for Assignment till **30.05.2024** as the "Interim Resolution Professional" (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the 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.

16. 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 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 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 or a similar grant or right during moratorium period;

17. 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 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 arrangement 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.

18. 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 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.

19. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs 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 to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall 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 shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with 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)