

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

C.P. No.1257/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Rudra Inc.  
440 Kewal, Ind. Estate,  
4<sup>th</sup> Floor, S.B. Marg, Lower Parel (W),  
Mumbai - 400 013

.... Petitioner

v/s.

Teemper Lifestyle Pvt. Ltd.,  
601, Pluto, B wing,  
Vasant Galazy, Bangur Nagar, Goregaon (W),  
Mumbai - 400 104

.... Respondent

**Order delivered on: 11.10.2019**

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)  
Hon'ble Shyam Babu Gautam, Member (Technical)

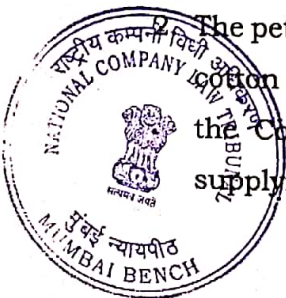
For the Petitioner : Mr. Nithish Bangera, Practicing Company Secretary  
For the Respondent: Mr. Sandeep Kumar Singh, Advocate

*Per: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)*

**ORDER**

1. This Company Petition is filed by Rudra Inc. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Teemper Lifestyle Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment to the extent of Rs. 16,03,013/- by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

The petitioner is a proprietorship firm and is in the business of manufacturing Cotton fabric since 2004. Corporate Debtor is a Company incorporated under the Companies Act, 1956 and is in the business of manufacturing and supplying garments.



3. The Petitioner submits that the Corporate Debtor approached the Petitioner for supply of Cotton fabric. The Petitioner further submits that they supplied the aforesaid cotton fabric to the Corporate Debtor and raised invoices for an amount of Rs. 9,55,076/- from a period of 23<sup>rd</sup> January 2016 till 30<sup>th</sup> June 2016.
4. The Petitioner also submits that as per various invoices raised by the him, the Corporate Debtor was liable to pay an interest at the rate of 24% per annum in case of delay in clearing in the outstanding amount. The same can be confirmed by the sale invoices annexed in the Petition.
5. That, the petitioner has further annexed a copy of Confirmation of accounts received from the Corporate Debtor vide his email dated 27.02.2019, wherein he has admitted the debt of Rs. 9,55,076/- payable to the Petitioner. Petitioner has also annexed copies of his Bank Statement and the Corporate Debtor's ledger statement to support his claim. The Petitioner enclosed the statement of account which shows that the last payment was received from the Corporate Debtor on 06.03.2018 to the extent of Rs. 25,000/-.
6. Since the Corporate Debtor failed to repay the outstanding dues, the Petitioner issued Demand Notice in Form-3 under Section 8 of the Code on 01.03.2019 demanding the balance of Rs.16,03,013/- including interest @24% per annum. However, the Corporate Debtor failed to repay the aforesaid dues despite receipt of demand notice and the Corporate Debtor neither replied to the same nor repaid the outstanding amount. The Petitioner filed affidavit under Section 9(3)(b) of the Code stating that the Corporate Debtor neither replied to the Demand Notice nor raised any dispute.
7. Counsel on behalf of the Corporate Debtor has tendered his appearance and a reply has been filed by him. The Corporate Debtor in his has submitted that the Petition is liable to be dismissed as there exists prior dispute with regard to the subject matter of the Petition. It is argued by the Corporate Debtor that since the goods were not delivered on time and the said goods were below quality.



8. The Corporate Debtor claims that due to sudden change in economic policy in India i.e. demonization and GST mostly effected garment industry and the Corporate Debtor being a garment company has incurred lot of loss due to the said sudden changed in the said policy. The Corporate Debtor has also

disputed the interest at the rate charged by the Petitioner, saying that he never agreed on the same.

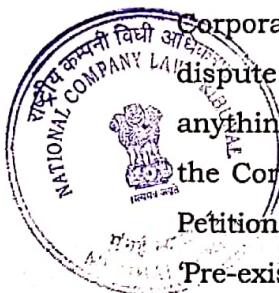
9. Thereafter, the Petitioner has filed his Rejoinder, wherein he has argued that the Corporate Debtor has not enclosed even a single document evidencing a pre-existing dispute. The Petitioner has also relied on Judgment of Hon'ble Supreme court in Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, 2018 1 SCC 353. It is argued that there is no 'existence of dispute' in compliance with the terms of provisions of the code. It is argued that all the reply as mentioned above is a patently feeble argument and therefore should not be considered.

### ORDER

10. We have heard the arguments of both the sides and have patently gone through the pleadings of the parties. Based on the submissions made the Corporate Debtor, the main defense by him is that since there was a pre-existing dispute between the parties.
11. Before going further, it is important that we look into the defense regarding 'Pre-existing dispute' raised by the Corporate Debtor. Reliance herein has to be placed on The Hon'ble Supreme Court in its landmark judgement of the *Mobilox (supra)* has said:

*"all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster."*

12. Therefore, when we look into the genuinity of the dispute we notice that the Corporate Debtor had never even once raised a single shred of objection or dispute against the Petitioner in the past about either quality of good or anything else. There is no document or communication placed on record by the Corporate Debtor to prove the same. It was for the first time when the Petition was filed that the Corporate Debtor raised the defense regarding a 'Pre-existing dispute' between the party.



13. Therefore, *prima facie* it is clear that the 'dispute' raised by the Corporate Debtor is patently feeble and is an assertion which is not supported by any evidence. This defense of the Corporate Debtor also has no merit and is therefore rejected.
14. The above facts show that there is an existence of debt which the Corporate Debtor is liable to pay to the Petitioner and that the Corporate Debtor defaulted in making the payment therefore the petition deserves to be admitted.
15. This Bench has gone into the details provided in the Form 5 and connected materials and after hearing the Petitioner is of the considered view that there is debt and default.
16. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

(a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



- (d) That the order of moratorium shall have effect from 11.10.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mahesh Kumar Gupta, Chattered Accountant, 4<sup>th</sup> Floor, Plot No. 2, 440, Kewal Industrial Estate, Sena Bapat Marg, Lower Parel (W), Mumbai – 400 013, Registration No. IBBI/IPA-001/IP-P00478/2017-18/10866 email-id as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

17. Accordingly, this Petition is admitted.

18. The Registry is hereby directed to communicate this order to both the parties as well as IRP immediately.

**Sd/-**  
SHYAM BABU GAUTAM  
Member (Technical)  
/PT/

**Sd/-**  
BHASKARA PANTULA MOHAN  
Member (Judicial)



Certified True Copy  
Copy Issued "free of cost"  
On 10.01.2020  
  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench