

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

IA(IBC)/127/KOB/2021

in

IBA/29/KOB/2020

(Under Rule 11 of National Company Law Tribunal Rules, 2016)

Order delivered on 31.08.2021

Coram:

**Mr. Rajesh Sharma
Hon'ble Member (Technical)**

**Mr. Ashok Kumar Borah
Hon'ble Member (Judicial)**

In the matter of

M/s. Sulpa International

- Operational Creditor

Vs.

M/s. Savute Textiles Private Limited

- Corporate Debtor

Parties/Counsels Present (through Video Conferencing):

For Applicant

: Shri Vinod P.V. , Advocate

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

1. This is an application filed under Rule 11 of the National Company Law Rules, 2016 by M/s. Sulpa International (Operational Creditor) seeking restoration of the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016) Application No. IBA/29/KOB/2020 to initiate Corporate Insolvency Resolution Process against M/s. Savute Textiles Private Limited which was earlier disposed of by this Tribunal vide order dated

04.12.2020 in terms of the settlement arrived at between the parties, taking into consideration the Memorandum of Understanding.

2. The brief facts of the case are that the Corporate Debtor is a manufacturer of linen and linen blended fabrics and the Operational Creditor has supplied Linen Fabric to the Corporate debtor against various purchase orders issued during the month of February to April 2018 and sales were made during the period March 2018 to June 2018. Out of the total invoiced amount of Rs.1,55,27,465/-, Corporate Debtor has only paid Rs.32,71,879. As on 09th December 2018 an amount of Rs.1,46,33,008/- was due from the Corporate Debtor. Since the Corporate Debtor was unable to pay its debts, the Operational Creditor issued demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 09.12.2019. After issuance of demand notice, an amount of Rs. 3,00,000/- was paid on 1st February 2020, therefore, a balance of Rs. 1,43,33,008/ was due from the Corporate Debtor. The applicant herein filed an application under Section 9 of the I&B Code, 2016 on 05.06.2020. the Corporate Debtor accepted notice and entered appearance in the above matter and sought time for settlement. Subsequently, a Memorandum of Understanding had been arrived at between the parties on 28.11.2020 to settle the dues of the Operational Creditor.
3. The factual matrix of the present Application would not be complete without examining the Deed of Settlement entered into between the parties on 28.11.2020. which is as under: -

“WHEREAS,

The Corporate Debtor is liable pay a sum of INR 1,26,55,586/- [Indian Rupees One Crore Twenty-Six Lakhs Fifty-Five Thousand Five Hundred and Eighty-Six Only] to the Operational Creditor.

2. The Corporate Debtor has approached the Operational Creditor and is desirous to enter into this MOU and to opt for full and final settlement with the Operational Creditor by way of repayment of a sum due and payable of INR 1,26,55,586/- [Indian Rupees One Crore Twenty-six lakhs fifty-Five Thousand Five Hundred and Eighty-Six Only) against principal dues outstanding along with interest pursuant to the mutual understanding between the parties.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS :

3. The Corporate Debtor shall pay a sum of INR 1,26,55,586/- [Indian Rupees One Crore Twenty-Six Lakhs fifty-five thousand five hundred and eighty-six only) against principal dues outstanding along with an interest at the rate of 12% p.a. commencing from the 46 days of the date of respective invoice till the date of repayment to the Operational Creditor as per the mutually agreed Repayment Schedule specified hereunder:

| <i>Instalment No.</i> | <i>Date of Payment</i> | <i>Principal Payment amount</i> |
|-----------------------|------------------------|---------------------------------|
| 1 | 31 December, 2020 | 20,00,000 |
| 2 | 31 January 2021 | 5,00,000 |
| 3 | 28 February 2021 | 5,00,000 |
| 4 | 31 March 2021 | 5,00,000 |
| 5 | 30 April 2021 | 6,00,000 |
| 6 | 31 May 2021 | 6,00,000 |
| 7 | 30 June 2021 | 7,00,000 |
| 8 | 31 July 2021 | 7,00,000 |
| 9 | 31 August 2021 | 8,00,000 |

| | | |
|----|-------------------|--------------------|
| 10 | 30 September 2021 | 8,00,000 |
| 11 | 31 October 2021 | 9,00,000 |
| 12 | 30 November 2021 | 10,00,000 |
| 13 | 31 December 2021 | 10,00,000 |
| 14 | 31 January 2022 | 10,00,000 |
| 15 | 28 February 2022 | 10,55,586 |
| | TOTAL | 1,26,55,586 |

4. The Corporate Debtor shall provide post-dated cheques equivalent to the amount due as per above repayment schedule for 1st block of six months i.e. commencing from the month of December 2020 to May 2021 along with Personal Guarantee of Mr. Stephen Logan to enter, sign, execute and implement a memorandum of understanding for repayment of the principal and interest outstanding of the Operational Creditor as mutually agreed between the parties mentioned hereinabove on or before execution of this MOU.

5. Thereafter, the Corporate Debtor shall provide post-dated cheques for 2nd block of six months commencing from June 2021 to November 2021 before the completion of the repayment of the 1st block.

6. Thereafter, for the 3rd block of balance period of three months commencing from November 2021 to February 2022 on or before the completion of the repayment of the 2nd block.

7. The said Personal Guarantee of Mr. Stephen Logan shall be deemed to be extended till the period of last date of repayment.

8. In the event of failure of the Corporate Debtor to make the afore stated payments within the timeframe specified, the Operational Creditor reserves its right to initiate fresh proceedings under the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor and to exercise all other legal remedies available with the Operational Creditor in order to recover the outstanding comprising of both principal and interest from the Corporate Debtor.

9. This MOU shall supersede and replace all the prior agreements and understandings between the Operational Creditor and the Corporate Debtor

with respect to the subject matter covered in this MOU and the mutual understanding entered herein shall be termed final."

4. Pursuant to the said settlement, the Corporate Debtor has agreed to pay ₹1,26,55,586/- to the Operational Creditor. The applicant herein based on the settlement agreement filed an application for withdrawal of the Application IBA/29/KOB/2020 under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 01.12.2020 seeking liberty to reopen the original application in the event of default committed by the Corporate Debtor. It is further stated that this Tribunal recording the Memorandum of Settlement on 04.12.2020 dismissed the application as withdrawn. As on 31st March 2021, the total amount payable by the Corporate Debtor is Rs.35,00,000/- However, the Corporate Debtor has made a payment of Rs.10,00,000/- till date. Applicant presented the cheques for realization of the instalments, but the same were dishonoured. Applicant sent a mail to the Corporate Debtor to make the payment on 01.03.2021, 25.03.2021 26.03.2021 and 06.04.2021 to which the Corporate Debtor sent a reply on 28.03.2021. The Corporate Debtor has committed breach of the terms of the settlement and cheated the applicant by giving false promises and post-dated cheques. Hence this application has been filed to restore the IBA/29/KOB/2020 by setting aside the order dated 04.12.2020.
5. We have gone through the whole case records and heard the arguments advanced by the learned counsel for the applicant. We have also gone through the Memorandum of Understanding dated 28.11.2020. Clause 8 of the MOU is as follows:

"8. In the event of failure of the Corporate Debtor to make the aforesaid payments within the timeframe specified, the Operational Creditor reserves its right to initiate fresh

proceedings under the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor and to exercise all other legal remedies available with the Operational Creditor in order to recover the outstanding comprising of both principal and interest from the Corporate Debtor.”

6. Vide order dated 04.12.2020 this Tribunal, dismissed the application as withdrawn in view of the withdrawal memo filed by the Operational Creditor enclosing the Memorandum of Understanding. Both parties were directed to strictly adhere to the conditions mentioned in the Memorandum of Understanding. In clause 8 of MOU it was made clear that the applicant deserves the right to initiate fresh proceedings under the I&B Code, 2016. In view of the above, the question of restoration of the application IBA/29/KOB/2020 does not arise. The applicant is at the liberty to institute fresh application, if he so desires.
7. With the above direction **IA (IBC)/127/KOB/2021 is disposed of.**

Dated this the 31st day of August 2021

Sd/-
(Rajesh Sharma)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

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