

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-I)
KOLKATA**

C.P. (IB)/115(KB)2021

An application under Section 9 read with Sections 13, 14 and other Applicable provisions of the Insolvency & Bankruptcy Code, 2016, and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

Aarti International Limited [CIN U27109PB1993PLC014037], having its registered office at G.T Road, Miller Ganj, Ludhiana – 141003, Punjab;

....Operational Creditor

-Versus-

Spectra Fashions Private Limited[CIN U18101WB2007PTC112736], having its registered office at 23/24, Radha Bazar Street, Sethia House 5th Floor, Kolkata – 700 001.

...Corporate Debtor

Date of hearing: 02/11/2022

Order Pronounced on: 21/02/2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical)

Mr. Mohan Ram Goenka, CS : For the Operational Creditor
Mr. Shubham Gupta, Adv.
Ms. Sneha Khaitan, CS

Ms. Jayati Chowdhury, Adv. : For the Corporate Debtor
Ms. Ranjana Seal, Adv.
Ms. Sucheta Mitra, Adv.

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ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Girdhari Lal, Authorized Signatory, Aarti International Limited (*'Operational Creditor'*) duly authorised *vide* Board Resolution dated 06 January, 2020¹ for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Spectra Fashions Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **20April, 2021** before this Adjudicating Authority. The total amount claimed in default is Rs.1,21,48,714/- (Rupees One Crore Twenty One Lakh Forty Eight Thousand Seven Hundred Fourteen only) as on 15February, 2019, along with interest @18% per annum. The date of default is stated to be as on 26 November, 2018.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.10,00,00,000/- (Rupees Ten Crore only) with subscribed share capital of Rs.9,50,00,000/- (Rupees Nine Crore Fifty Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 Operational Creditor is engaged in the business of manufacturing and export of Yarn and Fabrics. The directors of the Corporate Debtor placed the orders with the Operational Creditor for the supply of fabrics.
 - 5.2 Thereafter, goods were supplied by the Operational Creditor to the Corporate Debtor at their registered office at 23/24, Radha Bazar Street, Sethia House 5th Floor, Kolkata – 700 001 and invoices were raised [*at pages 81 to 116 of the Petition*].
 - 5.3 There was running account between the parties for last few years. The Corporate Debtor has cleared all the bills before 26 November, 2018 by

¹Annexure A-5

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making various payments from time to time. However, no payment has been received against the the bills raised on and from 26 November, 2018 till 17 July, 2019.

5.4 On 17 January, 2020, the Operational Creditor sent a statutory demand notice under section 8 of the Code, and the same was delivered to the Corporate Debtor on 27 January, 2020 [at page 75 of the Petition]. However, no reply was sent by the Corporate Debtor, neither they raise any dispute against the unpaid Operational Debt.

6. *Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor.*

6.1 The existence of the debt is disputed. In fact there are no outstanding debts due and payable to the Operational Creditor. Further, all the allegations in the demand notices dated 17 January, 2020 are denied and disputed.

6.2 The Corporate Debtor has paid the entire due in time; by filing this Application the Operational Creditor is trying to create forceful pressure on the Corporate Debtor to fetch more money for their unlawful gain. All the payments were duly accepted by the Operational Creditor.

6.3 The question of the Corporate Debtor being liable to make any payment to the Operational Creditor on account is redundant and does not arise as due to the business assignments which got stalled as the World Health Organization (WHO) declared COVID - 19 as a pandemic on March 11, 2020. The Government of India and the State Governments issued several advisory related to COVID_19 pandemic. On March 11, 2020, the Government of India issued an order under Section 69 of Disaster Management Act, 2005 delegated its power under the Section 10 of the Act to the Secretary, Ministry of Health and Family Welfare, Government of India to enhance the preparedness and containment of COVID 19 and other ancillary connected matters.

6.4 As the Government of India has notified, the entire business transactions system collapsed and due to pandemic the planning of the Corporate Debtor got jeopardised.

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Analysis and Findings

7. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record. It is seen that section 8 notice was served on the Corporate Debtor on 27 January, 2020. Ld. Counsel appearing for the Corporate Debtor has submitted that they are trying to arrive at a settlement in the matter. However, the financial condition of the Corporate Debtor is such that they are unable to pay the claimed amount.
8. Be that as it may, the statement of the Ld. Counsel for the Corporate Debtor brings to fore one admitted aspect of the matter that the Operational Debt is due and payable and default has occurred and accordingly we admit this application 115/KB/2021 and thereby we place the Corporate Debtor in CIRP. Further, it has been held by the Hon'ble NCLAT in *Tejas Khandhar v. Bank of Baroda* that a *One-Time Settlement Proposal (OTS proposal)* falls within the definition of 'acknowledgment of debt' as defined the provisions of the Limitation Act, 1963.²
9. Since, The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor. We make the following orders, as follows:-
 - (a) The application bearing ***CP (IB) No. 115/KB/2021*** filed by Aarti International Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Spectra Fashions Private Limited, is ***admitted***.
 - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of

²Company Appeal (AT) (Insolvency) No. 371 of 2020, decided on- 12-07-2022

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- any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (b) There shall be a moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016, and moratorium prohibits the following:
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) **Mr. Tarun Kumar Ray**, registration number **IBBI/IPA-001/IP-P01411/2018-2019/12228**, email: **tarun.ray123@yahoo.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the

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Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Operational Creditor shall deposit a sum of **Rs.4,00,000/- (Rupees Four Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance

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report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- 10.** *CP (IB) No. 115/KB/2021* to come up on **31 March, 2023** for filing the periodical report.
- 11.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 21st day of February, 2022

SA [LRA]