

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

**CP (IB) No. 1338/MB-IV/2022**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Bombay Rayon Fashions Limited**

[CIN: L17120MH1992PLC066880]

...Operational Creditor/Applicant

V/s

**Casabella Trading Private Limited**

[CIN: U74999MH2015PTC267824]

...Corporate Debtor/Corporate Debtor

Order Dated: 14.07.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Shastri, Advocate.

For the Corporate Debtor(s) : Ms. Shejal V. Nag i/b Mr.  
Satyadev Joshi, Advocates.

**ORDER**

*Per: Kishore Vemulapalli, Member Judicial*

1. This is an Application being C.P. (IB) No. 1338/MB/C-IV/2022 filed on 25.07.2022 by Bombay Rayon Fashions Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Casabella Trading Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
  - 1.1 The Operational Creditor has filed Board Resolution dated 06.12.2021 in support of authorization in favour of Mr. Sumit Nemani, Executive Assistant to Chairman of the Operational Creditor authorising him to file the present company application on behalf of the Operational Creditor.
  - 1.2 The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 5,53,43,209/- alongwith interest @18% p.a. from the date of default till date of payment. The Operational Creditor has not mentioned any date of default in the Part IV of the Application.
2. The Operational Creditor is engaged in the business of manufacturing and supply of goods such as various types of Cotton and Linen. The Corporate Debtor is engaged in the business of production and supply of the Articles made from products such as types of Cotton and Linen.

- 2.1 The Operational Creditor herein supplied various types of Cotton and Linen i.e. Fabrics to the Corporate Debtor as per Purchase Order dated 02.05.2018 placed by the Corporate Debtor and against the said Purchase Order, 17 invoices were raised by the Operational Creditor to the Corporate Debtor on different Dates. As per the ledger maintained by the Operational Creditor in its usual course of business, an amount of Rs. 5,53,43,209/- (Rupees Five Crore Fifty Three Lakhs Forty Three Thousand Two Hundred and Nine Only) plus interest is still due and payable by the Corporate Debtor.
- 2.2 The Corporate Debtor has acknowledged the balance due in their Balance Confirmation Letter wherein total outstanding due amount of Rs. 5,53,43,209/- was confirmed by the Corporate Debtor.
- 2.3 A Demand Notice dated 10/12/2021 was issued to the Corporate Debtor demanding payment of the unpaid operational debt of Rs.5,53,43,209/- (Rupees Five Crore Fifty Three Lakhs Forty Three Thousand Two Hundred and Nine Only) plus interest due from the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 which was duly delivered on the Registered Office of the Corporate

Debtor situated at Mumbai, Maharashtra on 13/12/2021, but no Reply has been received from the Corporate Debtor till date.

2.4 The Operational Creditor states that it never received any correspondence or communication with respect to any deficiency in quantity or quality of the Cotton and Linen sold by the Operational Creditor.

3. The Corporate Debtor herein sought time to file reply on 23.02.2023, and thereafter, hearing was held on 12.04.2023 and 05.06.2023, but the Corporate Debtor has not filed a reply in the matter until it was reserved for orders, i.e. on 20.06.2023, despite appearing on every occasion when the matter was listed for hearing.

4. We have perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1 The Corporate Debtor has provided unequivocal admission of its liability to pay to the Operational Creditor an amount of Rs. 5,53,43,209/- vide Balance Confirmation letter annexed to the petition i.e. the amount claimed as debt due and payable by the Corporate Debtor under this petition.

- 4.2 The Counsel for the Corporate Debtor has appeared on all occasions but despite asking for time to file reply to the present petition, failed to do so.
- 4.3 We find that the debt against the goods supplied by the Operational Creditor falls within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*”.
- 4.4 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.
5. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by

the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.

6. The Applicant has proposed the name of Mr. Bhaskar Gopal Shetty, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01285/2018-2019/12003] and Email Id.- [cabgshetty@gmail.com](mailto:cabgshetty@gmail.com); and has submitted his consent letter dated 11.07.2022 u/s. 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

### **ORDER**

7. This Application being C.P. (IB) No. 1338/NCLT/MB/C-IV/2022 filed under Section 9 of I&B Code, 2016, filed by Bombay Rayon Fashions Limited, Operational Creditor/ Applicant against Casabella Trading Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 Securitization and Reconstruction of Operational 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 possession of the corporate debtor.
- II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
- b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench hereby appoints Mr. Bhaskar Gopal Shetty, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01285/2018-2019/12003] and Email Id.- [cabgshetty@gmail.com](mailto:cabgshetty@gmail.com); as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee

payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Sd/-

Prabhat Kumar  
Member (Technical)

Kishore Vemulapalli  
Member (Judicial)

//LRA-Akshata Shah//