

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON 11.03.2022 at 10.30 AM THROUGH VIDEO CONFERENCING**

**PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

APPLICATION NUMBER :

PETITION NUMBER : IBA/317/2020

NAME OF THE PETITIONER(S) : Ishwarya Colours

NAME OF THE RESPONDENTS : Prostar Textile Mill Pvt Ltd

UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

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

IBA/317/2020

*(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 **Prostar Textile Mill Private Ltd***

IswaryaColours, Partnership Firm,
Represented by its Partner Mr.P.Devendran,
54/1, ThiruVeeKa Street,
Municipal Colony,
Erode – 638 011

... *Operational Creditor*

-Vs-

Prostar Textile Mill Private Ltd,
3/599A, Venkatesh Garden,
Venkatachalapathy Nagar,
Parapalayam Road, Mannarai(Po),
Tirupur – 641 607

... *Corporate Debtor*

Order Pronounced on 11th March 2022

CORAM:

**SUCHARITHA R, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

ORDER

Per: SUCHARITHA R, MEMBER (JUDICIAL)



Ms. Perna Khatri of A.K. Mylsami & Associates appears for the Petitioner and Mr. Sam Jayaraj Hoston, Advocate appears for the Respondent through video conferencing platform.

2. Learned Counsel for the Petitioner states that IBA/317/2020 was filed on 17.02.2020 for a sum of Rs.20,44,058/- due and payable by the Corporate Debtor. He further states that a total of 26 invoices were raised for various operational debts and the Corporate Debtor has failed to honour the payment. The said invoices are enclosed from Page Nos.20 to 45.

3. As per the invoices, it was submitted that the Petitioner is entitled for receiving interest at the rate of 18% per annum. Demand Notice under Section '8' of IBC, 2016 was sent on 22.08.2019 is enclosed at Page No.11 of the Petition.

4. Learned Counsel for the Petitioner also brings to the notice of this Adjudicating Authority that vide reply letter dated 30.09.2019 the Respondent agreed to settle the entire dues with interest at the rate of 18% per annum and the same shall be paid within 90 days from the date of the reply letter. Further through an e-mail dated 10.01.2020 the Respondent has also agreed to make the payment towards the amount due and payable.

5. There is no pre-existing dispute raised by the Corporate Debtor. The Corporate Debtor has not filed any counter which proved the debt and default beyond the reasonable doubt.

6. It is seen that when the present Application was pending, in another IBA/160/2020 vide order dated 28.01.2021, the CIRP in respect of the Corporate Debtor was ordered and consequent thereto, the present IBA/317/2020 came to be disposed of with liberty to the Petitioner to approach this Tribunal. Since IBA/160/2020 was settled and was withdrawn under Section 12A of IBC, 2016, the Operational Creditor herein moved IA/870/2021 before this Tribunal seeking revival of IBA/317/2020, which came to be allowed by this Tribunal vide order dated 21.01.2021. Thus, IBA/317/2020 was revived and taken on record.

7. In spite of sufficient opportunity being given, neither counter nor payment is made by the Respondent. Learned Counsel for the Respondent during the oral arguments categorically admitted that the amount is due and payable. However, he sought two weeks' time to settle the amount due and payable.



8. This Application is pending since February 2020, inspite of numerous opportunity given, settlement has not fructified. The Operational Creditor has proved that there is an 'operational debt' and the 'default' committed on the part of the Corporate Debtor. Further, the default arising in the present Application has happened much before the advent of Covid-19 and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

9. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

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;

10. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (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.

11. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (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.

12. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable

for the period between Jan 2022 – June 2022 **Mr. Elumalai Elango** with *Reg.IBBI/IPA-002/IP-N01159/2021-2022/13901* (*email id:- elumalaielango15@gmail.com*) as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order.

13. The IRP is directed to take charge of the Corporate Debtor’s management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a



consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

15. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

16. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



18. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

19. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

20. Post this IBA/317/2020 for hearing on **28.04.2022**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)