IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
(IB)-424/ND/2023

IN THE MATTER OF:

Apparels India
Through: Mr. Pradeep
Reg. Office at:
Dairy Farms, Post Office Lane,
Masoodpur Village, New Delhi-110070 **... Operational Creditor**

Versus

Aban Exim Pvt. Ltd.
Reg. Office at:
F No-210-P No-12, Suneja Tower,
Janakpuri, New Delhi-110058 **... Corporate Debtor**

Under Section: 9 of IBC, 2016

Order delivered on 01.01.2024

CORAM:
SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:
For the Appellant :
For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The OC viz. Apparels India is a proprietorship concern run by the proprietor Mr. Pardeep having its registration office at Dairy Farms, Post Office Lane, Masoodpur Village, New Delhi-110070. The OC is engaged in the business of several kind of apparels. The CD viz. Aban Exim Pvt. Ltd. incorporated under the Companies Act, 1956 is having its registered office at F No. 210-P No. 12, Suneja Tower, Janakpuri, New Delhi-110058 and bears

CIN U51909DL2004PTC127157. It is the case of the OC that on the basis of the order placed by the CD, it delivered the required material at the designated address of the CD and raised invoices dated 22.10.2022. According to the OC, against the delivered goods, it raised invoices upon the CD and despite delivery of goods and invoice being raised, the CD failed to make the payment for the supplied goods. Copies of invoices dated 22.10.2022 along with E-way bill are placed on record as Annexure P-4(Colly.), to the petition. Page No. 44 is a copy of confirmation of accounts dated 09.06.2023 issued by the CD. The confirmation of accounts as placed on record by the OC reads thus:

ANNEXURE P-5

To:
Aban Exim Pvt. Ltd.
Second Floor, Office No. 210,
Tower II, Janakpuri, New Delhi - 110058
GSTIN : 07AAGCA0578G3ZP
State Name : Delhi, Code : 07

From:
Apparels India
B-11, First Floor,108,
Dairy Farms, Post Office Lane,
Masoodpur Village, New Delhi - 110070
GSTIn : 07BNDPP4036Q1Z1
Sate Name : Delhi - Code : 07

Dear Sir/Madam,

Date : 09.06.2023

Sub: Confirmation of Accounts
1-Apr-22 to 31-Mar-23

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.
Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fritnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
22-Oct-22	Sale -AI/01	8169315.84			
22-Oct-22	Sale -AI/02	8911363.44			
22-Oct-22	Sale -AI/03	8828708.40			
22-Oct-22	Sale -AI/04	7202342.58			
			22-Feb-23	Bank	680000.00
		32911728.24			680000.00
					32231728.24
		32911728.24			32911728.24

I/We hereby confirm the above

Yours faithfully,

Ld. Counsel for the Applicant could draw our attention to the demand notice dated 12.06.2023 along with proof of service. The Applicant has also filed affidavit stating therein that the CD did not give any reply to the demand notice. The affidavit is at page No. 28 of the petition. Para 3 of the affidavit reads thus:

> *"3. That though the Corporate Debtor had not replied to the Demand Notice dated 12.06.2023, however, the Corporate Debtor, prior to the serving of the Demand Notice dated 12.06.2023, had not ever raised any disputes."*

Ld. Counsel for the Applicant could also draw our attention to the written communication by the proposed RP namely Mr. Vikram Bajaj registered with ICSI Insolvency Professionals Agency having registration number IBBI/IPA-002/IP-N00003/2016-17/10003. The RP has given his consent and has accepted his appointment in the form-2 viz. the consent of his appointment. The RP has stated that he is eligible to be appointed as RP for CIRP qua the CD and is not facing any disciplinary action. Para V of the page No. 60 of the petition reads thus:

> *"V. affirm that I am eligible to be appointed as a Resolution Professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."*

As can be seen from part-IV of the petition, the amount defaulted to be paid is more than the threshold limit i.e. Rs. one crore and the present petition could be preferred within one year from the date of default i.e. 22.02.2023. Part-IV (I & II) of the petition reads thus:

PART- IV

S.No.	PARTICULARS OF OPERATIONAL DEBT	
I.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE. THE DATE FROM WHICH SUCH DEBT FELL DUE.	The total principal outstanding amount is Rs.3,29,11,728.24/- (Rupees Three Crores Twenty Nine Lakhs Eleven Thousand Seven Hundred and Twenty Eight only) along with interest @36% p.a. from the date it became due until its realisation. That the Apparels India is a proprietorship concern run by its Proprietor Mr. Pardeep, having its registered office at Dairy Farms, Post Office Lane, Masoodpur Village, New Delhi – 110070, engaged in the business of several kind of apparels from several years (hereinafter referred to as the "**Operational Creditor**").
		That Aban Exim Pvt. Ltd. is a company incorporated under the Companies Act, 1956 having its registered office at F NO- 210-P NO-12, SUNEJA TOWER, JANAKPURI, NEW DELHI – 110058 and bearing CIN U51909DL2004PTC127157 (hereinafter referred to as the "**Corporate Debtor**"). That the Operational Creditor is engaged in the business of providing several kind of apparels since a long time.

		The Corporate Debtor is also engaged in the similar and other business including the business of import and export. That in the month of October, 2022 the Corporate Debtor has approached the Operational Creditor herein for supply of garments such as ladies heavy bridal suit, ladies designer short jacket, heavy dupatta etc. (hereinafter referred to as "***the said goods***"). It was agreed that the invoice shall be due on the
		date of delivery of the goods. That on the basis of the order placed by the Corporate Debtor, the Operational Creditor delivered the required material at the designated address of the Corporate Debtor and raised invoices dated 22.10.2022. It is stated that the goods delivered by the Operational Creditor was accepted by the Corporate Debtor without any instance of demur and protest.
		It is stated that against the delivery of the goods, the Operational Creditor has also raised four invoices upon the Corporate Debtor. However, despite receipt of the goods, the Corporate Debtor failed to clear any invoice raised by the Operational Creditor. After much persuasion the Corporate Debtor on 22.02.2023 had made a payment of Rs. 6,80,000/- (Rupees Six Lakh Eighty Thousand Only) to the Operational Creditor, however the balance amount of Rs. 3,22,31,728.24/- (Rupees Three Crore Twenty-Two Lakhs

		Thirty-One Thousand Seven Hundred Twenty-Right and Twenty-Four Paisa Only) was still pending.A copy of the invoices dated 22.10.2022 along with e-way bills is annexed herewith and marked as **<u>ANNEXURE P-4 (Colly).</u>** That the Operational Creditor on numerous occasions approached the Corporate Debtor with a request to clear the outstanding dues, however the same fell in the deaf ears of the Corporate Debtor.
		That after much persuasion a meeting was held on 09.06.2023 wherein the Corporate Debtor had confirmed the accounts maintained by the Operational Creditor, which clearly shows the outstanding dues as claimed herein above. A copy of the confirmation of accounts dated 09.06.2023 issued by the Corporate Debtor is annexed herewith and marked as**<u>ANNEXURE P-5.</u>** That therefore, it is evident that
		the CD is not in a position to clear the aforesaid operational debt. The Operational Creditor was left with no option but to send a Demand Notice dated 12.06.2023 in terms of Section 8 and 9 of the IBC Code, 2016 with an instruction that in case of non-payment of the outstanding dues, the necessary

		petition would be filed before the Hon'ble NCLT, New Delhi Bench under Section 8 and 9 of the IBC Code, 2016. The said notice has been served upon the Corporate Debtor via speed post as well as No reply or payment has been received, despite expiry of the stipulated period of 10 days. A Copy of the demand notice dated 12.06.2023 along with proof of service is annexed herewith and marked as **ANNEXURE P-6 (Colly).**
		That the Corporate Debtor does not have any defense in its favor. No dispute has ever been raised by the Corporate Debtor, therefore, it is prayed that insolvency proceedings shall be initiated against the Corporate Debtor. The date of invoice is 22.10.2022. Further, the Corporate Debtor has had made a payment of Rs. 6,80,000/- (Rupees Six Lakh Eighty Thousand Only) on 22.02.2023 confirming the debt and have not paid anything since then. Hence the date of default is**22.02.2023**.
ii.	AMOUNT CLAIMED TO BE IN DEFAULT THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF DEFAULT IN TABULAR FORM)	Rs. 3,22,31,728.24/- alongwith interest of 36% (as per MSME guidelines). 22.02.2023 A copy of working for computation of default is annexed herewith and marked as**ANNEXURE P-7**.

On 17.08.2023, Mr. Nidish Gupta, Ld. Counsel entered appearance on behalf of the CD and sought an opportunity to file reply to the petition. However, despite opportunity no reply had been filed. Last opportunity was granted to CD to file reply within 2 days, subject to payment of cost of Rs. 20,000/- to be deposited in the Prime Minister's Relief Fund. The receipt of payment of cost should be uploaded on the DMS/record, within given time. The order dated 28.08.2023 passed in this regard reads thus:

> *"Despite repeated opportunities, the Respondent has not filed any reply. Today, again Ld. Counsel appearing for the Respondent sought further extension of time to do the needful. By way of sheer indulgence, one last opportunity is granted for filing a reply within 2 days, subject to payment of the cost of Rs. 20,000/- to be deposited in the Prime Minister's Relief Fund. The receipt of payment of cost should be uploaded on the DMS/record, within the given time.*
>
> *List on 12.09.2023."*

When even after the opportunity could given subject to payment of cost of Rs. 20,000/-, the Respondent did not care to file any reply, on 12.09.2023 the proceedings qua it was set ex-parte. The order dated 12.09.2023 reads thus:

> *"Despite the last opportunity granted to CD to file its reply, subject to payment of the cost of Rs. 20,000/-, the CD has neither cared to file the reply nor pay the cost. It has not complied with the aforementioned order.*
>
> *In the wake, the right of the Respondent to file a reply is closed and the Respondent proceeded against ex-parte.*
>
> *Nevertheless, both the Petitioner and Respondent are directed to file independent affidavits clearly indicating therein that the present petition is not a collusive one and there is no relationship between the Petitioner and the Respondent.*

List for final hearing on 18.10.2023."

In terms of the aforementioned order dated 12.09.2023, both the Petitioner and the Respondent were directed to file independent affidavit clearly indicating therein that the present petition is not a collusive one and there is no relationship between the Petitioner and the Respondent. In terms of the order dated 18.10.2023, it could be recorded that the affidavit in terms of the order dated 12.09.2023 could be filed by the Petitioner. Nevertheless, yet again on 09.11.2023, when only proxy counsel appeared for CD, last opportunity was granted to CD to place on record its last audited balance sheet. However, on 07.12.2023, no one appeared on behalf of the CD and Mr. Aditya Nayyar, Ld. Counsel for the Petitioner submitted that he would procure the latest audited Balance-sheets qua the RoC and would file the same within one week. On 14.12.2023, again there was no appearance on behalf of the CD. Today Mr. Aditya Nayyar, Ld. Counsel for the Petitioner could draw our attention to the affidavit filed on behalf of OC on 17.10.2023, to espouse that the present petition is not collusive one and there is no relation between the OC and the CD. Para 3 of the affidavit reads thus:

> *"iii. That the captioned petition filed u/s 9 of the IBC, 2016 for initiation of the CIRP against the Corporate Debtor has not been filed in collusion with the Respondent. Further, the Deponent and the Corporate Debtor are not related to each other."*

As can be seen from the provisions of Section 9(5) of the IBC, 2016, while considering an application filed by the OC, this Adjudicating Authority need to examine as to whether the application is complete, there is no payment of the unpaid operational debt, the invoice of notice for payment to the CD has been delivered by the OC, no notice of dispute has been received by the OC and there is no proceedings pending against any resolution professional proposed under sub-Section 4 of Section 9 of the IBC, 2016. The provision of the Section 9(5) of the IBC, 2016 reads thus:

"9. Application for initiation of corporate insolvency resolution process by operational creditor: -

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any."

The Ld. Counsel for the Petitioner could draw our attention to the statement of bank account of the OC to show that the no payment qua the defaulted amount had been made by the CD to the OC. The statement is placed on record at Annexure P-7 of the petition. He could draw our attention to the affidavit filed by Mr. Shiv Prakash, S/o Sh. Munna Lal stating therein that the present petition is not collusive one, but the Respondent is dealing nearly 100 of vendors and the transaction entered into by OC with it is in the normal course of business. Though in para 4 of the affidavit by the CD it is alleged that the goods supplied were defective one, but there is no reference made by the CD to any pre-existing dispute. In view of the aforementioned, particularly for the reason that the requirements stipulated in Section 9(5) of the IBC, 2016 are satisfied, **we are left with no option but to admit the present petition.** Ordered accordingly.

The Company Petition IB-424/ND/2023 is **admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

"(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 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."

The Operational Creditor has proposed the name of IP to act as IRP of the CD therefore as suggested by the OC, this Bench appoints Mr. Vikram Bajaj having IBBI Registration No. IBBI/IPA-002/IP-N00003/2016-2017/10003 and Email ID bajaj.vikram@gmail.com from the list of panels of IPs recommended by IBBI to this Adjudicating Authority, subject to the condition that there is no disciplinary proceeding pending against the said IRP. The Adjudicating Authority further orders that:

> *"Mr. Vikram Bajaj, IRP (Email ID bajaj.vikram@gmail.com) having registration no. IBBI/IPA-002/IP-N00003/2016-2017/10003 is directed to take charge of the CIRP of the Respondent with immediate effect. Further, the IRP is directed to take steps under Section 15, 17, 18, 20 and 21 of the IBC, 2016."*

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

A copy of this Order shall be communicated to the Operational Creditor, the Respondent and the IRP mentioned above, by the Court/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)