

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-280/ND/2021

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Naina Rajkumar Bansal

Sole Proprietor

M/s Viraj Weaves

Having its Principal Place of Business at

Flat No.24, First Floor,

Luthra Apartment, Nawabwadi,

Begampura, Surat-395002

Gujarat

...Operational Creditor

Versus

M/s Fashion Flare International Private Limited

...Corporate Debtor

Delivered on 10.12.2021



Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Appearances:

Operational Creditor : Abhigya Kushwah & Co. (Advocates)

Corporate Debtor:

O R D E R

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-280/ND/2021 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, Naina Rajkumar Bansal, sole proprietor of M/s Viraj Weaves, is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Fashion Flare International Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

a. The Operational Creditor supplied manufactured cloth to the corporate debtor. After making some initial payments for some of the invoices, they stopped making payments even upon receiving the consignments from the operational creditor without any complaint or dispute. Corporate debtor used the material supplied by the operational creditor for his business purposes and earned huge profits and then later blocked the mobile phone of the operational creditor's authorized representative and also stopped replying to the emails.

b. It is submitted that the invoices that remained unpaid are Invoice No. G/30 dated 26.10.2018, Invoice No. G/31 dated 26.10.2018,



Invoice No. G/39 dated 03.11.2018, Invoice No. G/40 dated 03.11.2018, Invoice No. G/69 dated 27.12.2018 and Invoice No. G/83 dated 24.01.2018. It is stated that the demand notice u/s 8 of IBC, 2016 dated 15.01.2020 was sent by operational creditor. As per section 8(2) of IBC, 2016, the Notice was supposed to be answered by the Corporate Debtor within 10 days from the date of receipt of demand notice. The item was delivered to the corporate debtor on 18.01.2020, however, the reply to the demand notice was given on 07.02.2020, which is much more than 10 days as prescribed by section 8(2) of IBC, 2016, therefore, the said reply cannot be considered. Hence, the present application is filed by operational creditor for initiation of CIR Process of Corporate debtor as it defaulted in paying debt of an amount of Rs. 27,49,090/- (inclusive of interest) up to 30.11.2020.

3. The Corporate Debtor has been given several opportunities for raising objection against the captioned petition, however, no one appeared on behalf of the Corporate Debtor, therefore, vide order dated 03.12.2021, this adjudicating authority proceeded ex-parte. The relevant extract of the order dated 03.12.2021 is as follows:

“Counsel for the Operational Creditor is present. There is no representation on behalf of the corporate debtor. Counsel for the Operational Creditor submits that he has complied with the order dated 29.10.2021 by sending once again the present petition by all means on the corporate debtor.

In this connection, he has filed proof of service along with an affidavit. We have gone through the said documents and it is confirmed that the present petition has been duly served on the corporate debtor against proper acknowledgement.

In addition, we have also seen the petition along with proof of service of petition at the time of initial filing of the petition before this tribunal. From the above it is made clear that the corporate debtor in the



present case is intentionally avoiding the proceedings initiated by Operational Creditor under section 9 of IBC.

*Accordingly, this tribunal proceeds ex-parte against the corporate debtor and direct the counsels for the Operational Creditor to make his final submissions about the present application.
....”*

4. During the final arguments it is argued by the operational creditor that the corporate debtor has acknowledged the debt in email and same is annexed as Annexure-P9 (Colly) with the Petition. Hence, prayed that the Petition under section 9 of IBC, 2016 may be allowed and the CIR Process may be initiated of the Corporate Debtor.

5. We have perused the Petition and argument advanced by the Operational Creditor. There is clear acknowledgement of debt by the corporate debtor in email dated 15.12.2018 annexed as Annexure-P9 (Colly) with the petition. It is also pertinent to take a note that the Notification regarding the enhancement of minimum amount of default to Rs. one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor is much before the coming into effect of notification dated 24th March, 2020. Since any notification issued by the Government is generally prospective in nature unless specifically expressed, hence the said notification is not applicable to the present case. Therefore, this Tribunal is **inclined to admit this application** and accordingly initiate the process of CIRP of the Corporate Debtor. The Applicant has not proposed any insolvency resolution professional. This Tribunal, hereby, appoints Insolvency Professional namely, Mr. Mukesh Chand Jain having Registration Number IBBI/IPA-002/IP-N00960/2020-2021/13054 (Email ID-mcjain.jmca@gmail.com) as Interim Resolution Professional from the List provided by IBBI.



6. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

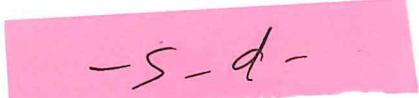
7. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
 - a. The institution of suits or continuation of pending suits or proceedings against 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 (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 respondent.

8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.



9. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.
10. The Operational Creditor is directed to pay a sum of Rs. 2,00,000/- to the interim resolution professional upon the IRP filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
11. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
12. The registry is directed to send a copy of this order to the Registrar of Companies under whose jurisdiction the Corporate Debtor is registered for updating its status on MCA database.
13. The order is pronounced by this Adjudicating Authority in virtual Hearing.


(Bachu Venkat Balaram Das)
Member (Judicial)


(Narender Kumar Bhola)
Member (Technical)