IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

CP (IB) 728/MB/C-I/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Ashish Omprakash Jain

Proprietary concern of Sadhna Dye Chem

235, GIDC Industrial Estate, Pandesara,

Surat-394221, Gujrat

... Operational Creditor/Applicant

Versus

Rameshwar Textile Mills Private Limited
[CIN: U17110MH1988PTC048546]
A-234, 2nd Floor, Antop Hill, Warehousing Complex, Vidyalankar, College Marg, Wadala (East), Mumbai – 400037.
...Corporate Debtor/Respondent

Order Delivered on 02.01.2024

Coram:

Hon'ble Member (Judicial)	:	Justice V.G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Aniruth Purusothaman, Advocate.

For the Corporate Debtor : None present (who is already proceeded *ex parte)*

ORDER

Per: Justice V.G. Bisht

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Ashish Omprakash Jain ("the Operational Creditor hereafter referred to as Petitioner")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Rameshwar Textile Mills Private Limited ("the Corporate Debtor hereafter referred to as Respondent")** The Total **Amount of Debt is of Rs.4,29,14,887.12/-** (Rupees Four Crores Twenty-Nine Lakhs Fourteen Thousand Eight Hundred Eighty-Seven and Paisa Twelve Only). The Date on which such debt fell due and as well the Corporate Debtor has Defaulted the loan amount on 22.12.2021

2. The Corporate Debtor was incorporated on 18.08.1998 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U17110MH1988PTC048546. Its registered office is at 71-73, Old Hanuman Lane, Kalbadevi Road, Shah Bhavan

Mumbai-400002. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

3. The Authorised Share Capital of Corporate Debtor is Rs 6,50,00,000 (Rupees Six Crores Fifty Lakhs Only) and Paid up share capital is Rs 5,29,24,100/- (Rupees Five Crores Twenty-Four Thousand One Hundred Only).

Submissions made by the Petitioner:

4. The Corporate Debtor approached the Applicant to supply Nylon Brown Socks Pair, the applicant thereafter raised the Invoice for the same on Corporate Debtor. Despite the issuance of the invoice and the subsequent maturity of the payment obligation, the Corporate Debtor disregarded the matter entirely, persistently defaulting on the amount despite numerous reminders.

5. The Corporate Debtor have supplied "Nylon Brown Socks Pair" against six invoices spanning from November 16, 2017, to December 27, 2017. The debt is of an ongoing nature, and the most recent payment of Rs. 40,00,000/- related to this outstanding amount was remitted on December 14, 2021, to December 21, 2021. Consequently, the default date is established as December 22, 2021.
6. The Operational creditor served the Demand Notice dated April 24th, 2023, in Form 4, and was dispatched to the registered office of the Corporate Debtor. Upon scrutinizing the Indian Speed Post Tracking status report (acknowledgment number EG217260932IN), it is evident that the notice was not

successfully served to the corporate debtor and was subsequently returned to the Operational Creditor.

7. On May 2nd, 2023, following the return of the notice that was originally served to the Corporate Debtor by speed post, the financial creditor subsequently emailed the Form 4 Demand Notice, addressing the outstanding debt.

8. The Record of Financial Information in NeSL Utility in Form-C as on 21.06.2023 submitted by the operational Creditor reflects a default of Rs.4,29,14,887.12/-.

9. The Invoices were issued during the month of November and December 2017. Accordingly, the limitation would expire during the Covid-19 Pandemic i.e. December 2020. The Hon'ble Supreme Court has excluded the covid Period from the Limitation. The Applicant further submitted that the Corporate Debtor made a payment from 14th December 2021 to 21st December 2021, a sum of Rs.40,00,000/-(Forty Lakh Rupees Only) from overall outstanding, Accordingly it was contented that the present petition is within the Limitation.

10. The Petitioner submitted that act of making part payments towards the outstanding dues tantamount to admission of liability.

11. The Petitioner submits that after setting off the amounts paid by the Respondent on account of other previous transactions is Rs.40,00,000 and therefore, net amount of Rs. 4,29,14,887.12/- remained unpaid and unsettled till date.

12. The Petitioner has placed on record copy of the ledger account and computation of claim.

Findings

13. Heard learned Counsel for the Applicant and perused the material available on record.

14. The Bench observed that in spite of granting various opportunities and in fact by listing the matter on Board with liberty to the Corporate Debtor to appear in the matter, Corporate Debtor choose not to appear before the Bench and argue their case. In that view of the matter, the Corporate Debtor was set *ex-parte* in present Company Petition bearing CP (IB) No. 728 of 2023, vide Order dated 22.11.2023.

15. The Operational Creditor issued a Demand Notice Form 4 dated **24th April 2023**, to the Corporate Debtor for an amount of Rs. 4,29,14,887.12/- (Rupees Four Crores Twenty-Nine Lakhs Fourteen Thousand Eight Hundred Eighty-Seven and Paisa Twelve Only) along with an Interest @ 30% per annum on the Principal Amount towards the balance outstanding against the Invoices raised against various Purchase Orders under the provision of the Insolvency and Bankruptcy Code, 2016, and the petition was filed on **07.07.2023**. The total number of invoices raised by the Applicant is 6 and out of the said invoices the Corporate Debtor has only made payment up to Rs.40,00,000/- against some of the invoices.

16. The Corporate Debtor made last payment of Rs. 40,00,000/- (Forty Lakh Rupees Only) towards the total outstanding debt

within the period from December 14th, 2021, to December 21st, 2021. This payment substantiates the occurrence of a default by the Corporate Debtor.

17. Vide Order Dated 10.01.2022 in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, the Hon'ble Supreme Court held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of Limitation as may be prescribed under any general or special laws in respect of all Judicial or Quasi-Judicial proceedings. In view of this, we find that the present petition is within limitation

18. Considering the above facts and circumstances, the debt and default stands established. Since, the Corporate Debtor has not filed any reply, we do not have any evidence of disputed in relation to debt in default.

19. In the backdrop of above facts and circumstances, we are of the view that the Corporate Debtor has defaulted in the payment of the outstanding debt.

20. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating

Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

21. The Petition bearing CP (IB) 728/MB/C-I/2023 filed by **Ashish Omprakash Jain Proprietor of M/s. Sadhna Dye Chem**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against Rameshwar Textile Mills Private Limited [CIN: U17110MH1988PTC048546]**, the Corporate Debtor, is admitted.

22. There shall be a moratorium under section 14 of the IBC, in regard to the following:

i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

23. Notwithstanding the above, during the period of moratorium: -

i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

24. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

25. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. Mr. Kailash Shah, Registration No.IBBI/IPA-001/IP-P00267/2017-2018/10511, Email Id:ipktshah@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated

by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

27. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

28. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

29. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

30. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.

31. Ordered accordingly.

Sd/-	**Sd/-**
Sh. Prabhat Kumar	**JUSTICE V.G Bisht**
Member (Technical)	**Member(Judicial)**