THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 458/Chd/Hry/2019

Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:

Raj Kumar
Proprietor of
Jai Jyoti Woolen Mills
with its registered office at
T-5A, Industrial Area,
Panipat-132103, Haryana

…Petitioner-Operational Creditor

Vs.

M/s Shri Sant Lal And Sons Exports Private Limited
with its registered office at
322/19, First Floor, Bhatia Colony,
Panipat-132103, Haryana
CIN No: U17303HR2017PTC067103

…Respondent-Corporate Debtor

Judgement delivered on: 07.12.2022

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Petitioner-Operational Creditor	:	Mr. Vishal Malhotra, Practising Chartered Accountant
For the Respondent-Corporate Debtor	:	None

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'),** by Raj Kumar Proprietor of Jai Jyoti Woolen Mills (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Shri Sant Lal & Exports Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, M/s Shri Sant Lal & Sons Exports Private Limited, is a Company incorporated on 16.01.2017 under the provisions of Companies Act, 2013 with CIN No. U17303HR2017PTC067103 with its registered office at 322/19, Ist Floor Bhatia Colony, Panipat, Haryana-132103 India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Page 8.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is engaged in the business of manufacturing, trading and job work of all types of fabric, blanket and other handloom goods. Corporate Debtor placed purchase orders for purchase of handloom goods from operational creditor and raised 26 invoices for sales, two invoices for job work between 10.07.2018 and 01.10.2018 amounting to Rs. 52,74,870/- against which payment of Rs. 19 lakhs was received. The first invoice was raised on 10.07.2018 and the last invoice was raised on 01.10.2018. Operational Creditor purchased goods from the corporate debtor amounting

to Rs. 5,51,760/- which was credited to the running account of the corporate debtor. Last payment was received on 10.12.2018 creating a debit balance of Rs. 28,23,110/-. On 18.08.2018, the operational creditor received cheque No. 425338 of Rs. 5 lakhs which was deposited into bank and returned unpaid due to insufficient funds. Operational Creditor delivered a demand notice dated 24.05.2019 by speed post and reply was received dated 06.06.2019 raising issue that it has supplied thread amounting to Rs. 14,12,287/- but failed to bring on record proof of delivery or invoice for the same and goods supplied by operational creditor were defective in quality. Corporate Debtor confirmed that a sum of Rs. 14,00,823/- was payable to operational creditor.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 28,23,110/- and the default occurred on 19.08.2018 i.e. the date on which last invoice was issued. Copy of GST Registration Certificate alongwith PAN card (Annexure-3), ledger account for financial year 2018-19 and period 01.04.2019 to 31.07.2019 (Annexure-4), defaults certificate issued by National E-governance Services Limited dated 24.06.2020 (Annexure-5), bank account statement (Annexure-6), invoices (Annexure-7) and bounced cheque (Annexure-8) are attached with the main petition.

5. A demand notice dated 24.05.2019 in Form 4 is stated to be issued by the operational creditor and the same has been delivered to the corporate debtor as reply dated 06.06.2019 in response to demand notice was received.

6. Accordingly, order dated 06.09.2019 notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. Affidavit of service is filed vide Diary No. 6084 dated 04.11.2019. The corporate debtor has filed reply vide diary No.1102 dated 10.02.2020 wherein it is stated that there was oral deal between parties. The operational creditor intentionally supplied defective material due to which there was consideration loss and damages to the reputation as well as business. The Corporate Debtor never denied to settle the things and made payments to the operational creditor. The operational creditor has backed out of terms and conditions as decided between the parties and transactions being purely commercial in nature cannot be brought under ambit of Insolvency and Bankruptcy Code, 2016. It was stated by the learned authorized representative on behalf of petitioner-operational creditor that he does not want to file any rejoinder to the said reply as recorded in order dated 25 July,2022 of this bench.The short written submissions have been filed by petitioner vide Diary No. 0627/1 dated 19.09.2022 There was no presentation on behalf of the respondent-corporate debtor, *ex parte* arguments were heard and have been concluded by the authorised representative of the petitioner-operational creditor.

7. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 4 dated 24.05.2019 was properly served. The demand notice was received as per tracking report attached at Page 44 of the main petition. In view of the same, it is held that the demand notice has been duly

served. Reply dated 06.06.2019 was filed to the demand notice wherein it was stated that only a sum of Rs. 14,00,823/- is due and outstanding which the corporate debtor never refused to pay. But without crediting/accounting the amount of Rs. 14,12,287/- which was paid in the shape of threads, operational creditor is bent upon to recover the amount of Rs. 28,23,110/- which is neither due nor recoverable. The defective goods worth Rs. 30 lakhs were supplied and corporate debtor had requested to waive off the amount for the same.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by the petitioner that the operational creditor had received a reply to the demand notice from the corporate debtor but no notice had been received relating to a 'pre-exiting' dispute of the operational debt. There were no proceedings initiated or undertaken by the applicant with respect to the debt mentioned and no proceedings pertaining to the same are pending in any forum (Annexure-9).

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 24.05.2019 in Form 4 was duly served on the corporate debtor through speed post. Therefore, the period of limitation would begin from the date of default i.e. 19.08.2018 i.e. the date on which the last invoice was issued. This application was filed on 03.09.2019 vide Diary No. 4007. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a

total unpaid operational debt (in default) of ₹28,23,110/-. The operational creditor had supplied handloom goods to the corporate debtor and raised invoices attached as Annexure-7. Although respondent has contended that a sum of Rs. 14,00,823/- is due and outstanding which the corporate debtor never refused to pay. But without crediting/accounting the amount of Rs. 14,12,287/- which was paid in the shape of threads, the operational creditor is bent upon to recover the amount of Rs. 28,23,110/- which is neither due nor recoverable. The defective goods worth Rs. 30 lakhs were supplied and the corporate debtor had requested to waive off the amount for the same but there is no concrete evidence in support of the same. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. 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 CIR Process in the case of the Corporate Debtor, M/s Shri Sant Lal & Sons Exports Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

14. In Part-III of Form No. 5, Mr. Dinesh Kumar, Registration No. IBBI/IPA-001/IPA-001/IP-P00860/2017-18/11442 has been proposed as Interim Resolution Professional (IRP) by the petitioner. Form No. 2 dated 29.07.2019 submitted by the proposed IRP attached as Annexure 11. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professionals of ICAI. The Law Research Associate of this Tribunal has checked the credentials of Mr. Dinesh Kumar and there is nothing adverse against him. In view of the above, we appoint Mr. Dinesh Kumar, Registration No. IBBI/IPA-001/IPA-001/IP-P00860/2017-18/11442, E-mail:dkgc2004@yahoo.com, Mobile No. 9896252550 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Dinesh Kumar 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 Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) 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

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. 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.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, 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.

17. 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.

18. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

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

20. This petition is accordingly admitted.

Sd/- 7.12.22

(Subrata Kumar Dash)
Member (Technical)

Sd/- 7.12.22

(Harnam Singh Thakur)
Member (Judicial)

December 07, 2022
YP/TB