

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**DIVISION BENCH, NEW DELHI**  
**COURT-III**

**Item 114**  
**IB-846(ND)/2020**

IN THE MATTER OF:

**M/s. Umesh Yarn Agencies**

.... *Operational creditor*

Versus

**M/s. Flora Dyeing House Private Limited**

.... *Corporate debtor*

SECTION

**U/s 9 IBC code 2016**

**Order delivered on 07.04.2021**

CORAM:

**CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)**

**SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)**

PRESENT:

For Operational Creditor

: Mr. Gautam & Mr. Uzair, Advocates.

For Corporate Debtor

: Mr. Ashutosh Gupta, Mr. Gaurav  
Rana & Mr. Abhishek Aggarwal,  
Advocates.

**ORDER**

**(Through Video Conference)**

1. The Ld. Counsel for the Operational Creditor is present. The Ld. Counsel for the Corporate Debtor is present. Pleadings are complete.

2. Under Consideration is CP (IB)-846(ND)/2020 filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Flora Dyeing House Private Limited*, declare Moratorium and appoint Interim Resolution Professional on the ground of default in making the payment of the debt due.

3. It is submitted by the Ld. Counsel for the Operational Creditor that the total amount of debt due is Rs. 3,01,71,087/- on account of supply of Cotton Yarn/Synthetic Yarn to the Corporate Debtor during the financial year 2011-2012 and the first bill was raised by the Operational Creditor on the Corporate Debtor on 29.11.2011 vide Bill No. R-977 for a sum of Rs.75,623/-.

4. It is further submitted that supplies were made continuously by the Operational Creditor to the Corporate Debtor and invoices were raised from time to time and part payments were made to the Operational Creditor by the Corporate Debtor. However, thereafter, the payments were stopped. The details of the invoices are placed on record at Pages 92 to 278 of the Type-set. The ledger account is also placed on record and the balance outstanding placed at Page 279 of the Type-set filed with Petition which shows the closing balance as on 28.11.2019 is Rs. 2,77,71,464/- to which the confirmation has also been given by the Corporate Debtor and other communications were made on different dates wherein the Corporate Debtor has sought time for making payments but failed to honor the commitments.

5. The Ld. Counsel for the Operational Creditor submitted that the demand notice was given to the Corporate Debtor on 24.12.2020 raising a demand of an amount of Rs. 3,01,71,087/- only, to which no reply was given by the Corporate Debtor. The Operational Creditor has also filed affidavit in compliance of Section 9(3) (b) & (c) of the Code. The affidavit is placed on record at Page 20 of the type-set filed with petition wherein under Para 3 it is deposed that the operational creditor has not received any notice from the Corporate Debtor relating to a dispute of the unpaid

operational debt. The ledger accounts and the Bank Statement are also placed on record which give the detail of the part payments and balance which is due and payable, which the Corporate Debtor failed to pay.

6. The Corporate Debtor has filed the reply and stated under para-No.2 that the applicant claimed an amount of Rs. 3,01,71,087/- with interest @ 18% per annum on the outstanding amount from 02.04.2017 onwards till actual realization. It is pertinent to state that there is no agreement in relation to the rate of interest between the parties. It is clear anomaly in the manner in which the interest <sup>has</sup>  $\frac{1}{2}$  been calculated. ①  
There is also difference of the rate of interest calculated on the different invoices. In short, the point raised by the corporate debtor is that the amount claimed is wrongly calculated which places different rates of interest on different invoices.

7. It is submitted by the Ld. Counsel for the Corporate Debtor that if the invoices are seen closely, then on few invoices there is no interest component. However, the Ld. Counsel for the Operational Creditor submitted that confirmation of the amount claimed is given by the Corporate Debtor, which is placed at Page 279 and besides that the email communications at Pages 280, 287 & 288 and the Corporate Debtor has never raised the issue at the time of receiving the invoices. Thus, the submissions made by the Ld. Counsel for the Operational Creditor are plausible. The plea raised by the Ld. Counsel for the Corporate Debtor seems to be afterthought. Therefore, the same stands **rejected**.

8. It is further stated under Para 4 of the reply that the Corporate Debtor has received complaints from customers and the debit notes were issued to the

Corporate Debtor for deducting the amount from the payments due. However, a query has been raised by this authority to the Ld. Counsel for the Corporate Debtor as to whether the debit notes if any raised on the Operational Creditor are filed with the reply. The Ld. Counsel for the Corporate Debtor fairly admitted that no debit notes were raised on the Operational Creditor. Since, no debit notes have been raised to the Operational Creditor, therefore, the plea taken by the Ld. Counsel for the Corporate Debtor does not merit consideration and the same stands **rejected**.

9. The documentary evidence placed on record establishes that the Corporate Debtor has failed to make the payments to the Operational Creditor and even reply has not been filed to the demand notice. Therefore, all the legal requirements are fulfilled, the application is **admitted**, and the commencement of the CIRP is ordered against the corporate debtor viz., *M/s. Flora Dyeing House Private Limited.*, which ordinarily shall be completed within 180 days, reckoning from the day this Order is passed.

10. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- (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

(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.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

12. The Operational Creditor has not proposed the name of Resolution Professional for appointment as Interim Resolution Professional ('IRP'). Therefore, **Mr. Hemant Gupta, registered with IBBI having Registration No : IBBI / IPA-001 / IP-P01072 / 2017-2018 / 11763 Email: hka.consultants@gmail.com and Mobile No: 9910611114**, is hereby appointed as IRP. The IRP is directed to take charge of the CD's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of the Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

13. We hereby direct the Operational Creditor to pay a sum of Rs. 2,00,000/- to the IRP to meet out 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 Persons) Regulations, 2016.


14. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

15. The Ld. Counsel for the Operational Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

16. The IRP on receiving the copy of the order is directed to communicate this Order to the Corporate Debtor, and the concerned RoC.

17. The Order is dictated and pronounced in open court through video conferencing in the presence of Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor.

  
**NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

  
**CH. MOHD. SHARIEF TARIQ**  
**MEMBER (JUDICIAL)**