**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**NEW DELHI, COURT-III**
**IB-447(ND)/2023**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**M/s. GAGAN FIBRES PRIVATE LIMITED**

*Having its registered office at:*

D-5, Textile Colony, Industrial Area - A,

Ludhiana, Punjab-141003.

*CIN:* U17121PB2007PTC030843 **...... Operational Creditor**

**VERSUS**

**M/s. INNOVATIVE TEXTILES LIMITED**

*Having its registered office at:*

81, Vigyan Vihar, Delhi-110092.

*CIN:* U74899DL1993PLC055266 **...... Corporate Debtor**

**Order Delivered On: 24.01.2024**

**CORAM:**
**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**
**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**
For the Applicant : Mr. Abhijeet Sohal, Adv.
For the Respondent : Mr. Pawan Jhabakh, Ms. Chandreyee Maitra, Ms. Asmita Srivasatav, Advs.

**ORDER**
**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. This Application has been filed by M/s. Gagan Fibres Private Limited, the Applicant/Operational Creditor before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), against M/s. Innovative Textiles Limited, the Respondent/Corporate

Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding principal amount of Rs. 71,01,431.01/- (Rupees Seventy One Lakh One Thousand Four Hundred Thirty One and One Paisa Only) plus Rs. 30,78,312/- (Rupees Thirty Lakh Seventy Eight Thousand Three Hundred and Twelve Only) as interest calculated upto 31.12.2021 totalling to Rs. 1,01,79,743.01/- (Rupees One Crore One Lakh Seventy Nine Thousand Seven Hundred Forty Three and One Paisa Only). The date of default in the present matter is 14.01.2019, i.e. the date of the last payment made by the Corporate Debtor to the Operational Creditor.

2. **Submissions of the Applicant/Operational Creditor:**

**i.** The Operational Creditor and the Corporate Debtor entered into a business arrangement for supplying goods and materials in the year 2017 through a Letter of Credit (LC) facility issued by the Operational Creditor to the Corporate Debtor to secure the supply of goods (polyester staple fibre of Reliance Industries Limited) on credit.

**ii.** It is the case of the Applicant/Operational Creditor that through this LC arrangement, the Corporate Debtor made the payments as and when the invoices were raised on the actual amount written in the invoice to the bank, but the bank deducted its charges in the form of "negotiation interest" (which are payable by the Corporate Debtor) and paid the short amount to the Applicant Company. The Applicant Company has many times approached the Corporate Debtor to reimburse the outstanding amount, which the Corporate Debtor has failed to acknowledge.

**iii.** The deficit amount is the Operational Debt which is due to the Operational Creditor since 2017 till date. The Applicant Company has on various occasions approached the Corporate Debtor through various modes of communication but all in vain.

**iv.** The Operational Creditor issued a Demand Notice under Section 8 of the Code on 11.01.2022 on the registered office address of the Respondent Company calling upon the Corporate Debtor to repay the unpaid Operational Debt in full within 10 days from the date of receipt of the Notice. The Corporate Debtor replied to the Section 8 demand notice and the same was duly delivered on 22.02.2022 via email as well as speed post almost after the lapse of a month, clearly violating the terms of the Demand Notice.

**v.** The Corporate Debtor vide its reply dated 22.02.2022 has denied the payment of entire dues and shifted the onus on the Bank while being ignorant of the fact that the bank charges in the form of "Negotiation Interest" were to be paid by them. Further, the Corporate Debtor has acted in violation of the Letter of Credit arrangement by not paying the interest amount to the Bank.

**vi.** The Operational Creditor submitted that the last payment was received in the month of January 2019 as the Operational Creditor received Rs. 32,12,083/- towards the pending invoices on 14.01.2019, which amounts to an acknowledgement of debt due and the Demand Notice was sent on 11.01.2022. Hence, the matter is well within the limitation period as the default occurred in the year 2019.

3. **Submissions of the Respondent/Corporate Debtor:**

**i.** The Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and submitted that the 'date of default' as per the Operational Creditor is 14.01.2019 which is available in Part IV of Form 5 and therefore the period of limitation would expire at the end of 3 (Three) years from the 'date of default'. The Corporate Debtor contended that since the period of limitation expired on 14.01.2022, it is crucial to consider the Order of the Hon'ble Supreme Court in **Suo Moto Writ Petition (C) No. 3 of 2020 (In Re: Cognizance for Extension of Limitation)** wherein the Hon'ble Supreme Court held that where the period of limitation would have expired between 15$^{th}$ March 2020 and 28$^{th}$ February 2022, then in such circumstances, the limitation period shall be extended by a period of 90 days from 01.03.2022, which would mean that the extended limitation period would expire by '30$^{th}$ May 2022'.

ii. The Corporate Debtor therefore states that the Operational Creditor, ought to have initiated proceedings before this Adjudicating Authority by the 30th day of May 2022, but the proceedings against the Corporate Debtor were initiated on the 10th day of September 2022, wherein CP IB-447(ND)/2023 has been electronically filed which is barred by the period of Limitation.

iii. The Corporate Debtor submitted that the Operational Debt that is allegedly due and payable by the Corporate Debtor is Rs. 1,01,79,743.01/- comprising of Rs. 71,01,431.01/- towards the Principal Amount and Rs. 30,78,312/- towards the Interest Amount calculated up to 31.12.2021.

iv. The invoices that have been annexed (Annexure P-3) by the Operational Creditor do not have any provision or clause under which the Operational Creditor would be entitled to claim interest, in case of a default by the Corporate Debtor. The Corporate Debtor submits that it is a settled law that where there is no specific provision or clause in the invoice that enables the Operational Creditor to claim interest on default, then, only the 'principal amount' ought to be treated as the debt or liability with respect to the claim made from the Corporate Debtor.

v. The Operational Creditor cannot claim and include the interest amount of Rs. 30,78,312/ calculated up to 31.12.2021, and accordingly the total claim of the Operational Creditor can only constitute the principal amount claimed from the Corporate Debtor, i.e., Rs. 71,01,431.01/-, which is significantly below the Rs. 1,00,00,000/- threshold as laid down under the Section 4 of the Insolvency & Bankruptcy Code, 2016. The Corporate Debtor states that the Operational Creditor has calculated a baseless Interest Amount of Rs. 30,78,312/- only for the purposes of maintaining proceedings, with the sole purpose of mischievously achieving the maintainability threshold of Rs.1,00,00,000/-.

vi. The Corporate Debtor has issued a detailed Reply dated 22.02.2022 to the Demand Notice issued by the Operational Creditor, wherein the

Corporate Debtor has clearly and vehemently denied the claims made by the Operational Creditor.

4. **Analysis and Findings:**

I. We have heard the Ld. Counsel appearing for both parties and also perused the records.

II. The following issues emerge for Consideration:

**First Issue:** Whether the present application is within the minimum default amount of Rs.1,00,00,000/- as provided under Section 4 of the Code or not.

**Second Issue:** Whether the present application is within the Limitation period to initiate the CIRP against the Corporate Debtor or not.

III. **First Issue- Threshold Limit**

i. The Respondent has raised a Preliminary Objection as to the maintainability of the present application filed under Section 9 of the Code on the ground that the amount claimed is below the threshold limit of Rs. 1,00,00,000/- as envisaged under Section 4 of the Code.

ii. Admittedly, the Applicant/Operational Creditor has claimed the outstanding principal amount of Rs. 71,01,431.01/- plus Rs. 30,78,312/- as interest totalling to Rs. 1,01,79,743.01/-.

iii. After perusal of the invoices, we find that the invoices do not indicate/provide that in the event of failure on the part of the Corporate Debtor to pay the invoiced amount, the Applicant was entitled to interest on the due amount. In the present case, the Applicant failed to provide any communications that show that interest will be charged in the case of delayed payment which has been agreed by the parties. Hence, we observe that the Interest cannot be clubbed together to reach the threshold limit of Rs. 1,00,00,000/-.

iv. The Hon'ble NCLAT in the case of **Pavan Enterprises Vs. Gammon India Ltd.** Company Appeal (AT) (Insolvency) No. 144 of 2018 dated 27.07.2018, wherein the Hon'ble NCLAT held that:

> *"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement, interest is payable to the Operational or Financial Creditor then the debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor."*

v. We are therefore of the considered view that the judgment passed by Hon'ble NCLAT in **Pavan Enterprises (supra)** will apply to the present case. The Applicant/Operational Creditor has failed to justify the aforesaid claim and also failed to substantiate the submission with any documentary evidence. Hence, we are satisfied that the present application is below the threshold limit of Rs.1,00,00,000/-.

**IV. <u>Second Issue- Limitation Period</u>**

i. As per the law laid down by the Hon'ble Supreme Court in the case of **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates** in Civil Appeal No. 23988 of 2017, the Law of Limitation i.e., Article 137 of the Limitation Act 1963 is applicable to the Application filed under Section 9 of the Code.

ii. The Article 137 of the Limitation Act provides a 3 (Three) year of Limitation Period from the date when "Right to Apply" accrues. "The Right to Apply", accrues when a default occurs. If the default has occurred over three years before the date of filing of the application, the application would be barred under Article 137 of the Limitation Act.

iii. In the present case, the Operational Creditor received Rs. 32,12,083/- towards the pending invoices on 14.01.2019. Accordingly, the Limitation for filing the present Section 9 Application starts from the date of default i.e. 14.01.2019. The

Limitation Period of 3 (Three) years, if calculated from the date of default i.e. 14.01.2019, shall expire on 14.01.2022. Whereas the present Application under section 9 of the Code has been filed on 21.03.2022 which is beyond the period of limitation and hence, the Application filed under section 9 of the Code is barred by the Law of Limitation. Further, it is noted that the Operational Creditor/ Applicant has failed to explain the delay.

**iv.** Hence, in view of the above, we are of the considered view that the present Application under Section 9 of the Code is barred by the limitation and is not maintainable.

**V.** We therefore answer the first issue and second issue as follows:

The present application is legally untenable even after the argument of the Applicant is taken into consideration. We do not find any cogent reason to entertain this application and we are of the considered view that the Corporate Debtor has been able to raise a contention regarding the threshold limit (minimum default amount) and Limitation period.

5. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:

   **i.** The Application bearing **IB-447(ND)/2023** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed.**

   **ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

   No order as to costs.

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| Sd/- | Sd/- |
| **(ATUL CHATURVEDI)** | **(BACHU VENKAT BALARAM DAS)** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |