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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/495/2020

(filed 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. Sri Lakshmi Saraswathi Cotspin***

M/s. United Raw Material Pte. Ltd.,
33, UBI Avenue 3 #05-32 Vertex Singapore 408868,
Correspondence Address in India :
2nd Floor, Vishwakarma Chambers Majura Gate,
Surat 395 002.

... *Operational Creditor*

-Vs-

M/s. Sri Lakshmi Saraswathi Cotspin Private Limited,
No.9, (Old No.8), Crescent Road,
Shenoy Nagar,
Chennai 600 030.

... *Corporate Debtor*

Order pronounced on 2nd September 2021

CORAM :

R.SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Kunjal Dalal, PCS

For Corporate Debtor : None appeared

ORDER

Per: **R.SUCHARITHA, MEMBER (JUDICIAL)**

This is an Application filed by the Operational Creditor viz., **M/s. United Raw Material Pte. Ltd.** *(herein referred to as the*

"Operational Creditor") under Section 9 of Insolvency Bankruptcy Code, 2016 *(hereinafter referred to as "IBC, 2016")* against **M/s. Sri Lakshmi Saraswathi Cotspin Private Limited** *(herein referred as the Corporate Debtor)* seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part I of the Application, it is seen that the Operational Creditor is a Company incorporated at Singapore on 30.05.2006 is having Company Number 200607763E. Part II of the Application discloses details of the Corporate Debtor from which it is evident that the Corporate Debtor is incorporated under the provisions of the Companies Act, 2013 on 19.06.2015. It is seen from the Application that the Registered Office address of the Corporate Debtor is situated at No.9 (Old No.8), Crescent road, Shenoy Nagar, Chennai 600 030. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal.

3. From Part IV of the Application, it is seen that the Operational Creditor has claimed a sum of USD 80686 which is due and payable by the Corporate Debtor and it is stated that the said debt has fallen due on 09.05.2017.

4. Part V of the Application discloses about details of the documents annexed along with this Application by the Operational Creditor in order to prove that the debt is as an Operational debt, which are as follows:-

i. *Copy of demand notice dated 13/11/2019 along with Annexure and postal receipt, postal consignment track report and copy of e mail evidencing service of same to Corporate Debtor is attached as Annexure D – Page 13-28.*

ii. *Copies of proforma Invoices forming part of Demand Notice attached at Page 18 – 22.*

iii. *Copy of Letter dated 09/05/2017 undertaking to refund the advance forming part of Demand Notice attached at Page 24-25.*

iv. *Copy of Reply to Demand Notice dated 27/11/2019 from Corporate Debtor as Annexure E – Page 29 -33.*

v. *Copy of Ledger Account in books of Operational Creditor for the period 01/07/2016 to 31/10/2019 attached as Annexure F – Page 34.*

vi. *Affidavit pursuant to Section 9 (3) (b) of IBC Code, 2016 (as Annexure G – Page 35-37).*

5. It emerges from the documents filed along with the Application that the Corporate Debtor vide their letter dated 09.05.2017 has stated that they have received a sum of USD 80,686 from the Operational Creditor as an advance against the Proforma Invoice Nos.SLSCOTSPIN/SC/079 dated 02.01.2017 for USD & SLSCOTSPIN/SC/085 dated 12.01.2017 for supply of Cotton Yarn to Singapore and it is stated that due to Erratic Cotton Prices

and circumstances beyond the control of the Corporate Debtor, they were not able to supply the cotton yarn to the Operational Creditor. Further, it is stated in the said letter that they would be returning the advance amount of USD 80,686 to the Operational Creditor which would be refunded in 3 months by way of three equal installments.

6. Based upon the said letter, it is seen that the Operational Creditor has filed the present Application seeking initiation of the CIRP against the Corporate Debtor under Section '9' of the IBC, 2016. On examining the transaction which transpired between the parties, it reveals the fact that it is the Corporate Debtor who has agreed to render service to the Operational Creditor by supply cotton yarn to the Operational Creditor and not *vice versa*. Under these circumstances, it is to be noted that for a 'debt' to qualify as an 'Operational Debt', it has to undergo the following percolation process;

(a) The amount in default should fall within the definition of 'claim' as defined under Section 3(6) of IBC, 2016.

(b) Such a 'claim' should be capable of being treated as a 'debt' as defined under Section 3(11) of IBC, 2016.

(c) And such 'debt' should fall within the confines of "Operational Debt" as defined under Section 5(21) of IBC, 2016.

(d) And the said "Operational Debt" must be owed by the Corporate Debtor to the Creditor, who can then be considered as an Operational Creditor under Section 5(20) of IBC, 2016.

7. Thus, for a person to qualify as an Operational Creditor he must have supplied the goods or rendered service to the Corporate Debtor, which is not the proposition in the present case and on the other it is the Corporate Debtor who has agreed to render the service to the Operational Creditor; however has failed to do so. Hence, the failure on the part of the Corporate Debtor to refund the advance amount paid by the Operational Creditor would not in any way qualify the Applicant to be an Operational Creditor in relation to the Corporate Debtor. Further, it should be borne in mind that only a supplier of goods or provider of services who has provided such goods or services can claim to be an "Operational Creditor" and not in the reverse (i.e.) a person who availed the services or received the goods from the Corporate Debtor and in relation to the said transaction a 'claim' had arisen.

8. Thus, in view of the reasons stated *supra*, we are of the considered view that the Applicant is not an Operational Creditor in

relation to the Corporate Debtor and hence the Application as filed by the Operational Creditor is not maintainable and liable to be dismissed and accordingly stands **dismissed**. No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond