

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

CP(IB)/40(CHE)2022

*(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 Karthikeya Spinning and Weaving
Mills Private Limited***

M/s. Velavan Textiles,

Partnership Firm,
Represented by its Partner Mr. K. Arun Kumar,
D.No. C/1, Third Floor 256 to 258,
Sri Lakshmi Ramu Residential Building,
Bharathiar Road, PN Palayam,
Coimbatore-641 037

... Applicant / Operational Creditor

-Vs-

**M/s. Sri Karthikeya Spinning and Weaving Mills
Private Limited,**

CIN: U17111TZ1947PTC000182

Registered Office:

No. 484, Kamaraj Road,
Uppilipalayam, Coimbatore-641 015

... Respondent / Corporate Debtor

*Order Pronounced on **9th June, 2023***

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor: Mr. J.S. Prithvi Rjaj, Advocate

For Corporate Debtor: Mr. S.V. Pravin Rathinam, Advocate

Ms. G. Josephine, Advocate

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application under Section 9 of the Insolvency and
Bankruptcy Code, 2016 ("**IBC**") read with Rule 6 of the Insolvency



and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **M/s. Velavan Textiles** (hereinafter referred to as "**Operational Creditor**") against **M/s. Sri Karthikeya Spinning and Weaving Mills Private Limited** (hereinafter referred to as "**Corporate Debtor**") for initiating Corporate Insolvency Resolution Process ("**CIRP**").

2. With the application, the Applicant has given its particulars in Part-I, particulars of the Corporate Debtor in Part-II, particulars of the Operational Debt in Part-IV and the particulars of documents in Part-V.

3. As per the averments made in the application, the Operational Creditor, inter alia, engaged in the business of procuring raw material from various manufacturers and supplying the same to various Spinning Mills, was approached by the Corporate Debtor for supply of Polyester Staple Fiber ("PSF"). On its request, the Operational Creditor procured PSF from various manufacturers including M/s. Bombay Dyeing & Mfg. Co. Ltd. and supplied the same to the Corporate Debtor. As per the understanding between two, the Operational Creditor provided 20 days credit period for making payments under the respective invoices to the Corporate Debtor failing which interest at the rate of 16% per annum was payable on the outstanding invoice amount.



4. It is stated that the Operational Creditor procured and supplied PSF to the Corporate Debtor from the year 2014 till 2018. Payments for the invoices raised were adjusted against the outstanding debt payable towards each invoice on 'Revolving Credit Basis'.

5. It is alleged that initially the payments for the invoices raised during the years from 2014 to 2017 were regular but subsequently, the Corporate Debtor defaulted in making timely payments. Last supply was made on 20.11.2018 for which an invoice for a sum of Rs.6,24,621/- (Rupees Six Lakhs Twenty Four Thousand Six Hundred and Twenty One only) was raised. Last payment made by the Corporate Debtor was on 21.01.2019 by way of supplying yarn to the Operational Creditor for a sum of Rs.3,34,366.40 (Rupees Three Lakhs Thirty Four Thousand Three Hundred and Sixty Six and Paise Forty only) which amount was adjusted by the Operational Creditor on 'Revolving Credit Basis' towards the outstanding amount of Rs.96,66,956.94 (Rupees Ninety Six Lakhs Sixty Six Thousand Nine Hundred and Fifty Six and Paise Ninety Four only) payable by the Corporate Debtor.

6. It is alleged that the debt was acknowledged by the Corporate Debtor by giving Legal Undertaking as per which, the Corporate Debtor issued cheques bearing Nos. 511574 and 511575 both dated 01.12.2020 for Rs.49,50,000/- (Rupees Forty Nine



Lakhs Fifty Thousand only) each and Cheque No.511683 and 511684 both dated 01.12.2020 for Rs.24,50,000/- (Rupees Twenty Four Lakhs Fifty Thousand only) each. However, the cheques on presentation were returned unpaid vide Return Cheque Advice/Memos dated 05.12.2020 with the remarks "Insufficient Funds". This made the Operational Creditor send two legal notices dated 17.12.2020 to the Corporate Debtor calling upon the Corporate Debtor to make the payments. However, the Corporate Debtor neither sent any reply nor made any payments. The Operational Creditor then filed two criminal cases against the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881 which are pending for disposal.

7. It is stated that no payments were made by the Corporate Debtor to the Operational Creditor after 21.01.2019. A Demand Notice under Section 8 of the IBC was sent to the Corporate Debtor on 26.11.2021 to pay a sum of Rs.1,49,92,311.37 (Rupees One Crore Forty Nine Lakhs Ninety Two Thousand Three Hundred and Eleven and Paise Thirty Seven only).

8. It is alleged that in reply to the notice, the Corporate Debtor raised frivolous allegations with an intent to create an illusion of pre-existing dispute to defeat the valid claim of the Operational Creditor. The alleged dispute as enumerated by the Corporate Debtor was regarding the quality of PSF manufactured by M/s.



Indorama Synthetics (I) Limited (“**Indorama**”), one of the manufacturers of PSF from whom the Operational Creditor had procured PSF and supplied to the Corporate Debtor. It is alleged that the payments for the period for which the Corporate Debtor allegedly raised the dispute have already been made by the Corporate Debtor to the Operational Creditor. Subsequent payments were also made by the Corporate Debtor till 21.01.2019. It is alleged that the Corporate Debtor has enclosed an e-mail dated 07.04.2018 sent to the manufacturer wherein it has categorically acknowledged its liability in respect of the outstanding amount payable by the Corporate Debtor to the Operational Creditor amounting to Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs only).

9. It is alleged that that the dispute raised by the Corporate Debtor in its reply is contrary to the Legal Undertaking given by it whereby the Corporate Debtor has clearly and categorically assured the Operational Creditor that *"any claim raised by the Corporate Debtor with regard to any defect in the goods or otherwise or as to any quantity discount, cash discount or any other discount shall be dealt with separately by the Operational Creditor and all the payments for the goods received shall be made by the Corporate Debtor immediately and no payments shall be stopped by the Corporate Debtor on account of any such claim"*. It



was stated in the Legal Undertaking that *"any claim with regard to any defect in goods or otherwise or as to any quantity discount, cash discount or any other discount, shall be admissible only after the same is acknowledged within 30 days from the date of the invoice by the Operational Creditor in writing and only if credit note specifying the amount of claim accepted by the Operational Creditor has been issued by it"*. It is stated that the default amount is Rs.1,54,02,338.66 (Rupees One Crore Fifty Four Lakhs Two Thousand Three Hundred and Thirty Eight and Paise Sixty Six only) which is inclusive of interest at the rate of 16% per annum for the period from 31.03.2019 till 21.01.2022.

10. On getting notice of the application, the Corporate Debtor filed its counter/reply wherein it denied the averments and the allegations made in the application. It however admitted that it, in the course of business, had contacted the Applicant/Operational Creditor for supply of PSF for manufacturing activities. It is alleged that the Operational Creditor had assured the Corporate Debtor that it would procure the Fiber from the quality suppliers. It is stated that pursuant to the same, it raised purchase orders with the Applicant/Operational Creditor for supply of PSF. It also gave blank cheques bearing Nos. 511683, 511684, 511574 and 511575 drawn on Indian Bank, Coimbatore in furtherance to a mutual understanding as a surety. It is stated that the Operational



Creditor had ensured the Corporate Debtor that the product is taken from one M/s. Indorama, Coimbatore.

11. It is alleged that the quality of Polyester Staple Fiber supplied by Indorama was of inferior quality. The Corporate Debtor had received complaints from its customers as they had complained of shade variation and patta problems in the dyed yarns who resultantly refused to lift the goods and stopped its payments which resulted into severe business losses to the Corporate Debtor. This fact was communicated to the Operational Creditor vide letter/e-mails dated 24.08.2016 and 07.04.2018 respectively. In the e-mail dated 07.04.2018, it had informed the Operational Creditor about the damages/losses sustained by it due to supply of poor quality of Fiber to the tune of Rs.2.00 Crores (Rupees Two Crores only).

12. It is alleged that the Operational Creditor with malicious intention, has referred to the Legal Undertaking issued by the Corporate Debtor and wilfully suppressed the e-mail dated 20.08.2018 issued by the Operational Creditor to the Corporate Debtor stating that there is a Debit Balance of Rs.85,41,276/- (Rupees Eighty Five Lakhs Forty One Thousand Two Hundred and Seventy Six only) apart from Indorama outstanding (quality complaints) and interest amount.



13. It is alleged that in the e-mail, the Operational Creditor had clearly accepted the defective quality of the products supplied by Indorama. Despite that, it maliciously filled up the cheques and encashed the same to the tune of Rs.1,48,00,000/- (Rupees One Crore Forty Eight Lakhs only). To that effect, it has lodged a complaint dated 26.07.2021 with the Central Crime Branch, Coimbatore bearing CSR No.19/2021.

14. It is stated that the Corporate Debtor has raised pre-existing dispute with respect to the quality of products supplied by the Operational Creditor and therefore, the application is not maintainable.

15. Rejoinder has been filed by the Applicant/Operational Creditor wherein it denied the averments/allegations raised by the Corporate Debtor. It is stated that the cheques were given by the Corporate Debtor along with Legal Undertaking. It is stated that the Operational Creditor is merely a middle man who procures and supplies goods from the manufacturers to other spinning mills and is not involved in the manufacture of Polyester Staple Fiber, therefore, the disputes with regard to the quality of PSF supplied to the Corporate Debtor were raised by the Corporate Debtor directly with the manufacturer i.e. Indorama. It is stated that the disputes raised with regard to the quality of goods pertained to the period from 2015 to 2016. The payments for aforesaid goods were



already made by the Corporate Debtor to the Operational Creditor. Subsequent payments were also made till January 2019. It is stated that letter dated 24.08.2016 was neither addressed nor sent to the Operational Creditor. It is alleged that in the e-mail dated 07.04.2018, the Corporate Debtor had only reiterated its alleged quality complaints made way back in 2015-2016 for which the Corporate Debtor had already made the payments. It is stated that e-mail dated 20.08.2018 was sent by the Operational Creditor as balance confirmation of Rs.85,41,276/- (Rupees Eighty Five Lakhs Forty One Thousand Two Hundred and Seventy Six only) as on 30.05.2018. It is stated that by letter dated 24.08.2016, the Corporate Debtor had admitted that it has withheld an amount of Rs.60,00,000/- (Rupees Sixty Lakhs only) payable to the Operational Creditor as it was in bad financial position. Indorama vide e-mails dated 03.09.2016 and 28.11.2016, had categorically stated that the alleged defective cones collected from the Corporate Debtor's mills were tested at Bombay Textile Research Association ("BTRA"), a Premier Institute for R&D where it was found that the cones were defective not due to quality issues with the Fiber but due to the mixing of yarn lots having different fibre specifications by the Corporate Debtor. It is stated that the Corporate Debtor had also approached Indorama for supply of Fibers through some other agent i.e. HM Textiles which is also evident from the e-mail dated 28.11.2016. It is alleged that the



Corporate Debtor with ulterior motive has illegally withheld the payments and raised the false disputes alleging defects.

16. We have heard Ld. Counsel for the Applicant and perused the records.

17. It is not in dispute that the Operational Creditor had supplied PSF to the Corporate Debtor during the period from 2014 to 2018. The Operational Creditor used to procure PSF from various manufacturers and supply to the Corporate Debtor. As per their understanding, the Operational Creditor had provided 20 days credit period for making payments under the respective invoices failing which interest at the rate of 16% per annum was leviable on the outstanding invoice amount. The Operational Creditor raised the invoices from time to time against which the Corporate Debtor made the payment which were adjusted against the total outstanding debt payable towards each invoice on a "revolving credit basis". The Operational Creditor made the last supply on 20.11.2018 for which it raised an invoice for a sum of Rs.6,24,621/- (Rupees Six Lakhs Twenty Four Thousand Six Hundred and Twenty One only). The last payment made by the Corporate Debtor was on 21.01.2019 in the form of supplying yarn to the Operational Creditor for a sum of Rs.3,34,366.40 (Rupees Three Lakhs Thirty Four Thousand Three Hundred and Sixty Six and Paise Forty only).



18. In the present case, the Operational Creditor has filed the ledger account of the Corporate Debtor for the period from 01.04.2017 to 31.03.2020 reflecting various supplies made by the Operational Creditor to the Corporate Debtor and the amounts paid by the Corporate Debtor to the Operational Creditor as **Annexure-II(5) at Page-52**. The Operational Creditor has also filed Legal Undertaking whereby the debt was acknowledged by the Corporate Debtor as **Annexure-II(6) at Page-54**. With the Legal Undertaking, the Corporate Debtor had issued the cheques for a total sum of Rs.1,48,00,000/- (Rupees One Crore Forty Eight Lakhs only) as **Annexure-II(6) at Page-54 & Annexure-II(7) at Page-58**. The record shows that the cheques were presented by the Operational Creditor, however the same were returned unpaid with the remarks "Insufficient Funds" vide **Annexure-II(8) at Page-61**. The Operational Creditor has also filed criminal complaint under the Negotiable Instruments Act, 1881 as **Annexure-II (10) at Page-73** after sending legal notices as **Annexure-II(9) at Page-65** which complaints are pending disposal.

19. In the present case, as evident from the ledger, the last payment made by the Corporate Debtor was on 21.01.2019. The Demand Notice was issued by the Operational Creditor under Section of the IBC, 2016 on 26.11.2021 demanding a sum of



Rs.1,49,92,311.37 (Rupees One Crore Forty Nine Lakhs Ninety Two Thousand Three Hundred and Eleven and Paise Thirty Seven only).

20. Admittedly, the Corporate Debtor had sent a reply to the notice and raised disputes as to the quality of yarn supplied by one of the manufacturers M/s. Indorama Synthetics (I) Limited but this issue was already addressed by Indorama vide its mails dated **03.09.2016 and 28.11.2016** stating that alleged defective cones collected from Corporate Debtor's mills were tested at Bombay Textile Research Association ("BTRA"), a Premier Institute for R&D and as per the report, the cones were defective [✓]not due to quality issues with the Fiber but due to the mixing of yarn lots having different Fiber specifications by the Corporate Debtor. This report was also shared by Indorama with the Corporate Debtor. It is pertinent to mention that the Corporate Debtor had thereafter approached Indorama for supply of Fiber through some different agent as evident from the mail dated 28.11.2016. It is also relevant to note that the quality complaints were made way back in 2015-2016 for which the Corporate Debtor had already made the payments to the Operational Creditor. The record shows that further supplies were made by the Operational Creditor for which payments were made by the Corporate Debtor till January 2019 without raising any quality complaints. Record shows that the



quality issue was duly addressed by the Operational Creditor during the supply of Fibers to the Corporate Debtor.

21. As regards lodging of complaint with Central Crime Branch, Coimbatore bearing CSR No.19/2021, the complaint was lodged only on 26.07.2021 i.e. after receipt of the legal notices dated 17.12.2020 sent by the Operational Creditor. There is no agreement or MOU to the effect that the aforesaid cheques were issued by the Corporate Debtor as surety, as alleged. The mail dated 21.08.2018 sent by the Operational Creditor relates to the fact that as per the books of account, there was a debit balance of Rs.85,41,276/- (Rupees Eighty Five Lakhs Forty One Thousand Two Hundred and Seventy Six only) apart from Indorama outstanding and interest amount for the payment delay. If we add the interest i.e. 16% per annum, the payable amount exceeds the threshold limit of Rs.1.00 Crore (Rupees One Crore). It is also clear from the Legal Undertaking placed on record which is not in dispute nor there is averment to the effect that it was taken by misrepresentation, fraud or coercion that the Corporate Debtor had purchased the goods from the Operational Creditor and issued the cheques. The Corporate Debtor had also confirmed that if there would be any claim as to any defect in the goods or otherwise, the same shall be dealt with separately by the Operational Creditor and all the payments of the goods received shall be made by them



immediately and no payments shall be stopped by them on account of any such claim which shall be admissible only after the same is acknowledged within 30 days from the date of the invoice by the Corporate Debtor in writing and if and only credit notes specifying the amount claim accepted by the Corporate Debtor has been issued by the Authorised Officer of the Corporate Debtor.

22. In the present case, the date of default has been stated as 21.01.2019. The application has been filed on 09.02.2022. Admittedly, the same has been filed after a period of three years but in view of the order of the Hon'ble Supreme Court in the Writ Petition (Civil) No.3/2020, the Applicant is entitled to the benefit of limitation.

23. As regards the objection that the Operational Creditor has filed a suit for recovery against the Corporate Debtor in the District Court at Coimbatore on 05.01.2022, record shows that the Operational Creditor had sent demand notice under Section 8 of the Code on 26.11.2021 which was replied by the Corporate Debtor on 13.12.2021. The same cannot be construed as a pre-existing dispute as envisaged under Section 8(2)(a) of the Code.

24. For the aforesaid discussions, we are of the view that this application meets the requisites for initiating the CIRP against the



Corporate Debtor for its having been committed default in paying the debt to the Operational Creditor.

25. Taking into consideration the facts and circumstances of the case as well as the position of law, we allow the application filed by the Operational Creditor. The Corporate Debtor **M/s. Sri Karthikeya Spinning and Weaving Mills Private Limited** is admitted to CIRP under Section 9(5) of the IBC, 2016 as the default is for more than Rs.1.00 Crore.

26. Since the Operational Creditor has not proposed the name of the Interim Resolution Professional in Part-III, this Tribunal based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between January 2023-June 2023, hereby appoints **Mr. R. Raghavendran with Registration Number [IBBI/IPA-001/IP-P00211/2017-2018/10411], E-mail ID: ragavca@gmail.com** as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, 18 of the Code 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.



27. 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 the 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 subsection, 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;

28. 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 the 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 arrangements 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.



29. 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 the 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.

30. The Operational Creditor is directed to pay a sum of **Rs.4,00,000/-** 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 with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. Based on the above terms, CP(IB)/40(CHE)/2022 stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into 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 is also furnished with a 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.

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)