

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI,
CP (IB) No.1046/MB/2019**

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

V.M. YARNS PRIVATE LIMITED

[CIN:U17110MH2002PTC138438]

Registered Office: 906, Unique Tower
Gajwadi Industrial Estate Off S.V. Road
Goregaon (West), Mumbai-400062

...Operational Creditor

VERSUS

VIJAY WEAVING & DYING PRIVATE LIMITED

[CIN: U17110MH2003PTC139987]

Registered Office: 454/458, Ramdas Building
Office 2Nd Floor, Room No.6, Popatwadi Corner
Kalbadevi Road, Mumbai-400002

...Corporate Debtor

Pronounced: 23.02.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Operational Creditor : Adv. Neeta Solanki

Corporate Debtor : Adv. Suresh M. Jain & Adv. Rahul J. Chaubey

ORDER

[Per: SANJIV DUTT, MEMBER (TECHNICAL)]

1. Background

- 1.1 This Application bearing C.P.(IB) No.1046/MB/2019 was filed by V.M. Yarns Private Limited, the Operational Creditor on 16.01.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Vijay Weaving & Dying Private Limited, the Corporate Debtor.
- 1.2 Both the Operational Creditor and the Corporate Debtor are engaged in business of spinning, weaving and finishing of textiles.
- 1.3 The Operational Creditor supplied different types of yarn to the Corporate Debtor and raised invoices from 22.03.2014 to 30.11.2015. An amount of Rs.42,77,686/- (Forty-Two Lakhs Seventy-Seven Thousand Six Hundred and Eighty-Six Rupees) including interest at the rate of 18% per annum became due from the Corporate Debtor which failed to make payments against the invoices.
- 1.4 The Operational Creditor issued Demand Notice dated 22.10.2018 to the Corporate Debtor as required under Section 8 of the Code. However, the Corporate Debtor failed to make payment of the aforesaid amount of operational debt due and payable to the Operational Creditor. This led to the

filing of the present Application by the Operational Creditor seeking initiation of CIRP in respect of the Corporate Debtor.

2. Averments of the Operational Creditor

- 2.1 The Operational Creditor submits that an amount of Rs. 42,77,686/- (Rupees Forty-Two Lakhs Seventy-Seven Thousand Six Hundred and Eighty-Six Only), inclusive of interest at the rate of 18% per annum became due from the Corporate Debtor against supply of yarn by the Operational Creditor. This comprised principal debt of Rs.26,23,722/- towards supply of yarn and interest of Rs.16,53,964/- towards delay or default in payment of aforesaid operational debt.
- 2.2 The Operational Creditor submits that the principal amount is claimed based on the invoices and the confirmation received from the Corporate Debtor *vide* email dated 05.10.2018. Despite repeated requests and follow-up through emails etc., the Corporate Debtor failed to clear the outstanding dues of the Operational Creditor.
- 2.3 Thereafter, the Operational Creditor issued a Demand Notice under Section 8 of the Code to the Corporate Debtor on 22.10.2018 which was delivered to the Corporate Debtor on 26.10.2018. However, the Corporate Debtor neither responded to the said Demand Notice nor made any payment till the date of this Application.
- 2.4 The Operational Creditor has attached the relevant tax invoices and Ledger Account of the Corporate Debtor for financial years 2014-15, 2015-16 and 2016-17 along with the present Application. An Affidavit dated 25.04.2019 under Section 9(3)(b) of the Code has been filed stating that the Operational

Creditor has neither received any reply nor any payment from the Corporate Debtor within the stipulated time in response to the Demand Notice and that there is no suit pending in respect of the unpaid operational debt before the service of the Demand Notice.

3. **Contentions of the Corporate Debtor**

- 3.1 The Corporate Debtor denies at the very outset that any amount much less a sum of Rs.42,77,686/- is due and payable by it to the Operational Creditor. It is submitted that the Application is vague and does not bring out as to how the alleged amount is due and payable by the Corporate Debtor to the Operational Creditor.
- 3.2 The Corporate Debtor points out that part of the alleged bills attached to the Application are not in the name of the Operational Creditor. Therefore, these bills purportedly issued by M/s. Samosaran Syntex Pvt. Ltd., cannot be considered for the present Application. Further, the alleged bills lack evidence supporting the delivery of goods to the Corporate Debtor. The documents annexed to the Application do not prove when, where and how the alleged delivery of goods was effected in favour of the Corporate Debtor. The Corporate Debtor also denies receiving the alleged invoices and goods from the Operational Creditor.
- 3.3 It is claimed that no Demand Notice, as required under Section 8 of the Code, was ever received or served upon the Corporate Debtor. The address mentioned in the statutory Demand Notice is not the registered address of the Corporate Debtor. Therefore, the mandatory requirement of law has not been complied with and hence the Application is not maintainable.

- 3.4 The Corporate Debtor further submits that the claim of the Operational Creditor is barred by the law of limitation. The alleged bills pertain to 2014 and 2015, while the Application was filed after more than three years in May, 2019. In view of the last invoice having been issued on 30.11.2015, the alleged claim of the Operational Creditor had already become time-barred in November, 2018.
- 3.5 It is contended that the alleged statement of the Ledger attached with the email dated 05.10.2018 has never been issued by the Corporate Debtor and the same is false and fabricated. The Corporate Debtor has never sent any such email to the Operational Creditor as is clear from the covering letter annexed to the Application.
- 3.6 It is submitted that the alleged bills raised by the Operational Creditor do not disclose any rate of interest. There are no alleged terms appearing on the bills with regard to the interest @18% per annum and even the interest sought to be claimed is without any justification. No particulars regarding the calculation of alleged interest are provided in the Application. Thus, the alleged claim of interest of Rs.16,53,964/- is not supported by any evidence.
- 3.7 It is also submitted that there is a condition of arbitration printed on the bills and, therefore, the Operational Creditor was supposed to have approached arbitration for resolving alleged disputes, if any.

4. **Rejoinder of the Operational Creditor**

- 4.1 In its rejoinder filed on 27.09.2022, the Operational Creditor has reiterated that the Corporate Debtor was duly served with the Demand Notice and the

Operational Creditor had already placed the proof of postal acknowledgement on record. It is pointed out that the building having the registered office of the Corporate Debtor viz., Ramdas Building, Kalbadevi Road, Mumbai had been demolished and was under redevelopment/ reconstruction at the relevant time and the Corporate Debtor is aware of this fact.

4.2 The present Application under section 9 of the Code has also been served on the Corporate Debtor and all its directors as well as on the registered email address of the Corporate Debtor available on its website. The Affidavits of Service dated 28.08.2019 and 02.12.2019 have already been placed on record. However, the Corporate Debtor has not raised any dispute except in the Affidavit-in-reply. The Corporate Debtor has raised disputes only with respect to part of the claim. Therefore, the present Application is only to be proceeded with regarding the undisputed claims of the Corporate Debtor.

4.3 As regards the bills issued by Samosaran Syntex Private Limited, it is clarified that the goods were sold by the said entity to the Corporate Debtor, as is evident from the invoices. It is stated that the debt, being the value of the goods under the said invoices, was assigned in favour of the Operational Creditor, which had certain receivables from Samosaran Syntex Private Limited. The said entity had endorsed and assigned the receivables under the invoices to the Operational Creditor and the Corporate Debtor was aware of this assignment, as is evident from the Ledger maintained by the Corporate Debtor and sent to the Operational Creditor.

4.4 There is no dispute as to the delivery of the goods effected to the Corporate Debtor. It is submitted that the delivery of the goods was duly received by the Corporate Debtor which had also made part payments from time to time. The

outstanding amount due and payable by the Corporate Debtor is duly reflected in the Ledger account maintained by the Corporate Debtor in its books which was shared with the Operational Creditor *vide* email dated 05.10.2018.

4.5 The Demand Notice dated 22.10.2018 under Section 8 was duly served upon the Corporate Debtor on 26.10.2018. As the building in which the registered office of the Corporate Debtor was located was under redevelopment at that point of time, the Notice was transmitted to the Corporate Debtor at 158/160, Royal Avenue Tower, 1st Floor, R. No.106, Dr. Vigas Street, Kalbadevi Road, Mumbai-400002, and was duly received by it on 26.10.2018.

4.6 The Operational Creditor asserts that its claim is not at all barred by the law of limitation. The Corporate Debtor *vide* email dated 05.10.2018 had acknowledged the debt due and payable which amounts to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963. The amounts were due towards the running account of the Corporate Debtor which made part payments from time to time. The last part payment of Rs.1,00,000/- was made on 08.06.2016 as evident from the Ledger provided by the Corporate Debtor. Such payment will fall within the meaning of Section 19 of the Limitation Act, 1963 and will have the effect of providing a fresh period of limitation. In this regard, the Operational Creditor has also relied on several case laws.

4.7 The computation of interest has been provided and annexed at Page Nos.70 to 72 of the Application. The interest is computed at 18% per annum as per prevailing market rates. Further, it is stated that the Ledger has been issued by the Corporate Debtor itself by way of attachment to the email dated 05.10.2018 sent from the registered email address of the Corporate Debtor,

as reflected on the website of the Registrar of Companies - Company Master Data of the Corporate Debtor. Therefore, the Corporate Debtor cannot claim that it had never sent the email to the Operational Creditor.

5. Analysis and Findings

Upon due consideration of the pleadings as well as written submissions and hearing the Ld. Counsel for the Operational Creditor, our findings in the matter are as under:-

- 5.1 The Operational Creditor has placed on record copies of relevant tax invoices along with Ledger Account of the Corporate Debtor for the Financial Years 2014-2015 to 2016-2017 showing outstanding amount of Rs.21,21,286/- due from the Corporate Debtor as on 31.03.2017 as against amount of Rs.26,23,722/- claimed to be in default as on 31.03.2018 by the Operational Creditor. It is noticed from the record that the amount of Rs.5,00,000/- claimed by the Operational Creditor in the statement of "Interest Details" in respect of Invoice No. V-714 dated 12.04.2014 finds no mention either in the Ledger Account of Dharmveer Synthetics Private Limited (previous name of the Corporate Debtor) or in the Ledger Account of the Corporate Debtor named in the Application for the relevant period. Thus, there is a discrepancy in the amount of operational debt due and payable as per the Ledger Account and the one claimed to be in default in the Application. However, the contention of the Corporate Debtor that bills in the name of Samosaran Syntex Private Limited should not be considered as part of the Operational Creditor's claim is found to be devoid of merit because the Corporate Debtor was aware of the assignment of the receivables from Samosaran Syntex Private Limited in favour of the Operational Creditor by virtue

of the clear and unequivocal endorsement on such bills requiring the Corporate Debtor to “make the payment on our behalf to M/s V.M. YARNS Private Limited”. Thus, it is clear from perusal of the record that an amount more than the threshold limit of Rs.1,00,000/- was due and payable by the Corporate Debtor to the Operational Creditor towards supply of yarn. Hence, we find that the Operational Creditor has been able to substantiate the existence of an operational debt due and payable by the Corporate Debtor which remained unpaid. The debt so owed by the Corporate Debtor to the Operational Creditor against the supply of yarn falls within the definition of “operational debt” under Section 5(21) of the Code.

5.2 The Operational Creditor issued a Demand Notice dated 22.10.2018 to the Corporate Debtor under Section 8(1) of the Code in the prescribed form demanding payment of the outstanding amount of operational debt. It is observed that the said Demand Notice was duly served on the Corporate Debtor on 26.10.2018, as evident from copy of the postal acknowledgement placed on record by the Operational Creditor. However, the Corporate Debtor neither responded to the aforesaid Demand Notice nor made any payment of the unpaid operational debt. Hence, we find that the Corporate Debtor defaulted in payment of the operational dues owed to the Operational Creditor.

5.3 It is observed from the record that the date of default has not been mentioned explicitly either in Part-IV of the Application or in the Demand Notice dated 22.10.2018. The total amount of debt due as well as the amount claimed to be in default are shown in Part-IV of the Application as due from various dates which were “confirmed” by the Corporate Debtor. In this regard, the Operational Creditor has placed on record “Bill-wise Details” from “01.04.2018 to 31.03.2018” allegedly received as attachment to the e-mail dated 05.12.2018 addressed by the

Corporate Debtor to the Operational Creditor. On perusal of the “Bill-wise Details”, it is noticed that the date of each bill has been mentioned as the due date of such bill which is found to be factually incorrect. Date of default can be calculated only when the invoice becomes due and payable. On perusal of tax invoices raised by the Operational Creditor on the Corporate Debtor, it is noticed that as per the terms of payment, each bill was to be paid within “15 days”. It is also observed that the Operational Creditor has maintained a running account of the Corporate Debtor in its books of account. Therefore, after considering the pleading of the Operational Creditor and the details of the invoices annexed to the Application, the date of default is determined as 15.12.2015 reckoning fifteen days from the date of the last invoice remaining unpaid i.e. 30.11.2015.

5.4 This brings to the fore the question of limitation vehemently raised by the Corporate Debtor since the present Application was filed by the Operational Creditor on 16.01.2019. However, it is noticed from the record that a part payment of Rs.1,00,000/- was made by the Corporate Debtor on 08.06.2016 which is covered within the meaning of Section 19 of the Limitation Act, 1963 and will have the effect of activating a fresh period of limitation. Thus, the present Application filed on 16.01.2019 is found to be well within the period of limitation. Therefore, we find that the contention of the Corporate Debtor that the Operational Creditor's claim is barred by limitation is untenable and the same is accordingly rejected.

5.5 On perusal of the materials available on record, we find that there is nothing to show that any dispute was raised by the Corporate Debtor before the receipt of the Demand Notice. The Operational Creditor has filed an Affidavit under Section 9(3)(b) of the Code, *inter alia*, affirming that the Corporate Debtor neither specified existence of any suit or arbitration proceedings nor annexed a record of

the pendency of the suit or arbitration proceedings filed before the receipt of the Demand Notice issued by the Operational Creditor nor sent a proof of repayment of unpaid operational debt as required under Section 8(2) of the Code. It is also affirmed that the Operational Creditor has not received any notice of dispute regarding the pending amount from the Corporate Debtor in terms of Section 8(2) of the Code. Though the Corporate Debtor in its written submissions has claimed that the alleged bills are not supported by proof of delivery of goods, it has not furnished even an iota of documentary evidence to substantiate its claim. There is nothing to show that any dispute or objection with regard to delivery of goods was raised by the Corporate Debtor before the receipt of the Demand Notice. And finally, the Corporate Debtor's claim that the Demand Notice dated 22.10.2018 under Section 8 of the Code was never received also stands demolished on account of production of copy of the relevant postal acknowledgement dated 26.10.2018 by the Operational Creditor as proof of service thereof. Hence, it cannot be said that there was any pre-existing dispute between the parties regarding the amount of operational debt in default.

- 5.6 It is also seen from the record that there was no provision for charging of interest under the tax invoices raised by the Operational Creditor on the Corporate Debtor. It is well-established that interest cannot be claimed as a matter of right when there is no agreement between the parties for the same. Therefore, in the absence of mutual agreement between the parties, the Operational Creditor's claim for interest is found to be unsustainable.
- 5.7 As regards the Corporate Debtor's plea that the Operational Creditor should have approached the Bombay Yarn Merchants Association and Exchange Limited for

arbitration in terms of the arbitration clause in tax invoices instead of filing the present Application under Section 9 of the Code, it is now settled that presence of an arbitration clause in an agreement or tax invoice does not bar an operational creditor from approaching the Adjudicating Authority under Section 9 of the Code. There is no embargo on the Operational Creditor to prefer a Section 9 Application under the Code even if there is an arbitration clause under the tax invoices.

5.8 From the above discussions, it is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt to the Operational Creditor exceeding Rs.1,00,000/- (One Lakh Rupees), being the threshold monetary limit under Section 4 of the Code prevailing on the date of filing of the present Application. Thus, this Application under Section 9 of the Code preferred by the Operational Creditor is found to be maintainable. The Application is complete and has been filed in the prescribed form. There is no payment of the unpaid operational debt till date. No notice of pre-existing dispute has been received by the Operational Creditor in response to the Demand Notice. The Operational Creditor has proposed the name of Mr. Girish Krishna Hingorani to act as the Interim Resolution Professional (IRP) and no disciplinary proceeding is shown to be pending against him. In view of the above, we find that all requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.1046/MB/2019 filed under Section 9 of the Code by M/s. V.M. Yarns Pvt. Ltd., the

Operational Creditor, for initiating CIRP in respect of M/s. Vijay Weaving and Dying Pvt. Ltd., the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of Code with consequential directions as follows:

- I. We prohibit-
 - 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 of 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 Securitisation 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 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 order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order

for the liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.

- IV. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Girish Krishna Hingorani, a registered Insolvency Professional having Registration Number- IBBI/IPA-002/IP-N00842/2019-2020/12695, Email address girish2207@rediffmail.com** and valid Authorisation for Assignment till 08.11.2024 as the Interim Resolution Professional (IRP) to carry out the functions under the Code. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Sections 17 and 25 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) 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, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the

Committee of Creditors (CoC) becoming available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the 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 IRP including by way of email and WhatsApp.
- X. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
deepa/JNK

Sd/-
K. R. SAJI KUMAR
MEMBER(JUDICIAL)