

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.302/Chd/Hry/2019

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

Calzini Fashions Limited
having its registered office at
D-9/3, Okhla Industrial Area,
Phase-2, New Delhi - 110020

...Petitioner/Operational Creditor

Versus

Shristi Plywood Pvt. Ltd.
having its registered office at
Vijay Vihar, Silokhra Road,
Gurgaon, Haryana - 122001

...Respondent/Corporate Debtor

Judgement delivered on: 21.11.2019

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Vipul Joshi, Advocate

For the Respondent : Mr. Vibhu Agnihotri, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**') by M/s Calzini Fashions Limited (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Shristi Plywood Pvt. Ltd. (**Corporate Debtor**). The Identification Number of the operational creditor as mentioned in Part-I of Form-5, is U74994DL2007PLC164774 and the address of its registered office is D-9/3, Okhla Industrial Area, Phase-2, New Delhi - 110020. The petitioner-operational creditor has authorized Mr. Aayush Goenka, Director to file petition on its behalf. The copy of the Resolution passed by the Board of Directors of the company is at page 304 of the petition. There is also an affidavit in support of the contents of the application annexed at pages 17 to 19 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Shristi Plywood Pvt. Ltd. (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹50,00,000/- and paid up share capital of ₹43,58,900/-. The CIN of the respondent-corporate debtor is U20232HR2001PTC034736 and its registered office is situated in Gurgaon in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure-II/F (Colly) of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the respondent-corporate debtor placed purchase order(s) for supply of fabric and garments – knitted leggings/socks upon the operational creditor. In March 2018, the petitioner honouring the orders placed by the corporate debtor and supplied the said material and raised several invoices. The copy of invoices are annexure

placed as Annexure-II/A (Colly). However, the corporate debtor defaulted in the partial payment of ₹39,697.25/- against Invoice No.CFDL/17-18/0256 dated 17.03.2018 and full payment of the unpaid amount of ₹2,76,360.00/- against Invoice No.CFDL/17-18/0258 dated 22.03.2018 and breached the terms agreed between the parties. As such, a total unpaid operational debt of ₹3,16,057.25/- became due and payable as on 22.03.2018 by the corporate debtor to the operational creditor. The working for computation of the debt and default in tabular form is at page 35 of the petition as Enclosure-E. It has been stated that operational creditor vide its letter dated 20.12.2018 (Annexure-II/B) called upon the corporate debtor to pay the aforesaid outstanding debt in respect of supply of the aforesaid goods and to that letter corporate debtor replied vide its letter dated 03.01.2019 (Annexure-II/C) acknowledged the unpaid operational debt of ₹3,16,057.25/- and assured to be paid latest by 31.01.2019. It is stated that no payment has been made so far.

4. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor despite various reminders.

5. A demand notice in Form No.3 is stated to be issued on 25.03.2019 (Annexure-I of the petition). The demand notice was accompanied by the duly issued invoices in the name of the corporate debtor bearing acknowledgement of receipt of goods by the corporate debtor (Enclosure-A) along with copy of operational creditor's letter dated 20.12.2018 (Enclosure-B), copy of corporate debtor's letter dated 03.01.2019 (Enclosure-C), copy of operational creditor's ledger statement showing non-payment of the debt by the

corporate debtor (Enclosure-D) and working computation of debt and default in tabular form (Enclosure-E). The copies of these enclosures are attached at pages 26 to 35 of the petition. The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹3,16,057.25/- (inclusive partial payment of ₹39,697.25/- against Invoice No.CFDL/17-18/0256 dated 17.03.2018 and full payment of the unpaid amount of ₹2,76,360.00/- against Invoice No.CFDL/17-18/0258 dated 22.03.2018) within 10 days from the receipt of the notice.

6. It is deposed by the Operational Creditor that no reply or notice of dispute has been received from the Corporate Debtor to the Demand Notice dated 25.03.2019 issued by the Operational Creditor. The affidavit is appended with the petition as Annexure-IV.

7. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 25.03.2019 nor made any outstanding payment and hence this petition.

8. Notice of this petition was issued to the Corporate Debtor on 04.07.2019 to show cause as to why this petition be not admitted.

9. The Corporate Debtor filed reply vide Diary No.4379 dated 27.08.2019 by way of affidavit of Mr. Hare Krishna Kajaria, Authorised Representative of the Corporate Debtor. It is submitted that respondent is carrying on the business of trading in plywood, textiles and related products and has been facing financial stress due to slow down in business due to unfavourable market conditions. It is further stated that the respondent has all along had the bona fide intention to repay the applicant for the alleged

operational debt and that the default in payment thereof was never intentional and prayed to reject the application filed by the applicant/operational creditor inasmuch as the respondent would be disproportionately prejudiced in case the application is allowed and the Corporate Insolvency Resolution Process is initiated against them under the IBC.

10. On the last date of hearing, the learned counsel for the respondent submitted that though the respondent has filed reply, the CP may be admitted as the respondent-corporate debtor is unable to pay the debt.

11. We have carefully considered the submissions of the learned counsel for the corporate debtor and operational creditor and have also perused the records.

12. The first issue for consideration is whether the demand notice in Form No.3 dated 25.03.2019 was properly served. The demand notice dated 25.03.2019 was sent at the address as per the master data at Page No.46 of the petition in which the registered office is shown as Vijay Vihra, Silokha Road, Gurgaon, Haryana - 122001. There is no reply to demand notice by the corporate debtor.

13. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has not filed any reply to the demand notice dated 25.03.2019 nor disputed the liability towards the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

14. The provisions of Section 9(5)(i) of the Code are as follows:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*
 - (a) the application made under sub-section (2) is complete;*
 - (b) there is no payment of the unpaid operational debt;*
 - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
 - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*
 - (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”*

15. The Hon’ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017***, held as under:-

“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 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 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.”

16. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is an total unpaid operational debt (in default) of ₹3,16,057.25/-. Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.03.2018 to 11.03.2019 (page 44 of the petition) has been filed. The copy of invoices has been filed at Annexure-II/A (Colly) of the petition. Moreover, demand notice in Form No.3 was also sent on 25.03.2019 stating that the amount due as on 22.03.2018 from the corporate debtor to the operational creditor is ₹3,16,057.25 (inclusive partial payment of ₹39,697.25/- against Invoice No.CFDL/17-18/0256 dated 17.03.2018 and full payment of the unpaid amount of ₹2,76,360.00/- against Invoice No.CFDL/17-18/0258 dated 22.03.2018). As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 08.05.2019 (Annexure-IV of the petition) has been placed by the operational creditor stating that despite service of the demand notice dated 25.03.2019, no reply or notice of dispute has been received and has not paid the operational debt referred to in this petition as unpaid. We have held above that the demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

17. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand

satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

18. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor M/s Shristi Plywood Pvt. Ltd. and direct moratorium and appointment of Interim Resolution Professional as below.

19. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- a) 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;
- 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 Operational 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 corporate debtor.

20. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

22. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

- “a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*

b) xxxxx”

Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

23. In this regard a letter bearing File No. 25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No.IBBI/IP/EMP/2018/02 dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Mr. Ravi Sethia appearing at Serial No.35 of the panel to be appointed as Interim Resolution Professional.

24. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ravi Sethia and there is nothing adverse against him.

25. In view of the above, we appoint Mr. Ravi Sethia, Registration No.IBBI/IPA-001/IP-P01305/2018-2019/12052, Mobile No.9903562754, E-mail: ravisethia@bsraffiliates.com, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Ravi Sethia shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall

stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Nov., 21, 2019
Anchal