

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

IBA/1104/2019 filed under Section 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 **M/s. SAALIM SHOES PRIVATE LIMITED**

M/s. Spectra Kolors,

Rep. by its Senior Partner,

Mr. S. Ramesh Prabu,

No.3/730, J.B. Complex, Bharathi Nagar,

Ranipet, Walaja Taluk, Vellore District – 632 402

... Applicant / Operational Creditor

-Vs-

M/s. Saalim Shoes Private Limited,

No.1-A, Regency Apartment,

No.5, 1st Lane, Nungambakkam High Road,

Nungambakkam, Chennai – 600 034

... Respondent / Corporate Debtor

Order Pronounced on 22nd September 2020

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Petitioner / Operational Creditor : Rohan Rajasekaran, Counsel

For Respondent : E.K. Kumaresan, Counsel

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. The Petitioner in the above Petition has approached this
Tribunal as an Operational Creditor as defined under the provisions

of Insolvency & Bankruptcy Code, 2016 (IBC, 2016) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor on the ground that debts which are due to the Operational Creditor have been defaulted in their payment by the Corporate Debtor.

2. Perusal of the Petition discloses that the Operational Creditor is a 'Partnership Firm' Registered under the Indian Partnership Act, 1932 and its Office address is at No.3/730, J.B. Complex, Bharathi Nagar, Ranipet, Walaja Taluk, Vellore District - 632 402. In relation to the Corporate Debtor the following particulars are stated the Registered Office address is situated at No.1-A, Regency Apartment, No.5, 1st Lane, Nungambakkam High Road, Nungambakkam, Chennai - 600 034. The Corporate Debtor was incorporated on 19.06.20106 with Identification No.U19111TN2006PTC060267. Further the Authorized Share Capital of the Corporate Debtor / Respondent is disclosed as Rs.1,00,00,000/- (Rupees One Crore Only) and the Issued, Subscribed and Paid-up Capital of the Corporate Debtor is reflected as Rs.97,87,500/- (Rupees Ninety Seven Lakhs Eighty Seven Thousand Five Hundred Only) as evidenced from its Memorandum of Association.



3. In relation to the transaction which transpired between the Operational Creditor and the Corporate Debtor, it is stated that the Operational Creditor is engaged in the sales of leather tanning chemicals and the Corporate Debtor is engaged in the process of finished Leather Sides and Hides and hence purchased materials from the Operational Creditor under several invoices.

4. The details of the invoices, it is represented by Learned Counsel for the Operational Creditor during the course of his submissions are as given in Annexure II-E. The invoices, it is seen from the said Statement of Accounts that, have commenced from 24.08.2016 and continued for the years 2017 as well as 2018 and it is seen that a sum of Rs.59,24,643/- is the closing balance as on 31.03.2018 reflected to be due from the Corporate Debtor to the Operational Creditor. For the year ended 31.03.2019 as well, the ledger account of the Petitioner discloses that a sum of Rs.59,24,643/- continues to be due.

5. In the circumstances, since the amounts have not been paid, it is represented that a notice as required under the provisions of IBC, 2016 being the 'Notice of Demand' was issued to the Corporate Debtor to its Registered Office address on 12.07.2019 demanding the payments in a sum of Rs.74,68,005.00 which



includes the principal amount in a sum of Rs.59,24,643.00 and the balance towards the interest @ 18% per annum as on the said date. It is also submitted that the 'Demand Notice' was duly served upon the Corporate Debtor as evidenced from the 'Track Consignment' issued by India Post reflecting as against the date of 13.07.2019 to the effect that "Item Delivery Confirmed". No reply to the said 'Demand Notice' issued by the Operational Creditor to the Corporate Debtor was received nor any payment was made in relation to the amount demanded from the Corporate Debtor.

6. In the circumstances, this Petition filed before this Tribunal wherein under part IV of the prescribed Form as stipulated under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for brevity 'AAA' Rules, 2016 has been preferred before this Tribunal on 22.08.2019 along with an affidavit being sworn in by one Mr. S. Ramesh Prabu as a Partner of the Operational Creditor swearing to the contents of the Application as well as signed the Application on behalf of the Corporate Debtor.

7. Pursuant to the notice, from the record of the proceedings, it is seen that the Corporate Debtor has duly entered appearance and also filed a reply to the Petition. Perusal of the reply shows that the Corporate Debtor has taken an objection in relation to the capacity

of the person signing on behalf of the Partnership Firm viz., the Operational Creditor.

8. Further a contention has also been raised that transactions as between the parties have been both in the nature of credit as well as cash transactions and that amount received in cash by the Operational Creditor in relation to the payment of invoices have not been disclosed in the Statement of Account as filed along with the Petition.

9. It is also contended on behalf of the Corporate Debtor that taking into consideration the accounts as submitted by the Operational Creditor along with the Application, it is contended that supplies which have been reflected to be effected where payment in relation to the invoices have not been made beyond the fixed period of 60 days and in the said circumstances the Operational Creditor could have ended the business relations. In the circumstances, it is submitted that the balance as reflected in the Statement of Account cannot be accepted as it is completely false as payments in cash received by the Operational Creditor have not been accounted.

10. It is also further contended that not even once after the year 2017, the Operational Creditor has sent any e-mail or a letter or



made any effort to contact the Corporate Debtor with respect to the alleged dues of the Operational Creditor. In the circumstances, the allegations of the Operational Creditor in relation to 'Non Payment of Operational Debt' does not hold any water. The Corporate Debtor has also raised a plea that the goods which have been supplied viz., the chemicals suffered from several defects. However, keeping in mind the long term business relations with the Operational Creditor, the Corporate Debtor agreed to issue a 'Debit Note' in this regard to the Operational Creditor.

11. It is also stated in the reply filed by the Corporate Debtor that there has been no acknowledgment of the Statement of Calculation of sales in relation to the accounts provided by the Operational Creditor as annexed along with the Application.

12. It is further contended that each transaction as reflected in the Statement is independent and distinct and the invoice amount is settled by 'Letters of Credit' issued by the Banks and there can be no accumulation of dues nor a presumption can be made that there was a 'running account' maintained between the parties.

13. Taking into consideration all above aspects, in view of the position that debt does not exist nor any unpaid 'Operational Debt'



due to the Operational Creditor as alleged by the Operational Creditor, this Petition is liable to be dismissed with exemplary cost.

14. We have carefully considered the rival pleadings and documents if any annexed therewith as well as the respective submissions made during the course of the hearings held before this Tribunal on 16.09.2020. From the Petition, it is evident that the claim of the Operational Creditor relates to supply of chemicals to the Corporate Debtor, who is engaged in the business of processing finished Leather Sides and Hides and in the circumstances since the chemical supplied by the Operational Creditor is used by the Corporate Debtor in the course of business it satisfies the definition of an 'Operational Debt' as defined under Section 5 (21) of IBC, 2016 and the Petitioner being an Operational Creditor is entitled to maintain the Petition before this Tribunal as against the Corporate Debtor.

15. It is also noticed from the Application / Petition as filed by the Operational Creditor wherein it has been stated that the Registered Office of the Corporate Debtor is situated within the State of Tamil Nadu and in the circumstances this Tribunal has got the 'Territorial Jurisdiction' to entertain this Petition.



16. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, however, since the date of default taking into consideration the invoices raised as well as the 'Demand Notice' issued wherein it is stated that the default has arisen in relation to the claim on 20.01.2018. Since the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

17. In so far as the 'Question of Limitation' is concerned, it is evident from the perusal of the ledger extracts as filed by the Petitioner / Operational Creditor in relation to the Corporate Debtor as maintained in its 'Books of Accounts' which discloses that the invoices have been raised commencing from 24.08.2016 and last of the invoice as claimed by the Operational Creditor has been raised on 20.01.2018.

18. Further perusal of the ledger extracts also demonstrates that payment has been made by the Corporate Debtor from time to



time even though not correlating with the invoices raised but only in an adhoc manner. The Corporate Debtor has also failed to file any documents demonstrate to the effect that the payments are required to be correlated in relation to specific or particular invoices as raised by the Operational Creditor and in the circumstances the contention put forth by the Corporate Debtor that each transaction is required to be treated in an independent and distinct manner cannot also be accepted on the basis of accounting the invoices and striking the balance seems to indicate that it is only a 'Running Account' maintained between the Operational Creditor and the Corporate Debtor and in the circumstances the claim as made by the Operational Creditor is within the 'Period of Limitation' of three years and it cannot be claimed that it is barred by limitation.

19. Now, focusing on compliance with formalities as required by the Petitioner under IBC, 2016, it is seen that Notice under Section '8' of IBC, 2016 being the 'Demand Notice' has been issued by the Operational Creditor to the Corporate Debtor in the Form as prescribed in AAA Rules. Despite service of the said 'Demand Notice' dated 12.07.2019 and delivered by India Post on 13.07.2019, the Corporate Debtor has not chosen to reply to the said 'Demand Notice'. It has thus compelled the Operational



Creditor to approach this Tribunal, in the absence of any dispute being raised for nor payment being made in relation to the claim in terms of Section 9 of IBC, 2016.

20. Now coming to the ground which is sought to be projected by the Corporate Debtor to avoid the claim, it is required to be noted that even though an allegation has been made that payments in relation to the invoices have been made in cash and that the same has not been accounted for, however, in the reply, it has failed to furnish any receipt as could have been issued by the Operational Creditor in relation to the 'Cash Payments', alleged.

21. Further in relation to the contention that the Operational Creditor in the absence of payment, could have stopped supplies also does not merit much consideration by this Tribunal. Similarly, no evidence whatsoever has also been placed on record in support of the contention that the supplies as made by the Operational Creditor to the Corporate Debtor were defective, even the alleged debit note, if any, raised for the said purpose.

22. In the absence of any record furnished by the Corporate Debtor itself, the said contention falls flat on its face. Here it is also pertinent to note that no notice of dispute has also been issued by the Corporate Debtor in response to the 'Notice of



Demand'. Further in relation to the reflection of the Operational Creditor's accounts in its books and as filed by the Operational Creditor reflecting the balance as claimed annexed as Annexure II-G to the Petition, the reply of the Corporate Debtor is only evasive.

23. Further in relation to the challenge mounted by the Corporate Debtor that the authorized person being one of the Partners of the Operational Creditor is not backed by any specific authorization or resolution as passed by the Partnership Firm it is required to be noted that the 'Partnership Firm' is a 'Registered Partnership Firm' as evidenced from the documents filed by the Operational Creditor on 22.08.2019 before this Tribunal. 'Partnership Deed' also discloses the name of the person who has filed this Petition viz., Mr. S. Ramesh Prabhu as a partner of the Firm viz., the Operational Creditor and in the circumstances taking into consideration the provisions of Partnership Act, 1932, he has an implied power / agency on his part in the ordinary course of business to bind by his actions the other partners and in the circumstances the contention raising a dispute in relation to his competency to file the Petition on behalf of the 'Partnership Firm' is required to be eschewed.



24. Taking into consideration all the above aspects, we are of the considered view that the claim stands proved and hence we are inclined to admit the Petition and thereby initiate the CIRP in relation to the Corporate Debtor as it is evidenced that a default has been committed in relation to an 'Operational Debt' to the Operational Creditor viz., the Petitioner by the Corporate Debtor.

25. Perusal of the Application shows that the Operational Creditor has not named any Resolution Professional in Part III of the prescribed format as given in 'AAA' Rules, 2016 and has left it to this Tribunal to propose the name of a Interim Resolution Professional.

26. Taking into consideration the above Mr. S.R. Shriram Shekher with Registration Number IBBI/IPA-003/IP-N000144/2017-2018/11598 (*email id:- shekhershiraam@gmail.com*) is named as the Interim Resolution Professional in relation to the CIRP of the Corporate Debtor. In view of the admission of this Petition, the following consequences will also follow as hereunder :-

27. This Tribunal hence based on the latest list furnished by Insolvency and Bankruptcy Board of India appoints Mr. S.R. Shriram Shekher, with Registration Number IBBI/IPA-

003/IP-N000144/2017-2018/11598 (*email id:- shekhershiraam@gmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. 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.

28. 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 such transactions as may be notified by the Central



Government in consultation with any financial sector regulator.

29. 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.

30. 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 him in accordance to Regulation 6 of Insolvency and Bankruptcy



Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. 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 who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with a 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-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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