

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.301
C.P.(IB)/69(AHM)2021

Proceedings under Section 9 IBC

IN THE MATTER OF:

Prashant D Agarwal
V/s
Avni Yarns Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 02/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB)-69 of 2021

(Application Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **M/s. Avni Yarns Private Limited**

Prashant D. Agarwal

Karta of M/s. M.S. Enterprise,
A Proprietorship Firm of Prashant D. Agarwal (HUF)
Having its office at
310, Shyam Chamber, Opp. Sub-Jail,
Surat, Gujarat-395002.

.....Operational Creditor

VERSUS

Avni Yarns Private Ltd.

Regd. Office At:
Plot No. 9, Block No. 300/301,
Tantithaiya Kadodara, Surat,
Gujarat – 394327

.....Corporate Debtor

Order pronounced on 02.04.2024

CORAM:

Sh. Shammi Khan, Hon'ble Member (Judicial)

Sh. Sameer Kakar, Hon'ble Member (Technical)

APPEARANCE:

For Applicant : Mr. Pratik Thakkar, Advocate a/w.
: Ms. Vacha Shah, Proxy Advocate
For Respondent : Mr. Dhiren Dave, Advocate

ORDER

[Per Bench]

1. The present application is filed by Mr. Prashant D. Agarwal Karta of M/s. M.S. Enterprises, Proprietorship Firm (hereinafter referred to as '**Operational Creditor**') against the Respondent **Avni Yarns Private Ltd** (hereinafter referred to as '**Corporate Debtor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "**IB (AAA) Rules, 2016**") for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as "**IRP**") and declare the moratorium for having defaulted payment of the operational debt of **Rs.1,37,59,251/-** including interest.
2. A perusal of Part-I of the Form-V reveals that this application is filed through its Mr. Prashant D. Agarwal Karta of M/s. M.S. Enterprises, Proprietorship Firm of Prashant D. Agarwal (HUF) having address as 310, Shyam Chamber, Opp. Sub-Jail, Surat-395002.
3. On perusal of Part-II of the Form-V reveals that the corporate debtor is one Avni Yungs Pvt Ltd having CIN No. U17119GJ1997PTC032448 incorporated on 02.06.1997 with registered office at Plot No. 9, Block No. 300/301, Tantithaiya Kadodara, Surat – 394327.

4. On perusal of Part-III of the Form-V reveals reveals that applicant has not named any IRP and perusal of part-IV reveals that the principle claimed operational debt in application is Rs.1,00,42,977/- and interest uptill 29.12.2020 is Rs.37,16,274/- and total amount claimed is Rs. 1,37,59,251/-.
5. Further, perusal of the Part-IV reveals that the first date of default is mentioned as 19.04.2019, the working computation of is attached on Annexure-F.
6. The documents relied by the operational creditor produced at page-11 & 12 which are as under:
 - a) Copy each of invoices are annexed at Annexure-C-Colly.
 - b) Copy each of E-way Bills are already annexed at Annexure-D-Colly.
 - c) Copy of each purchase orders are annexed at Annexure-E-Colly.
 - d) Copy of the Demand Notice as in Form 3 dated 29.12.2020 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 along with Proof of Service is Annexed as Annexure-H-Colly.
 - e) Copy of Account statement of Corporate Debtor maintained in the books of Operational Creditor from 01.04.2018 to 13.02.2021 at Annexure-I.

- f) Copy of reply dated 12.02.2021 to the Demand Notice at Annexure-J.
- g) Copy each of list and invoices raised to other parties for comparison of prices from 2018 to 2020 are annexed at Annexure-K-Colly.
7. It is stated that operational creditor is engaged in the manufacturing and trading of textile auxiliaries and supply to various dying process house.
8. It is stated that the corporate debtor and operational creditor entered into business transaction for the purpose of buying and selling of chemicals on mutually agreeable terms and conditions since 2017.
9. It is stated that 60 days credit was allowed by the operational creditor to the corporate debtor and further thereafter, interest of 24% was to be charged.
10. It is stated that the last payment received by the Operational Creditor from Corporate Debtor was on 11.02.2020.
11. It is stated that since payments were not coming, the Operational Creditor issued a demand notice dated 29.12.2020 demanding the Corporate Debtor to pay a sum of Rs. 1,37,59,251/-. The copy of the demand notice is placed on page 322-330, which was served on the Corporate Debtor as per the tracking report attached on 02.02.2021.

12. It is stated that the said demand notice dated 29.12.2020 was replied by the Corporate Debtor through his Company Secretary vide letter dated 12.02.2021. A perusal of the reply to the demand notice reveals that following defenses were taken in the reply:
- i. False purchase order was raised in connivance with one of the employees for which a police complaint was filed on 10.02.2021 (Post issue of demand notice).
 - ii. Quality of goods was poor.
 - iii. A sum of Rs. 3,03,963/- was paid on 30.01.2021 (Post issue of demand notice).
 - iv. Interest has been disputed.
 - v. The Signatory to the notices not having authority.
 - vi. There is no contract to interest.
13. Being not satisfied, the applicant has filed the present application seeking commencement of CIRP, appointment of IRP and declaration of moratorium. The present application was filed on 08.04.2021.
14. Upon notice, the Corporate Debtor has filed reply under diary No. 1836 dated 18.11.2021 through an affidavit which is dated 13.11.2021 affirmed by one Mr. Bheemanna B. Chikkerur, General Manager of Respondent Company. The summary of the reply is as under:

- i. There is no contract as regards interest and the ledger attached by the Operational Creditor doesn't reflect any interest payment by the Corporate Debtor.
 - ii. There is no due date specified under the contract, it is as per the industry practice.
 - iii. Principle outstanding is below the threshold limit of Rs. 1 Crore and is only Rs. 97,39,0130/- as on 13.02.2021.
 - iv. As per the last invoice as per the petitioner is dated 17.03.2020 and as per the claims of the applicant taking a credit period of 60 days, the due date comes on 17.05.2020 which is within the exempted period under Section 10 (A).
 - v. False purchase order was raised in connivance with one of the employees for which a police complaint was filed on 10.02.2021
 - vi. The person who has affirmed the application is not authorized and Karta of HUF cannot have a proprietary firm.
15. Rejoinder was filed by applicant under diary No. D-186 dated 10.01.2022. The summary of the rejoinder affidavit is as under:
- i. The invoices issued against the Corporate Debtor which was duly acknowledged by the Corporate Debtor, there is a clause being clause no. 4 which

states interest to be 2% per month, thus there is clear understanding of interest.

- ii. The purchase order clearly specifies 60 days as the payment term.
 - iii. The payment of Rs. 3,03,963/- was on 30.01.2021 i.e. post the issue of demand notice and was deliberately done to bring the outstanding amount below Rs. 1.00 Crore threshold limit.
 - iv. The petition is above the threshold limit.
 - v. In order to create the sham and bogus evidence the Corporate Debtor has filed a police complaint on 10.02.2021, post issue of the demand notice.
 - vi. The applicant has attached the MSME certificate of M.S. Enterprise at Annexure-2 at page 57.
16. Under diary No. D4284 dated 30.10.2023, revised chart was filed by the applicant. On perusal of the same, reveals that the applicant has reduced the amount of Rs. 3,03,963/- received on 30.01.2021 against invoices 100,101,102,103,104 and 105. However, the principle amount outstanding is shown as Rs. 97,19,117/- and interest has been calculated as Rs. 30,53,369/-.
17. Written submissions have been filed and have been taken into consideration.

18. We have heard the various counsels on both the sides. The applicant has supplied goods to the respondent and the respondent is not disputing the receipt of goods.
19. The respondent has raised feeble defense regarding quality of goods. However, no documentary evidence was ever produced before us to show that as such there was dispute regarding quality of goods. In our view the moonshine defense has been taken by the respondent herein so as to quality of goods.
20. As regards payment post the issue of demand notice amounting Rs. 3,03,963/-, such payments indeed was made by the Corporate Debtor post the issue of demand notice. In our view, as on the date of issue of demand notice, the amount was above threshold.
21. The invoices contain clauses as regards interest in case of the late payment which has been accepted by the Corporate Debtor without any debar.
22. In our view, the applicant has proved beyond doubt that there is a debt due from the Corporate Debtor, that there is default in making payment by the Corporate Debtor and the amount of default is more than Rs. 1.00 Crore.
23. The present application is complete in terms of Section 9 of the Code. The Operational Creditor is entitled to claim its dues, establishing the default in payment of the Operational

Debt beyond doubt. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

24. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **Avni Yarns Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 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.*
- e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

(iii) 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 Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iv) 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.

- (v) The Operational Creditor has not proposed the name of IRP. Hence, this Tribunal hereby appoints **Mr. Omkarchand Rikhabdas Maloo**, having Registration No. IBBI/IPA-001/IP-P00435/2017-18/11449 (Email ID:- omkar@ormaloo.com) as per the panel suggested by IBBI for this Bench for the period of January, 1 of 2024 to June 30, 2024. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the IBC, 2016. 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 IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate with the IRP the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call

for the submission of claims under Section 15 as required by Section 13(1)(b) of the IBC, 2016.

- (viii) 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.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) 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.
- (xi) The Operational Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

- (xii) 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 the MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.
- (xiv) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

25. Accordingly, **CP (IB) No. 69 of 2021** is allowed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

Mehul Desai Steno

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)