

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH  
Company Petition (IB)No.492/ALD/2019**

**In the matter of:**  
**The Insolvency and Bankruptcy Code, 2016**

**AND**

**In the matter of:**  
**Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016**

**AND**

**In the matter of :**

**Sai Com Codes Flexoprint Pvt. Ltd.**  
**.....Operational Creditor/ Applicant.**

**VERSUS**

**Hemco Garments Pvt. Ltd & Anr.**  
**.....Corporate Debtor/Respondent.**

**ORDER DELIVERED ON : 01.03.2021**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Applicant/ Operational Creditor: Mr. Rahul Chaudhary, Adv. And  
Mr. Ankur Singhal, Adv**

**For the Respondent/ Corporate Debtor: None**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

**Order**



The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. **"Sai Com Codes Flexoprint Pvt. Ltd"** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"Hemco Garments Private Limited & Anr."**.

2. As per averments made in the petition, the corporate debtor had approached the operational creditor for purchase of different types of labels pursuant to which the operational creditor has supplied the requisite labels

— Sd —

through various invoices in favour of the corporate debtor from time to time.

3. Further, as per the terms and conditions contained in the invoices, the operational creditor had been supplying the requisite labels through tax invoices in favour of the Corporate Debtor and the same was duly received by the corporate debtor through logistics and the amount was to be payable within 30 days from the dater of respective tax invoices otherwise the corporate debtor was liable to pay interest @ 18% on the outstanding amount, if the payment was not made within stipulated time.
4. The counsel for the operational creditor has given details of the unpaid tax invoices which is as follows:

SL. No.	DATE	AMOUNT (IN RS.)
1.	11.02.2019	6,79,680.00
2.	03.03.2019	18,656.00
3.	04.04.2019	42,048.00
4.	11.04.2019	3,45,032.00
5.	09.05.2019	2,99,059.00
6.	22.05.2019	91,096.00
7.	22.05.2019	2,62,432.00



5. It was further stated that the tax invoice dated 11.02.2019 was partially paid whereas other retail tax invoices are totally unpaid. The operational creditor has been maintaining the running ledger account in respect of the transactions executed with the corporate debtor as maintained and operated in due course of its business, whereby, the operational creditor had mentioned the details of tax invoice's as well as the amount received from the corporate debtor.

-5d-



6. The operational creditor has been following the corporate debtor for its outstanding amount and had sent emails on numerous occasions requesting the corporate debtor to pay the outstanding amount but they have not responded to it.
7. It is further contended that when the amount was not paid , inspite of various demands raised by the petitioner, the operational creditor issued demand notice Under Section 8 of the IBC, 2016 dated 28.08.2019 demanding the outstanding amount of Rs.18,23,289/- towards the invoices and Rs. 1,74,700/- towards interest which was duly received by the respondent **(The Copy of demand notice along with the delivery report is annexed as Pg No.57 and 58 of the application) .**
8. On demand notice being delivered to the Corporate debtor, a reply dated 16.09.2019 has been issued on behalf of the corporate debtor to the Operational Creditor. In reply to the demand notice, the respondent has stated that the applicant is a vendor of Patanjali Ayurved Limited and as per the agreement entered into between the respondent and Patanjali, the respondent was required to raise the purchase order upon receipt of instructions from Patanjali to the applicant and used to supply the goods to Patanjali which facts are very well within the knowledge of the applicant. Further stated that the applicant has failed to perform the contract in timely manner due to which the corporate debtor has suffered losses and damages which are to be recovered from the operational creditor and after various reminders by the corporate debtor to the applicant, the applicant failed to take any effective step to rectify the same thus the entire amount stands forfeited by the respondent .
9. It is submitted that as the corporate debtor has failed to make any payment to the operational creditor and the reply to the demand notice is false and frivolous and the same are made only to avoid the debt which is admittedly due and payable and there is no bonafide dispute with regard to the debt due. The respondent has therefore filed this petition as an operational

- 5d -



creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.

10. The corporate Debtor has been duly served by speed post and the tracking report is on record. Pursuant to the court order, notice issued to the Corporate Debtor has been delivered and tracking report is also on record which shows that the respondent has been served the notice. However no one appeared on behalf of the respondent.

11. It is a matter of record that although various opportunities were granted but the Corporate Debtor has chosen not to contest the case and hence vide order dated 07.01.2021, the case was fixed for exparte hearing on 22.02.2021, then on the date of hearing also the respondent opted not to appear.

12. I have heard the arguments raised by the Ld. Counsel for the Operational Creditor and perused the application and the documents annexed there in.



Now, before considering the submissions raised on behalf of the petitioner, I would like to refer Section 9 (5) of the IB Code and the same is quoted below:

**Sec 9: Application for initiation of corporate insolvency resolution process by operation 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 <sup>3</sup> [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*

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

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if--

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

(b) there has been <sup>3</sup>[payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

14. It is a settled law that if any dispute is raised prior to the issuance of the invoices or Demand Notice u/s 8(1) of the IBC with regard to quality of service or goods or pendency of the suit or arbitration, in such case one may take the plea that there is an 'existence of dispute' but if any dispute is raised after issuance of Demand Notice u/s 8(1) that cannot be termed to be a 'pre-existing dispute'.



15. In the present matter, the corporate debtor has replied to the Section 8 notice and raised a pre existing dispute regarding the quality of material supplied but there is no material documents to prove the same as corporate debtor has not appeared to contest the case inspite of notice being delivered as well as several opportunities being granted, thus it cannot be said there the dispute was pre existing as raised in reply to the demand notice by the corporate debtor.

16. Therefore, in light of the aforesaid provisions, I would like to consider the

— 5d —

17. present application and this adjudicating Authority is of the considered view that the total amount claimed in default is of Rs.18,23,239/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor. The increase in threshold limit to initiate CIRP from Rs. 1 lakh to 1 Crore vide notification of the MCA dated March 24, 2020 is prospective in nature and does not in any way apply to the present matter.

18. It is matter of record that applicant filed a copy of invoices from 11.02.2019 till 22.05.2019 along with the present petition and the present petition is filed under section 9 of IB code on 03.12.2019. A perusal of the same goes to show that invoices of this period are found well within the limitation **(As per section 238 A of IB Code)** to triggered the CIRP in respect of corporate debtor.



19. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards supply of goods to corporate debtor as per its purchase order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.

20. The Petitioner, in the present IB petition, has complied with Section 9 (3) (b) and 9(3) (c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code, the present application is found complete and the default of debts is established. Hence, the present petition deserves admission.

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21. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]*

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2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.



22. Since in the present matter the applicant did not propose the name of the IRP. Hence, this Adjudicating Authority hereby appoint **Mr. Deepak Mittal** IBBI/IPA-001/IP-P-02096/2020-2021/13264 Email Id: **reshmaandco@gmail.com** as Interim resolution Professional.

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23. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

24. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

List on 05.04.2021 for filing of the Progress Report before this Bench.

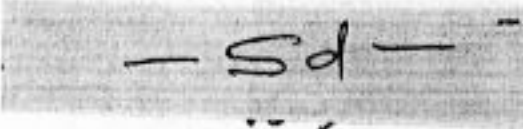


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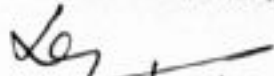
Date: 01.03.2021

Swati Gupta  
(LRA)

Compared by Me  
Mahesh Sahai  
1/3/2021

  
JUSTICE RAJESH DAYAL KHARE  
MEMBER (J)

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

  
7/3/21

P. P. PANDEY  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD-U.P.