

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) No. 4585/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.

**Hiralal Lunawat,
Authorized Person for SAHARA EXPORT
Shed No. C-1 Plot No-4306/47, GIDC Sachin,
Road No. 42 C, Surat 394 230**

... Operational Creditor/Petitioner

Versus

About U Fashions Private Limited
Unit 101B, 1st Flr, Abhishek Premises,
Plot No. C5-6 Dalia Ind. Est., Off. New Link Road,
Andheri (W) Mumbai 400 058
Email: sailesh.nahar@aboutu.co.in

...Corporate Debtor/Respondent

Order Delivered on: 11.08.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical): Ms. Anu Jagmohan Singh

Appearances:

For the Operational Creditor : Mr. Dalal, Advocate

For the Corporate Debtor : Mr. Nithish Bangera, Advocate

ORDER

Per: Anu Jagmohan Singh, Member(Technical)

1. The present Company Petition is filed by **Hiralal Lunawat, Authorized Person for SAHARA EXPORT** (hereinafter referred to as **“the Operational Creditor”**) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **“the Code”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (**“CIRP”**) against **About U Fashions Private Limited**, (hereinafter referred to as **“the Corporate Debtor”**).
2. The Corporate Debtor was incorporated on 02.07.2008 under Companies Act, 1956. Its registered office is situated at Unit 101B, 1st Flr., Abhishek Premises, Plot No. C5-6 Dalia Ind. Est., Off. New Link Road, Andheri (W) Mumbai 400 058. Hence, this Tribunal has the jurisdiction to entertain the present Company Petition.

Submissions advanced by the Operational Creditor

3. The Operational Creditor is into the business of Job Work services like embroidery, knitting and other over printing on textile material. The Corporate Debtor is into the business of manufacturing of textiles and clothing and the Corporate Debtor used to sell fabrics to Operational Creditor in turn Operational Creditor used to do job work on the fabrics and sell the printed fabrics back to the Corporate Debtor.

4. The Operational Creditor submits that the Operational debt has become due on account of supply of Goods comprising of textile items and interest on delayed payment in respect of invoices during the period 08.06.2016 to 23.10.2018. The invoices are placed on record at Annexure G.
5. The total amount of debt alleged to be in default including interest amount to the tune of Rs. 12,04,853.71/- is Rs.46,19,815.71/- (Rupees Forty-Six Lakhs Nineteen Thousand Eight Hundred and Fifteen Only), as on 30.06.2019. The working computation of default is placed as “Annexure H”.
6. The Operational Creditor has issued a demand Notice on 12.07.2019, demanding payment to the tune of Rs. 46,19,815.71/- in respect of unpaid Operational debt due from the Corporate Debtor as the Corporate Debtor was a permanent Customer so such debt is on continuous basis in course of business. The Corporate Debtor has replied to the said demand notice vide letter dated 29.07.2019 attached as annexure K at page 92 of the Petition.

Submissions advanced by the Corporate Debtor.

7. The Corporate Debtor in reply to the Demand Notice dated 29.07.2019 in para 3 states that Section 3(12) of the Code warrants non-payment

of debt which has become due and payable which triggers the default clause. A debt becomes due and payable only when it is crystallized and admitted between the parties.

8. The Corporate Debtor has filed Affidavit in Reply to the present Company Petition in which the Corporate Debtor has raised objection contending that the present Company Petition has been filed by one Mr. Hiralal Lunawat, whereas proprietor of the Operational Creditor is Ms. Kusum Soni. Hence, the Corporate Debtor further submits that the person who is filing the present Company Petition is neither the owner nor the Authorized Representative of the Operational Creditor and no Authority Letter authorizing Mr. Hiralal Lunawat is enclosed in the Company Petition. In support of his contention, the Corporate Debtor is relying upon the Order passed by the Hon'ble NCLT Amaravati Bench in the matter of *Vijaya Durga Green Field Pvt. Ltd. V/s Canara Bank*, wherein it is observed that "*without authority person cannot file Petition before IBC*".
9. The Corporate Debtor submits that they used to raise invoices for the sale of textile material on the Operational Creditor and the goods delivered were duly received by the Corporate Debtor. The copies of the invoices raised by the Corporate Debtor is annexed as 'Exhibit-B' to the reply. Since, no payment was received by the Corporate Debtor

with respect to these invoices. The Corporate Debtor made payments after deducting the amount of the textile invoice.

10. The Corporate Debtor in its written submissions submits that the Operational Creditor even after receiving payment aggregating to the tune of Rs. 15,47,059/-, not only raised Demand Notice on the amount received but even filed the present Company Petition for the amount already received and also claiming interest on the receipt amount. Corporate Debtor further submits that after filing of the present Petition the Corporate Debtor also paid Rs. 4,41,913/- on 19.07.2021 against all invoices mentioned under YARN Division. Thereafter, on 28.01.2022, the Corporate Debtor has paid Rs. 2,00,000/- to the Operational Creditor in their Bank Account No. 3832. Therefore, the Corporate Debtor have paid total amount of Rs. 21,88,972/- to the Operational Creditor.
11. Corporate Debtor further submits that the Operational Creditor has not disclosed the credit of textile amount of Rs. 4,91,027/- for the fabrics supplied by the Corporate Debtor to the Operational Creditor and the Operational Creditor is also seeking interest on the invoices which are already paid and thus submits that the Operational Creditor has not disclosed material fact. The Corporate Debtor has also relied upon the observation held by the Hon'ble NCLAT in the matter of *Steel India...*

v/s Theme Developers Pvt. Ltd. wherein it is observed that ***“interest alone cannot be construed as Operational Debt”***.

12. The Corporate Debtor further submits that the Operational Creditor has intentionally enclosed bank statement of account No. 3842, whereas most of the payment made by the Corporate Debtor has gone to account No. 3816 of the Operational Creditor. However, Corporate Debtor further submits that the Operational Creditor intentionally enclosed wrong bank statement in the Petition pursuant to Section 9(3)(c) of the Code.
13. The Corporate Debtor further submits that the Operational Creditor has signed settlement MoU reference No. 223 dt. 05.07.2019 where the Operational Creditor has mentioned the outstanding amount as Rs. 21,07,200/-, whereas is now making a demand of Rs. 46,19,815.71/- and states that the Operational Creditor is making contradictory statement in his Petition and in the settlement MoU. Hence, the existence of dispute and settlement was never disclosed in the Petition. Therefore, submits that the demand notice and Petition is not maintainable under the Provisions of the Code. The Corporate Debtor has also relied upon the judgment of the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited...Vs...Kirusa Software Private Limited*.

14. The Corporate Debtor lastly submits that the Operational Creditor is not sure of the date of default as the Operational Creditor has in demand notice stated that the date of default is 01.04.2019 whereas in part IV of the Petition, the date of default stated to be is 30.06.2019. The Operational Creditor is not sure of the date of receipt of payment as the Operational Creditor is stating different dates at different places.

Findings

15. We have heard the submissions of both sides and perused the records
16. The transaction between the parties was such that the Operational Creditor used to do job work such as embroidery and yarn services on the material supplied by the Corporate Debtor. The Corporate Debtor for the material supplied raised invoices and used to make payment to the Operational creditor after deducting the amount due to it, in lieu of supply of fabrics. It appears the case is that of a claim and counter claim between the parties.
17. The Respondent has invited our attention to the letter dated 05.07.2019 addressed by the Operational Creditor to the Corporate Debtor wherein it is categorically stated that the outstanding dues are amounting to Rs.21,07,200/- and the Operational Creditor is ready and willing to settle for an amount of Rs.15,00,000/-.

18. Further, it is appropriate to mention here that the last bill/invoice for embroidery division annexed by Operational Creditor is dated 15.10.2018 and the Corporate Debtor has also in its reply provided a tabular computation of invoices wherein the last date of invoice raised is also stated to be 15.10.2018 at page 47-48 of Affidavit in Reply. Therefore, the aforesaid settlement letter dated 05.07.2019 was signed by the Operational Creditor after the transaction between the parties came to an end. The relevant paragraph of the letter is reproduced herein below:

“ We are ready to accept post dated cheque of Rs.15,00,000/- (Fifteen Lakh Only) dated 01.10.2019 towards full and final settlement of our outstanding dues of Rs.21,07,200/- (Twenty One Lakh Seven Thousand and Two Hundred Only) receivable from you...”

19. The Corporate Debtor submits that it has paid Rs. 15,47,059/- prior to issuance of Demand Notice. The Corporate Debtor has further paid after filing of the present Petition Rs. 4,41,913/- and thereafter, on 28.01.2022, the Corporate Debtor has paid Rs. 2,00,000/- to the Operational Creditor.
20. It is observed from the bank statements annexed to the Affidavit-in-reply and written submissions of the Corporate Debtor that the aforesaid amount has in fact been paid by the Corporate Debtor.

Therefore, a total amount of Rs.21,88,972/- has already been paid by the Corporate Debtor which is over and above Rs.21,07,200/- as stated by the Operational Creditor to be outstanding in letter dated 05.07.2019. Accordingly, nothing remains due and payable by the Corporate Debtor to the Operational Creditor.

21. Considering the totality of the facts and circumstances, this matter is liable to be rejected. The Petitioner has used the proceedings under the Code as a tool for recovery.
22. In the above circumstances the petition bearing **CP (IB) 4585/MB/C-I/2019** filed by, the Operational Creditor, **Hiralal Lunawat, Authorized Person for SAHARA EXPORT** under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **About U Fashions Private Limited**, the Corporate Debtor, is **rejected**.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

11.08.2023

SAM

Sd/-

H. V. SUBBA RAO

Member (Judicial)