

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 533/KB/2018

In the matter of:

Jain Constructions Private Limited(Unit Rupdarshi)

..Operational

Creditor

Versus

M/s. Kariwala Designers Private Limited

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Operational Creditor:

1. Mr. Sankarsan Sarkar Advocate
2. Mrs. Swapna Choubey, Advocate
3. Mr. Sidhartha Sharma, Advocate
4. Ms. Diprani Thakur, PCS

For the Corporate Debtor:

1. Mr. Sristi Roy Burman, Advocate





2. Md. Zohaib Rauf, Advocate

Date of Pronouncement of the Order : 24-10-2019

ORDER

Per Shri Jinan KR, Member(Judicial)

1. The CP(IB) No. 533/KB/2018, is an Application filed by M/s. Jain Constructions Private Limited(Unit Rupdarshi) / Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution process (in short CIRP) as against M/s. Kariwala Designers Private Limited /Corporate Debtor, alleging that an amount of Rs. 6,61,414/- (Rupees Six Lakh Sixty one thousand four hundred fourteen only) with interest @ 12% per annum from 07-05-2017, is the unpaid outstanding due from the Corporate Debtor and despite issuance of Demand Notice, the Corporate Debtor failed in discharging the debt and accordingly, filed this Application for initiating the CIRP process.

2. The brief averments for the considerations of the Application are the following:

The Operational Creditor is engaged in business of manufacturing and supplying of textile garments and clothing and other materials. As per verbal orders, placed by the Corporate Debtor, the Operational Creditor, from time to time, supplied textile and garments at price agreed between the parties. The goods were



supplied to the Corporate Debtor and were accepted, appropriated and utilised by the Corporate Debtor. The Operational Creditor, after such supplies, raised invoices from time to time, aggregating to an amount of Rs. 19,85,217/- (Rupees Nineteen Lakhs Eighty Five Thousand Two Hundred and Seventeen only). Such invoices were received by the Corporate Debtor without raising any dispute as to its correctness. The copy of invoices issued by Operational Creditor on various dates are annexed with the Application and collectively marked as Annexure-IV.

The Corporate Debtor returned some of the goods and raised Purchase Returns aggregating to an amount of Rs. 5,84,778/- (Rupees Five Lakhs eighty Four Thousand Seven hundred and Seventy Eight only) from time to time. The copies of Purchase Returns issued by the Corporate Debtor on various dates are annexed with the Application and collectively marked as Annexure-V. In view of return of some of the goods and raising Purchase Returns aggregating to Rs. 5,84,778/-, such amount stood appropriated from the principal amount of invoices and accordingly, a sum of Rs. 14,00,439/- became due and payable to the Operational Creditor by the Corporate Debtor. The Corporate Debtor made part payment of an amount of Rs. 7,60,985/- (Rupees Seven lakhs Sixty Thousand Nine Hundred and Eighty Five only) on various dates, leaving an outstanding principal amount of Rs. 6,39,454/-. The copy of the Bank Statement of the Operational Creditor, in this regard, is annexed with the Application and marked as Annexure -VII.



The Operational Creditor has made several requests and written reminders to the Corporate Debtor for making payment of the outstanding dues against them but despite receipt of all such letters and despite repeated assurances, the Corporate Debtor have failed and neglected to make payment of the balance amount, being the outstanding principal dues amounting to Rs, 6,39,454/- (Rupees Six Lakhs thirty nine Thousand Four Hundred Fifty four only). The copies of the correspondences including reminder letters issued by Operational Creditor and letters from the Corporate Debtor regarding grant of additional time for release of payment of admitting the principal dues are annexed with the Application and collectively marked as Annexure -VI. Thereafter, the Operational Creditor has issued statutory Demand Notice on 23-03-2018 to the Corporate Debtor and the said Notice has been received by the Corporate Debtor on 26-03-2018. No reply has been received. The copies of Demand Notice in form 3 and the Tracking report are collectively annexed with the Application and marked as Annexure-I.

An aggregate sum of Rs. 6,61,414/- comprising of a principal sum of Rs. 6,39,454/- (Rupees Six Lakhs Thirty nine Thousand Four Hundred Fifty four only) along with interest amounting to Rs. 21,960/-, calculated on the principal amount @ 12% per annum from the period May 7, 2017 up to March 16, 2018 is due from the corporate debtor.

3. The Corporate Debtor, being failed to make payment of total outstanding amount of Rs. 6,61,414/- (Rupees Six Lakh Sixty One thousand Four hundred fourteen only), the Applicant had no other



alternative other than to initiate the CIRP process against the Corporate Debtor and prays for passing an Order of Admission.

4. The Corporate Debtor entered appearance and filed Reply affidavit objecting this Application, raising three folded contentions. Firstly, it contended that the claim is bogus and unsubstantiated and is disputed. Secondly, it contends that there were disputes among the family members of the Corporate Debtor, resulting in initiation of proceedings under Section 240 and 241 of the Companies Act, 2013 by some shareholders and because of such proceedings being pending, it was not possible to make any payment by the Corporate Debtor to the Operational Creditor. Thirdly, it contended that the Corporate Debtor has no liability at all towards the Operational Creditor and that the Corporate Debtor is not liable to pay any sum or sum of Rs. 6,61,414/- as claimed for. The Application is, therefore, liable to be dismissed with costs.

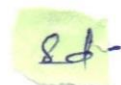
5. Heard both sides. Perused the records.

6. The transaction between the Operational Creditor and the Corporate Debtor has not been denied. There is no denial as to the receipt of the goods and placing of orders, as alleged by the Operational Creditor. By way of filing reply affidavit, it is contended that the Corporate Debtor is denying and disputing the liability to pay the amount in demand. At the time of argument, there is no satisfactory explanation forthcoming to prove that there is a pre-existing dispute in regard to the debt claimed by the Operational Creditor.

7. The Operational Creditor, in support of its claim, has produced copies of Invoices as Annexure -IV and copies of correspondence including reminder letters, claiming the principal amounts due, as Annexure-VI. Despite the demand, the Operational Creditor also issued Demand Notice as per Annexure-I. A reference to Demand Notice shows that it was issued on 23-03-2018 and proof of delivery of notice shows that it was delivered on the Corporate Debtor on 26-03-2018. There is no denial of receipt of the Demand Notice by the Corporate Debtor. No explanation forthcoming as to why there is no reply to the Demand Notice issued by the Operational Creditor under Section 8(1) of the Insolvency & Bankruptcy Code, 2016. Non issuance of reply to the Demand Notice, received evidently by the Corporate Debtor, raising any pre-existing dispute, itself is an indication that the claim of the Operational Creditor that a sum of Rs. 6,61,414 (Rupees Six Lakhs Sixty One thousand four hundred fourteen only) is the outstanding debt due and payable by the Corporate Debtor and it is an admitted debt due and payable to the operational creditor.

8. In the above said circumstances, let us take evidence available on the side of the Operational Creditor. To substantiate its claim that the amount claimed is due and payable by the Corporate Debtor, the Ld. Counsel, appearing for the Operational Creditor, referred to us a letter dated 20-02-2018 sent by the Corporate Debtor to the Operational Creditor. It reads as follows:

"Date 20th February



Rupadarshi,
109A, Park Street,
4th Floor,
Kolkata - 700 016

Dear Sir,

Please find enclosed herewith confirmation of account for the period 1.4.2017 till 5.2.2018.

We admit our liability of Rs. 6,39,454/- outstanding to you.

As informed to you during our meetings, we are facing problems due to disputes amongst our family members and the Directors of the Company and we are unable to carry out normal business operations. You are requested to allow us reasonable time to clear the aforesaid payment.

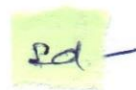
Meanwhile, we have placed some purchase orders with you and you are requested to continue delivery of the fresh orders and we undertake that these payments will be cleared on an urgent basis.

We are grateful for your co-operation and confirm that your payment will be cleared on utmost priority.

Thanking you,

Yours faithfully,

For Kariwala Designers Pvt. Ltd.



Sd/-

Director"

9. The above letter is self-explanatory as to the admission of the liability to the tune of Rs. 6,39,454/-, though the exact figure varies than that of the claim of the Operational Creditor. No objection as regards quantum of amount, as shown in the Demand Notice, is raised at the time of hearing. Therefore, the contention that the claim is disputed and denied in the reply affidavit is found not true, but false. On the other hand the Operational Creditor succeeded in proving that the amount as demanded by the Operational Creditor is due from the Corporate Debtor.

10. It is significant to note that the Corporate Debtor returned some of the goods and raised Purchase Returns aggregating to an amount of Rs. 5,84,778/-, from time to time, and the statement of Account and ledger copy proves that the above said amount has been adjusted by the Operational Creditor and the Operational Creditor is claiming the balance amount outstanding due after adjustment. Accordingly, in the absence of establishing a pre-existing dispute as alleged by the Corporate Debtor, we are of the considered view that the Operational Creditor succeeded in proving that the amount as demanded by the Operational Creditor is due and payable by the Corporate Debtor and the Corporate Debtor failed in paying the amount, despite receipt of the Demand Notice and also failed in raising any pre-existing dispute before the date of receipt of the Demand Notice.

Sd/-

Sd/-

11. The objection that the Corporate Debtor could not pay because of an Application filed by some of the Shareholders of the Company, alleging oppression and mismanagement under Section 240 and 241 of the Companies Act, 2013, is not a bar for initiating the CIRP process as against the Corporate Debtor who failed in discharging its debt despite demand. Therefore, none of the objections, raised by the Corporate Debtor, seem to be sustainable under the law. The claim of the Operational Creditor is not bogus or disputed, as alleged.
12. Being satisfied that the objections on the side of the corporate debtor is not sustainable under law, the question is whether the Application filed under Section 9 of the Insolvency & Bankruptcy Code is complete or not. The Applicant has proposed one Mr. Chhedi Rajbhar, an Insolvency Professional, registered with ICAI Insolvency Professionals Agency, having registration number IBBI/IPA-001/IP-P00129/2017-18/10271 as Interim Resolution Professional and produced Form-II and written communication showing that there is no disciplinary proceeding pending against the proposed Insolvency Resolution Professional. So also, an affidavit in conformity with Section 9(3)(b) of the Insolvency & Bankruptcy Code, 2016 that there is no Notice of dispute was given by the Corporate Debtor and copy of statement of Bank Account proving that there is no payment of unpaid operational debt, seen produced on the side of the Operational Creditor. The requirement under Section 9(3) being meted out, this Application deserves to be considered and is liable to be allowed. Accordingly, the Application is admitted following:-



ORDERS

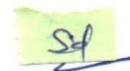
i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s Kariwala Designers Private Limited, is hereby admitted.

ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.

- viii) **Mr. Chhedi Rajbhar, C/o. C. Rajbhar & Co., 40, Strand Road, 2nd Floor, Room No. 49, Kolkata- 700 001, an Insolvency Professional, registered with ICAI Insolvency Professionals Agency, having registration number IBBI/IPA-001/IP-P00129/2017-18/10271, E-mail ID: crajbharco.ca@gmail.com, Mobile No. 9831182472**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date and follow Regulation 40A strictly.
- x) The Operational Creditor is directed to deposit Rs. 2,00,000/- (Rupees Two Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the




preliminary expenses for initiating the CIR Process by the IRP with in one week of the date of this order.

xi) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.


xii) List the matter on 28-11-2019 for filing of the progress report.

13. In the result, the CP(IB) No. 533/KB/2018, is allowed and disposed of.

14. The free copy/certified copy of the Order may be issued to all the concerned Parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member(Technical)



(Jnan K.R.)
Member(Judicial)

Signed on this, the 24th day of October, 2019

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