

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

IBA/409/2020

*(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 of **Locust Incorp Apparel Export Private Limited**

Innovative Textiles Limited.,

81, Vigyan Vihar,
New Delhi 110 092.

...Petitioner/Operational Creditor

-Vs-

Locust Incorp Apparel Export Private Limited,

No.28/12, MGR Nagar, 4th Street,
P.N.Road, Tirupur,
Coimbatore – 641 602.

... Respondent/Corporate Debtor

Order pronounced on 27 December 2021

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Lakshmi Menon, Advocate
For Corporate Debtor : Arvind Rajagopal, Advocate*

ORDER

**Per: JUSTICE RAMALINGAM SUDHAKAR,
HON'BLE PRESIDENT**

This is an Application filed by Innovative Textiles Limited
(hereinafter referred to as "**Operational Creditor**") under Section
9 of the Insolvency and Bankruptcy Code, 2016 against Locust
Incorp Apparel Export Private Limited, (hereinafter referred as the

"Corporate Debtor") seeking thereof to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part I of this Application, it is seen that the Operational Creditor is a Public Limited Company incorporated under the provisions of the Companies Act, 2013. From Part II, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 16.12.2015 bearing CIN: U17111TZ2015PTC022074 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.28/12, MGR Nagar, 4th Street, P.N.Road, Tirupur, Coimbatore – 641 602. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part IV of the Application it is seen that the Operational Creditor has stated that a sum of Rs.1,88,34,612/- (Principal Debt amount Rs.1,68,33,169/- plus Interest amount calculated @ 18% per annum is Rs.20,01,443/-) is the total due payable by the Corporate Debtor. Part V of the Application discloses the list of the documents which had been filed by the Operational Creditor in order to prove its Operational Debt and the list of documents which have been filed along with the Application are as follows;

a) A copy of Demand Notice in Form 3 dated 11.06.2020.

- b) A list of final purchase orders (FPO), along with copies.
- c) A list of all pending invoices, along with copies.
- d) A list of all post-dated cheques issued by the Corporate Debtor, along with copies.
- e) Copies of Debit Note No.ITL/DN/002 dated 31.05.2020 of Rs.14,72,399/- along with a copy of e-mail dated 04.06.2020 and Debit Note No.ITL/DN/010 for the interest upto 21.07.2020.
- f) A copy of the reply to the demand notice, email dated 14.06.2020
- g) Worksheet reflecting the principal and interest calculations of the sum owned by the Corporate Debtor as on 22.07.2020.
- h) A copy of Ledger Account maintained by the Operational Creditor with respect to Corporate Debtor, for the financial year 2019-2020 and for the financial year 2020-2021 viz from 01.04.2020 to 22.07.2020.
- i) A copy of Bank Statement of the Operational Creditor confirming that there is no payment of relevant unpaid operational debt.

4. The Learned Counsel for the Petitioner/ Operational Creditor submitted that the Operational Creditor is engaged in a business of spinning yarn, knitting of fabric, dyeing and printing to produce finished fabrics, manufacturing of garments for variety of its customers and based upon the Purchase Order raised by the Corporate Debtor, the Operational Creditor supplied its materials to the Corporate Debtor.



5. It is further submitted that the Operational Creditor supplied the dyed knitted fabrics to the Corporate Debtor and invoices were issued for the said supply. The list of invoices are appended as Annexure II(6) to the typed set file along with the Application and perusal of the same would manifest the fact that there are a total of 133 Invoices which were raised by the Operational Creditor.

6. It is further submitted that as per the agreement and mutual understanding, the deliveries were made by the Operational Creditor and in pursuance of the same, the Corporate Debtor has also issued a total of 25 post-dated cheques and the list of the cheques issued by the Corporate Debtor are appended as Annexure – II(3) to the typed set filed along with the Application. The terms in the invoices state that, in case delayed payment, interest at the rate of 1.5% per month on outstanding amount shall be payable by the Corporate Debtor.

7. It was submitted that the Corporate Debtor had failed to honour the invoices of the Operational Creditor and further it was submitted that the said 25 Cheques given by the Corporate Debtor was also returned with an endorsement "*funds insufficient*". In the circumstances, it was submitted that the Operational Creditor was left with no other option and has issued Demand Notice as



stipulated under Section 8 of IBC, 2016 to the Corporate Debtor in Form – 3 and Form – 4 dated 11.06.2020.

8. It is further submitted by the Learned Counsel for the Operational Creditor that the said Demand Notice was acknowledged by the Corporate Debtor vide reply email dated 14.06.2020 and also the Corporate Debtor assured to release all the outstanding to the Operational Creditor. Since, no payment was made by the Corporate Debtor, the Operational Creditor has filed this present application before this Tribunal seeking thereof to initiate CIRP against the Corporate Debtor.

9. *Per contra*, the Learned Counsel for the Corporate Debtor in the counter averred that the 1.5% interest per month which is calculated by the Operational Creditor as against the Principal amount is not arrived by mutual understanding between the Operational Creditor and the Corporate Debtor. Further, it was averred that there is huge difference in the amount mentioned in Form 3 & 4 Demand Notice filed by the Operational Creditor and the amount reflecting in the books of the Corporate Debtor.

10. Heard Learned Counsels for the parties, after perusing the documents filed it seen that the Operational Creditor had supplied materials and raised invoices against the Corporate Debtor which is



a 'debt' on the part of the Corporate Debtor and the dishonour of the 25 cheques issued by the Corporate Debtor would amount to 'default' being committed on the part of the Corporate Debtor and from the above submissions is proved that there is an 'operational debt' and the 'default' which is being committed on the part of the Corporate Debtor. Further, it is also pertinent to note that the default arising in the present Application is prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

11. Further, it is seen that in page 21 of the counter filed by the Corporate Debtor that after filing of the present Application, the Corporate Debtor has paid a sum of Rs.18,00,000/- on 18.12.2020, and a sum of Rs.20,00,000/- on 20.01.2021 and a sum of Rs.27,00,000/- on 17.02.2021 to the Operational Creditor which go on to show that the Corporate Debtor has admitted its liability and has paid the amount. Further, as on date of filing of the Application, the amount reflecting in the books of the Corporate Debtor as debt due is to the tune of Rs.1,57,71,072/-. This is the relevant factor for consideration.

12. In relation to another objection raised by the Learned Counsel for the Corporate Debtor that the interest at the rate of 1.5% per month which is charged by the Operational



Creditortowards delayed payment was not mutually agreed between the parties does not hold much water in view of the fact that the Corporate Debtor even after the receipt of the Demand Notice has not brought it to the knowledge of the Operational Creditor about the discrepancies in relation to the charging of interest on delayed payment, however on the other hand the Corporate Debtor has replied to the Demand Notice as follows;

.....

We never disputed the outstanding but commitments failed because of COVID, eventhough we made payments of Rs.30 lakhs in between to innovative.

We ensure payments in every month so that whole outstanding will be cleared once the situation is normal.

We request the suppliers who are part of our growth till today and we appreciate if the same continued in times of distress.

Innovative textiles we feel like a friend in need is friend in deed.

Request not to proceed under IBC and give time to repay the outstanding.

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13. The interest for delayed payment is the payment is a part and parcel of the Invoice over which goods were supplied by the Operational Creditor to the Corporate Debtor. Having received the goods on the terms of the invoice without any demur, the contention of the Corporate Debtor that the interest portion was not mutually agreed between the parties is untenable and required to be eschewed. Further, the above referred email, would clearly show that the Corporate Debtor has admitted its liability, however



expressed its inability to pay the amount. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. 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 July 2021 to December 2021, found at Sl. No. 19, appoints **Mr. Viswanathan**, with **Reg. No. IBBI/IPA-003/IP-N00275/2020-2021/13069** (email id:- *viswanathan.irp@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. 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 Code and file his report within 20 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.



14. 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;



15. 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.

16. 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.

17. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-** (*Rupees One 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 on date of this order. 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.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice RAMALINGAM SUDHAKAR
Hon'ble PRESIDENT

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