

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 285/Chd/Hry/2020

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Sunfocus Solutions Private Limited

with its registered office at
Near Big Bridge Dhanotu
PO Mahadev In Sundernagar
Mandi HP 174402 IN

...Petitioner-Operational Creditor

Vs.

Jewel Garments Private Limited

with its registered office at
Plot No-29 DLF Industrial Area,
Phase-II Faridabad
HR 121003 IN

...Respondent-Corporate Debtor

Judgement delivered on: 15.09.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Sumer Singh Brar, Advocate
For the Respondent-Corporate Debtor : Mr. Sandeep Singh Josan, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), and Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 by Vikas Kumar Thakur, Director of Sunfocus Solutions Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its Director, Vikas Kumar Thakur, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Jewel Garments Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Jewel Garments Private Limited, is a Company incorporated on 02.11.2007 under the provisions of Companies Act, 1956 with CIN No. U17291HR2007PTC037361 with its registered office at Plot No. 29, DLF Industrial Area, Phase II, Faridabad, HR-121003, IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A-1.

3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor is engaged in the business of manufacturing of clothing and textile. Operational Creditor entered into an agreement dated 02.07.2019 with the Respondent/ Corporate Debtor for development of the website for the purpose of trading garments and textiles produced by the Corporate Debtor. The Operational Creditor raised two invoices bearing invoice no. DOM-29 and DOM-35 dated 06.08.2019 and 29.08.2019 for a total amount of Rs. 21,13,000.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 21,13,000/- and the default occurred on 13.09.19 i.e. after lapse of fifteen days from the date of last invoice raised. Copy of the invoice/bills raised by the operational creditor (Annexure A-4), copy of Agreement (Annexure A-2), computation of default

(Annexure A-3) and copy of ledger statement as maintained in the books of petitioner (Annexure A-7) are attached with the main petition.

5. A demand notice in Form 3 dated 03.02.2020 was sent to the Respondent twice on 04.02.2022 and 13.02.2022. However, on both occasions the post could not be delivered and returned as 'insufficient address'. Thereafter, demand notice was sent via email dated 24.02.2020. Reply in response to e-mail has been received on 09.03.2020 wherein it is stated that there are not sufficient funds to pursue the same (Annexure A-6). The same demand notice was again sent to Respondent via speed post which was successfully delivered on 29.02.2022.

6. In Part-III of Form No. 5, Mr. Jaramu Ram Thakur has been proposed as Interim Resolution Professional (IRP) by the petitioner. Form No. 2 dated 02.03.2022 submitted by the proposed IRP is also enclosed with Certificate of Registration . It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professionals of ICAI (Annexure A-8).

7. Accordingly, order dated 03.03.2021, notice of this petition was issued to Respondent-Corporate Debtor to show cause as to why petition be not admitted. Affidavit of service has been filed to that effect vide Diary No. 2240/01 dated 15.03.2021. The corporate debtor has also filed reply vide diary No. 2240/3 dated 06.07.2022 through its Director, Mr. Sandeep Gupta, whereby it states that the corporate debtor is not in a position to repay the debt in question as the financial conditions have gone worst and not in position to honour the debt.

8. The short written submissions are filed by Operational Creditor vide diary No. 02240/04 dated 05.08.2022 and by Corporate Debtor vide diary No. 02240/5 dated 05.08.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 03.02.2020 was properly served. The demand notice was received as per tracking report mentioned at Page No. 51 of the main petition and through e-mail on 24.02.2020 (Annexure A-6). In view of the same, it is held that the demand notice has been duly served. However, reply was received to the demand notice sent through e-mail, whereby the corporate debtor admits the liability by stating, to close the project as it is where basis and to excuse from the payments as they do not have sufficient funds.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by petitioner that the operational creditor affirms that the corporate debtor has not given any notice raising dispute relating to the unpaid amount of operational debt as claimed in the application. The same has been inferred from the affidavit in terms of Section 9(3)(b) of I&B Code, 2016. The affidavit is attached with the main petition from page 59 to 61. It implies that there is no pre-existing dispute in relation to the debt claimed as per Part IV of Form 5. Moreover, the corporate debtor in its reply stated that the amount claimed is not denied and the respondent is not in a position to repay the debt in

question. Therefore it is evident from above that the present petition is of admitted liability.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 03.02.2020 in Form 3 attached as Annexure A-5 was duly served on the corporate debtor through speed post delivered on 29.02.2020. It is to be noted that the period of limitation would begin from the date of default i.e. 13.09.2019. This application was filed on 13.03.2020 and refiled on 02.11.2020 vide Diary No. 2002. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹21,13,000/-. The operational creditor entered into agreement with the corporate debtor for development of the website for the purpose of trading garments and textiles produced by the corporate debtor. The raised invoices are attached as Annexure- A4, copy of agreement dated 02.07.2019 is attached as Annexure-A2 of the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor

is undisputed as it is stated by respondent/corporate debtor in its reply that due to adverse financial conditions. Thus, the respondent-corporate debtor has admitted its liability. Accordingly, the petitioner proved the debt and the default.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Jewel Garments Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 the possession of the corporate debtor.

17. It is further directed that the manufacturing of clothing and textiles produced by corporate debtor or its business as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till 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.

19. The Law Research Associate attached with the Adjudicating Authority has checked the credentials of Mr. Jaramu Ram Thakur and there is nothing adverse against him. In view of the above, we appoint Mr. Jaramu Ram Thakur, Registration No. IBBI/IPA-001/IPP-01869/2019-2020/12933, E-mail: jrthakurvms@gmail.com, Mobile No. 9888344644 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Jaramu Ram Thakur shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound

manner. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

20. The petitioner is directed to deposit an amount of **₹75,000/-** (Rupees Seventy Five Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. This petition is accordingly allowed and admitted.

22. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/- 15.09.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 15.9.22
(Harnam Singh Thakur)
Member (Judicial)

September 15, 2022
YP/TB