



CP (IB)/638(AHM)2019
M/s. Krishna Textile. Vs M/s. Bharat Trade Link Pvt. Ltd.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

C.P. (IB)/638/NCLT/(AHM)/2019

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

In the matter of:

M/s. Krishna Textile

....Applicant/Operational Creditor

VERSUS

M/s. Bharat Trade Link Pvt. Ltd.

.... Respondent/Corporate Debtor

Order Pronounced on: 11.07.2023

CORAM:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

M/s. Krishna Textile
Through its Proprietor,
Mr. Kishan P. Purswani
B-7, Maskati Market,
Sakar Bazar Kalupur,
Ahmedabad, Gujarat.

....Applicant/Operational Creditor

VERSUS

M/s. Bharat Trade Link Pvt. Ltd.
CIN: U51101GJ2013PTC076926
Registered Office at:
Shop No.816/818, Raghuvir Textile Mall,
B/H. Dr. World AAI MATA Road,
Parvat Patia, Surat, Gujarat.

.... Respondent/Corporate Debtor

APPEARANCE:

For the Applicant: Mr. Pradeep Tulsian, PCA.
For the Respondent: Ms. Komal Khatri for Mr. Digant Kakkad, Adv.

ORDER

1. This application is filed on 22.08.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity “**the IBC, 2016**”) r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) by Mr. Kishan P. Purswani, Proprietor of M/s. Krishna Textile (for brevity



“the Applicant/ OC”) with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against the M/s. Bharat Trade Link Pvt. Ltd. (for brevity “the Respondent/CD”).

2. The Applicant is a proprietorship concern of Mr. Kishan P. Purswami having GST No. 24AAWPP0880F1ZE and its registered office at B-7, Maskati Market, Sakar Bazar, Kalupur, Ahmedabad engaged in the trading of cloth and garments.
3. The Respondent is a Public Limited Company having CIN No.U51101GJ2013PTC076926 and its registered office at 816, Raghuvir Textile Mall, B/h. Dr. World Aai Mata Road Parvat Patia, Surat -395010. The Authorized Share Capital and Paid-up share capital of the Respondent Company is Rs.1,00,000/- respectively.
4. It is submitted that the Applicant supplied kurties/garments vide various invoices amounting to Rs. 6,06,171/- and the Applicant dispatched the goods through Delivery Challan (DC) Nos.821341, 821389, 821337, 821338, 821339, 821336, 821335, 821340, 821326, 821327, 821390, 821329, 822050 & 822051 (DC produced at page nos.35 to 49) dated 01.07.2016 to 19.07.2016, which were duly received and acknowledged by the Respondent. In spite of repeated reminders and follow-up through telephonic conversation, the



Respondent failed to make payment and till date no payment has been made by the Respondent against the said outstanding amount. Thereafter, the Applicant has sent the Demand Notice under section 8 of the IBC on 31.07.2018 through RPAD to the registered office of the Corporate Debtor and to all its directors at the addresses available at MCA for its outstanding amount of Rs.6,06,171/- towards the amount as mentioned in the invoices and Rs.2,81,810/- towards the interest @ 24% p.a. for overdue payment. Applicant has also submitted a certificate from Bank that till date Applicant has not received any payment against the material supplied by it to the Respondent.

5. The corporate debtor/respondent filed an affidavit in reply inter alia raising the following objections:-
- the Applicant is not covered under the definition of Operational Creditor and therefore, the application is not maintainable.
 - Respondent and Applicant were in business relation till 8th April, 2016. Such business relations had regularly gone on from February, 2015 to April, 2016. Since April, 2016, the Respondent Company has not given any orders to the Applicant. It is also submitted that the present application has



been filed by the Applicant / Operational Creditor in 2019 for recovery of debt of year 2016, hence, the present application is not within the limitation as prescribed by law.

- The Application suffers from non-joinder of necessary party.
- No goods have been delivered by the Operational creditor to Respondent and the invoices and delivery challans are forged.
- All payments are made and there is no outstanding pending in the account of the CD.

6. The applicant filed an affidavit in rebuttal inter alia stating that inspite of submitting all proof of goods delivered to the Respondent/CD, the Respondent refuses to have received the delivery of goods, which according to the OC is absolutely false and vague. It is also submitted that the ledger or statement of accounts submitted by the Respondent is pertaining to the old transactions which have been done and completed in the year 2015-16 and have purportedly failed to show the transactions after the 2015-16, i.e., invoices of July 2016. It is submitted that till date, there is no objection or denial raised by the Respondent for non-receipt of goods. Moreover, the transporter company has been selected by the Respondent himself. It is also submitted that the application is well



within the limitation period which can be clearly ascertained from date of the last business transaction which is July, 2016 and the date of demand notice filed by the Operational Creditor is dated 18.07.2018.

7. The applicant filed written submissions inter alia stating that:
- That there is a demand of principal legal outstanding amount including the interest thereupon for non payment of dues for a very long period and for which this petition has been filed. All the compliances to file the said Petition has been complied with. The operational debt particularly comprises the sales invoice raised from date 01/07/2016 to 19/07/2016 as mentioned in Form -5 Part-V.
 - That there were business transactions with the respondent after the date, i.e., 08.04.2016 and which he has fraudulently omitted in his submissions with malafide intentions.
 - That our application is well within limitation period which can be clearly ascertained from last sales invoice date of 19.07.2016 and considering the payment credit period of 90 days (as signed and agreed upon by the respondent under the Standard terms & conditions of sale), the period of limitation starts from date



19.07.2016 and extends till 18.10.2019 as per the provision of law and the Petition is filed on 22.08.2019.

- That the denial for delivery of goods has been raised only after filing of Petition in his reply. Since, 2016, after receiving the delivery of goods and sales invoice towards it, the respondent has not raised this issue even once and the LR/delivery challans submitted are of the transport company selected by the respondent himself and the respondent has taken the delivery of goods by payment of logistic charges of the transport company the money receipt of which has been submitted to the Tribunal.
 - Copy of the audited list of Sundry Debtors, certified by the CA of the firm for the F.Y. 2017-18 marked as Annexure-C, which clearly depicts the outstanding liability of the respondent company which has been reflected till the current year in the financial statement filed with the tax authority.
8. The corporate debtor also filed its written submissions inter alia stating that the present application is not within limitation and the present dispute regarding outstanding debt is raised by the applicant is of civil nature and such civil disputes cannot be adjudicated



properly under the provision of the IB Code, 2016, but the same will have to be done only by way of civil proceedings.

9. Heard learned Counsel for both sides and perused the documents available on record.
10. It transpires from the record that the Operational Creditor supplied the goods to the Corporate Debtor and raised various invoices during the period from 01.07.2016 to 19.07.2016 for an amount of Rs.6,06,171/- on which interest for an amount of Rs. 2,81,810/- (interest up to 15.07.2018) is claimed. The total outstanding is thus, Rs. 8,87,981/-.
11. So far as contention of non-receipt of goods by Corporate Debtor is concerned, the Applicant herein has produced the Delivery Challan Receipts/LR's at page no.35 to 49. Moreover, the Corporate Debtor has specifically admitted to delivery of notices to it in its reply at page no.59, which reads as under:-

“ Therefore, upon such facts and circumstances the Respondent ignored the notices so served upon and hence did not reply to such frivolous and bogus notice.”

12. It also transpires that the present application is well within the limitation as the last invoice was raised on 19.07.2016 and the credit period of the said invoice was extended upto 18.10.2016, i.e., 90



days from the date of invoice and the present application is filed on 22.08.2019 and also meets the threshold limit prescribed under section 4 of the Code. The present application is otherwise complete and defect-free.

13. Hence, In the given facts and circumstances, the present application is complete under Section 9(5)(i)(a) and Operational Creditor is entitled to claim its dues, a fact which remained uncontroverted, establishing the default in payment of the operational debt. The present application deserves to be admitted against the Corporate Debtor in terms of Section 9(5)(i) of the IBC, 2016.
14. In view of the above, we admit this application and pass the order as under:-
 - (i) The Application bearing **CP(IB)638/(AHM)/2019** filed by **M/s. Krishna Textile** (the Applicant/ Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Bharat Trade Link Pvt. Ltd.** (the Corporate Debtor) is hereby admitted and the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:-
 - a. *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;

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 Securitisation 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 corporate debtor.

(ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iii) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated



or suspended or interrupted during the moratorium period as per provisions of sub-Sections (2) and (2A) of Section 14 of IBC, 2016.

- (iv) The applicant has not proposed the name of the Interim Resolution Professional (IRP). We hereby appoint **Mr. Sachin Sinha**, having Registration No. IBBI/IPA-002/IP-N-00939/2019-20/12985 and having e-mail id: sachinsinhaassociates@gmail.com and Mob. No. 7698012471 subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed within a period of one week from the date of this order.
- (v) The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every



assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, does not assist or Co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (vi) This Adjudicating Authority directs the IRP to make the public announcement of the initiation of the Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the IBC, 2016.
- (vii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (viii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.



- (ix) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (x) We direct the Operational Creditor to deposit a sum of **Rs. 1.00 lacs (Rupees one lakh only)** with the Interim Resolution Professional, namely, Mr. Sachin Sinha to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- (xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload



the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- (xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

15. Accordingly, the present application being CP (IB) No. 638 of 2019 is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

S/d-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

S/d-

SHAMMI KHAN
MEMBER (JUDICIAL)

Rahul/LRA