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

CP/121/IB/2018

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 and
Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating
Authority] Rules, 2016)*

*In the matter of **M/s. Sri Lakshmi Saraswathi Spintex Limited-GD***

M/s. Augustan Textiles Colours Private Limited

Malampuzha Road,
Kanjikkode West (P.O),
Palakkad, Kerala

... Operational Creditor

-Vs-

M/s. Sri Lakshmi Saraswathi Spintex Limited-GD

Shed No. 10, Nethaji Apparel Park,
Eeettiveerampalayam (P.O),
New Tiruppur – 641 666

... Corporate Debtor

Order pronounced on 28th September 2021

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : S. Saravanan, Advocate
For Corporate Debtor : Naveen Kumar Murthi, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Consideration is an Application filed under Section 9 of
the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to
as IBC, 2016") by **M/s. Augustan Textiles Colours Private**

Limited (hereinafter called as "Operational Creditor") for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against **M/s. Sri Lakshmi Saraswathi Spintex Limited-GD** (hereinafter called as "Corporate Debtor").

2. Part - I, of the Application discloses the fact that the Applicant / Operational Creditor herein is a private limited company with CIN- U01712TZ2004PTC011256. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Public Limited Company with CIN:U17120TN2010PLC078474 which was incorporated on 20.12.2010 and that its Authorized Share Capital and Paid up Capital are Rs. 12,00,00,000/- and Rs. 11,68,98,460/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No. 9 Old No. 8, Crescent Road, Shenoy Nagar, Chennai - 600 030.

3. Part - III of the Application discloses the fact that the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint an Interim Resolution Professional from the list furnished by the Insolvency and Bankruptcy Board of India.



4. From Part-IV of the Application it is seen that, the Operational Creditor has stated that a sum of Rs.29,96,028.96/- along with interest is due and payable by the Corporate Debtor.

5. Part V of the Application sets out the list of documents filed by the Operational Creditor in order to prove the existence of the Operational debt and the amount in default,

- i. Legal Notice, 01.02.2017
- ii. Demand Notice, dated 15.07.2017
- iii. Ledger copies of Operational Creditor
- iv. Invoices

6. The Learned Counsel for the Operational Creditor submitted that they are engaged in the all kinds of dying, bleaching, compacting, printing and other textile processing activities and during the course of its business the Corporate Debtor had engaged the Operational Creditor to do dying, bleaching, printing and compacting of fabrics for the Operational Creditor on credit basis between the period from November 2015 to March 2016. Based on the services rendered by the Operational Creditor invoices were raised to the tune of Rs. 26,96,028.96/- and it was submitted that despite several request and remainders the Corporate Debtor herein has not settled the amount due to the Operational Creditor from 31.12.2016 onwards. Under such



circumstances, it is seen that the Operational Creditor has issued a Demand Notice on 15.07.2017 to the Corporate Debtor and hence prayed for the initiation of the Corporate Insolvency Resolution Process as against the Corporate Debtor.

7. The Respondent has filed objections and the Learned Counsel for the Corporate Debtor submitted that the present application is not maintainable since the quantum of the amount to be paid by the Corporate Debtor have been disputed since 2016 i.e., before issuance of Demand Notice. It is further averred that the Corporate Debtor had faced quality and delay issues with respect to the services offered by the Operational Creditor, which have been communicated to them through several emails. It was further submitted that the Operational Creditors themselves are unclear with respect to the claim amount and initially the Operational Creditor on 26.07.2016 issued a legal notice for a sum of Rs.30,30,568.96/- and on account of non-payment of the same, the Operational Creditor has issued another notice for a sum of Rs. 29,69,028.96/- on 31.12.2016.

8. It was submitted by the Learned Counsel for the Corporate Debtor that there exists no invoice for a sum of Rs.90,103/- which has been added in the claim. Further the Corporate Debtor has

submitted that the value of work undertaken is only for a sum of Rs.6,50,000/- and hence the rest of the disputed amount cannot be called as 'default'. It is further alleged that about 29 invoices which have been annexed in the typed set are generated in the name of one M/s. Sri Lakshmi Saraswathi Impeex Private Limited which is different company from that of the Corporate Debtor.

9. Further, the Learned Counsel for the Corporate Debtor submitted that there was a dispute in relation to the debt which is payable to the Operational Creditor before the issuance of the Demand Notice and hence the present Application has to be rejected by the Adjudicating Authority and in support of the same the Learned Counsel for the Corporate Debtor relied upon the Judgment of the Hon'ble Supreme Court in the matter of **Mobilox Innovations (P) Limited -Vs- Kirusa Software (P) Limited;** (2018) 1 SCC 353.

10. Heard the submissions made by the Learned Counsel for the parties. It is seen from the record of proceedings that the parties herein since the month of November 2018 have requested time on the pretext that the settlement talks are in process. Also, it is seen that when the matter was posted for hearing on 14.12.2018, the Corporate Debtor has stated that a sum of Rs.11,20,000/- from the

total claim amount is hereby admitted and accordingly is ready for payment of the same in three instalments and also further added that there exists a dispute for the rest of the claim amount. Accordingly, this Tribunal vide its order dated 04.01.2019, directed to make part payment as agreed between the parties and also liberty was sought by the Operational Creditor to seek appropriate remedy for the rest of the amount to be paid to the Operational Creditor. Subsequent to which, it is seen that the following payments have been made by the Corporate Debtor .

a) Demand Draft for a Sum of Rs. 2,00,000/-
dated 04.04.2019

b) Demand Draft for a Sum of Rs. 3,00,000/-
dated 21.05.2019

c) Demand Draft for a Sum of Rs. 2,00,000/-
dated 19.08.2019

11. It is also seen that the present matter, on account of certain administrative error, was transferred to NCLT Kochi Bench and again remanded back to NCLT Chennai Bench and hence the present case was pending on the file of this Tribunal since the year of 2018.

12. Be that as it may, coming to the case on hand, on perusal of the Application it is seen that the Operational Creditor has not



enclosed the proof of serving the Demand Notice to the Corporate Debtor and also has failed to file the Affidavit as mandated under Section 9(3)(b) of IBC, 2016.

13. Further, in the typed set filed along with the Application, the Operational Creditor has enclosed the Invoices from page No. 58 to 132 and as rightly pointed out by the Learned Counsel for the Corporate Debtor there are certain Invoices which are raised by the Operational Creditor not in the name of the Corporate Debtor, but in the name of the one M/s. Sri Lakshmi Saraswathi Impeex Private Limited. Hence by clubbing all those Invoices, the Operational Creditor has filed the present Application by treating the dues which are payable by M/s. Sri Lakshmi Saraswathi Impeex Private Limited as the dues of the Corporate Debtor.

14. Further this Tribunal being an Adjudicating Authority under the IBC, 2016 and the proceedings before this Tribunal being summary in nature, this Tribunal unlike a Civil Court cannot indulge in the luxury of taking evidence and that the debt and default on the part of the Corporate Debtor is required to be proved by the Operational Creditor beyond reasonable doubt.



15. Thus, from the discussions made *supra* the Application filed by the Applicant / Operational Creditor under Section 9 of the IBC, 2016 stands **dismissed**. No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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