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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 02.06.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 415/BB/2019	For pronouncement of order	Sec 9 of I&B Code 2016	M/s Trend Arrest Clothing Pvt Ltd	M/s Ashwin R A, Advocate	M/s Inmark Retail Pvt Ltd	Vinayak Bhat, PCS

ADVOCATE FOR PETITIONER/s: Ashwin A. A.

ADVOCATE FOR RESPONDENT/s: VINAYAK BHAT

ORDER

Heard Shri Ashwin RA, learned Counsel for the Petitioner and Shri Vinayak Bhat, learned Counsel for the Respondent through video conferencing.

CP (IB) No.415/BB/2019 is admitted by separate order by appointing IRP, imposing moratorium, etc.

Post the CP for report of the IRP on 15th July, 2020.


Member (T)

Krishna


Member (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.415/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

Trend Arrest Clothing Private Limited

G-95, Lower Ground Floor,
Nirvana, South City II,
Gurgaon, Haryana-122018

Operational Creditor/ Petitioner

Versus

Inmark Retail Private Limited

No.481-B, IV Phase, Peenya Industrial Area,
Bangalore 560058

Corporate Debtor/Respondent

Order Pronounced on: 02nd June, 2020

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Operational Creditor :Adv. Ashwin R.A

For the Corporate Debtor :PCS Vinayak Bhat

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P. (IB) No.415/BB/2019 is filed by Trend Arrest Clothing Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of Inmark Retail Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that the Corporate Debtor has committed default for a total outstanding amount of Rs.35,91,740/- (Rupees Thirty Five Lakh Ninety One Thousand Seven Hundred and Forty Only)



Thirty Five Lakh Ninety One Thousand Seven Hundred and Forty Only) including an interest of Rs.5,29,664/- (Rupees Five Lakh Twenty Nine Thousand Six Hundred and Sixty Four Only).

2. Mr. Lelin Roul, holding the position of Manager (Accounts & Finance) has filed this petition being duly authorised by Board Resolution dated 04.09.2019 passed by the Operational Creditor Company. Copy of the Board Resolution dated 04.09.2019 is annexed to the Petition.
3. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are inter alia as follows:

- (1) The Operational Creditor, being a Company engaged in the business of retail of clothes and accessories has supplied readymade garments and accessories to the Corporate Debtor and invoices were raised by the Operational Creditor from 18.08.2017 to 24.12.2018 against the materials supplied. Copies of the invoices are annexed to the Application.
- (2) It is submitted by the Operational Creditor that the Corporate Debtor was making on account payments. The Corporate Debtor has failed to make payments of Rs.30,62,075/- being the balance payable amount and an interest at the rate of 18% p.a. being Rs.5,29,664/-.
- (3) The Operational Creditor has annexed copies of e-mail communications exchanged between the Operational Creditor and the Corporate Debtor in support of its claim that the Corporate Debtor has admitted its liability to make good the operational debt.
- (4) It is pointed by the Operational Creditor that the Corporate Debtor has never disputed the fact that it is liable to pay the operational debt. In this regard the Operational Creditor pointed out that in reply to the email dated 25.03.2019 seeking confirmation on the payment plan, the Corporate Debtor vide email dated 26.03.2019 assured the Operational Creditor that the payments will be made from the 1st week of April. Further the Corporate Debtor vide email dated 04.04.2019



provided the plan of action for pending payments to be made to the Operational Creditor. It is submitted by the Operational Creditor that emails dated 05.04.2019, 23.04.2019, 29.04.2019, 30.04.2019 and 16.05.2019 seeking time for payments clearly establish the debt being admitted by the Corporate Debtor. Copies of emails dated 26.03.2019, 04.04.2019, 05.04.2019, 23.04.2019, 29.04.2019, 30.04.2019 and 16.05.2019 are annexed to the Petition.

- (5) It is submitted by the Operational Creditor that Demand Notice under section 8 of the I & B Code, 2016 was issued on 11.07.2019. However no reply or payment was received by the Operational Creditor. Copy of the Demand Notice dated 11.07.2019 along with the postal receipt and acknowledgement dated 19.07.2019 showing that same was duly delivered to the Corporate Debtor is annexed to the Petition.
- (6) The Operational Creditor has annexed affidavit dated 07.12.2019 in compliance of section 9(3)(b) of the Code, 2016 stating that the operational Creditor has not received any notice of dispute denying the claim.
- (7) The Operational Creditor has annexed its Bank Statements for the period 01.04.2017 to 31.03.2019 showing part payments of Rs.7,17,534/-. Further, a copy of the record of default maintained with National E-Governance Services Limited under Form C is also annexed to the Petition.

4. On a perusal of the Order sheet, it is observed that the Corporate Debtor has failed to file its Statement of Objections despite sufficient opportunity being provided. It has, however, filed its written submissions on 18.02.2020 stating that the Corporate Debtor was purchasing finished goods from the Operational Creditor on 'Sale or Return Basis' as per the Memorandum of Understanding entered between the parties to this Petition. It is submitted by the Corporate Debtor that under the MOU, the Respondent is required to make payments only in respect of goods that are sold by them. The balance unsold goods are liable



to be returned to the Operational Creditor. Copy of the MOU is annexed to the written submissions.

5. As regards the dispute the Corporate Debtor has submitted as under:

"It is stated that, dues itself are under dispute. There are goods/Garments ready for return worth Rs. 14,97,085/- (Fourteen Lakh Ninety Seven Thousand Eighty Five) to be collected by petitioner as per contract. But the petitioner Company not collected so far and they are included this amount as claim. Actual dues after goods return is Rs.15,64,990/- (Fifteen Lakh Sixty Four Thousand Nine Hundred Ninety) only as against his claim of Rs.30,62,075. plus Interest of Rs.5,29,664 /-."

6. With regard to its financial position, the Corporate Debtor has stated that:

".....the company has been experiencing liquidity crisis due to current market conditions. Last six months on the total collections of Rs.5.50 Crores, the company bankers have taken Rs.2.24 Crores having 41% of the total collections. This resulted in non-payment of dues to suppliers/creditors.

It is further stated that, the company approached bankers for restructuring of Term Loan and sought working capital enhancement. Term Loan availed is Rs. 28.00 Crores and already repaid Rs.22.00 crores with interest on monthly installment.

It is further stated that, The Company Loan account become NPA as Term Loan instalments were not been paid from last three months and Banker has frozen the bank account operation. The Company putting all the effort to enhance the term loan from the bank and regularize the supplier's payments and its employees salary."

7. In view of the above, the Corporate Debtor submits that the goods sold by the Corporate Debtor and the amount payable is only Rs.15,64,990/- Rupees Fifteen Lakh Sixty Four Thousand Nine Hundred and Ninety only). That the

remaining amount represents the unsold goods which the Corporate Debtor is willing to return to the Applicant. It is hence claimed that there is a dispute as it is contrary to the MOU entered by the Operational Creditor and the Corporate Debtor.

8. Heard Shri Ashwin R.A, learned Counsel for the Operational Creditor and Shri Vinayak Bhat, PCS for the Corporate Debtor. We have carefully perused the pleadings of both the parties and extant provisions of the code and the rules made thereunder.
9. On perusal of the invoices annexed to the Petition and the MOU annexed to the Written submissions filed by the Corporate Debtor, it is established that the Operational Creditor supplied readymade garments and accessories to the Corporate Debtor.
10. On a perusal of the email communications annexed to the Petition, it is seen that the Corporate Debtor admitted to its liability in its email dated 26.03.2019 sent by the Corporate Debtor to the Operational Creditor and assured the Operational Creditor that payments will be started by 1st week of April. The Corporate Debtor has also laid down the payment plan in the email dated 04.04.2019. The relevant extract from the email dated 04.04.2019 is produced herein below:

"1. Old payments flow will start from 22nd April and will complete before end may. (22/04-3L, 17/05-2L, 22/05-2L, 28/05-2L)

2. We will initiate RTV of slow moving stock from 12th April onwards.

3. Fresh stock to be replaced in store on same day, pls advice

4. Payments will be regularized from April sales onwards, payments will be done by 3rd week of subsequent month."

11. It may be further mentioned that on a perusal of various emails exchanged between the parties, the Operational Creditor has constantly demanded the payments to which the Corporate Debtor in its emails 26.03.2019, 04.04.2019, 05.04.2019, 23.04.2019, 29.04.2019, 30.04.2019 and 16.05.2019 only sought



time to make the payments. The email conversations clearly establish the admission of the liability to pay the operational debt.

12. Further, it is also seen from the Written Submissions made by the Corporate Debtor that it has admitted to its liability to repay a sum of Rs.15,64,990/- at para 4 of the written submissions, as quoted above. Thus, the only dispute is with regard to the amount payable, which has to be worked out after the unsold goods are returned, as per the MOU, and not that the debt does not exist. In fact, it admits that the Operational Creditor is entitled to Rs.15,64,990/-. On perusal of the records brought on record we are satisfied that the Corporate Debtor owes a debt above the minimum required as per the Code to trigger a CIRP, and the same is not under dispute.
13. We have perused the Demand Notice dated 11.07.2019 issued to the Corporate Debtor and copy of the postal receipt and acknowledgement, which establish the fact that the notice was duly served on the Corporate Debtor. The affidavit dated 07.12.2019 filed by the Operational Creditor in compliance with section 9(3)(b) of the I & B Code, 2016 also states that the Operational Creditor has not received any notice of dispute. We have also perused the record of default of the Corporate Debtor maintained by the Operational Creditor with the National E-Governance Service Limited. Further, we have perused the Statement of Accounts of the Operational Creditor for the period 01.04.2017 to 31.03.2019 which reflect the part payments made by the Corporate Debtor.
14. We further find that the Corporate Debtor has expressed its inability to repay its liabilities. It has cited its liquidity crisis for the non-payment of the operational dues which in turn speaks about the poor financial health of the Company. It is admitted that the Corporate Debtor has been experiencing liquidity crisis as most of its sale proceeds have been taken by the Banks, because of which it is unable to repay its debt to the Operational Creditors. It has been approaching the Banks for restructuring of its Term Loan and has been looking for working capital enhancement. It is also admitted that the Company's Loan account has become NPA due to non-payments and the Bank accounts have been frozen.



Quite clearly, the Corporate Debtor has lost its substratum and its ability to pay its debts.

15. It is further seen that another Operational Creditor KPA Apparels Private Limited, C-134, Sector 63, NOIDA, U.P. 201301, has filed a Company Petition u/s 9 of the Code, against the same Corporate Debtor as in this Petition, Inmark Retail Private Ltd. on account of non-payment of operational debt in very similar circumstances, amounting to Rs 44,54,072.88. In that case also the debt remains admittedly unpaid. It is clear that the Corporate Debtor is facing insolvency having lost its ability to pay its debts, meet its expenses, or run its business.
16. The instant Company Petition is filed in accordance with law, and the Operational Creditor has suggested a qualified Resolution Professional namely Mr. Varun V.S, with Registration No.IBBI/IPA-002/IP-N00290/2017-18/10848, who has also filed his written Consent in Form-2 dated 09.09.2019, and that he is eligible to be appointed as IRP.
17. It is a settled position of law that once the debt and default in question is proved, and there being no legitimate dispute raised by the Corporate Debtor with regard to the existence of the same, in an Application/Petition filed U/s 9 of Code, it is mandatory for the Adjudicating Authority to initiate CIRP, appoint IRP, impose moratorium etc. In these circumstances, we are convinced that it is fit case to be admitted and for initiating CIRP in respect of Corporate Debtor.
18. In view of the above facts and circumstances of the case and the law on the issue, by exercising powers conferred on the Adjudicating Authority, U/s 9 (5)(i) of the Code, the Company petition bearing C.P.(IB) No.415/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Corporate Debtor with the following consequential directions:
 - 1) **Mr. Varun V.S**, bearing **Registration No.IBBI/IPA-002/IP-N00290/2017-18/10848**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor/Corporate Debtor to carry out the functions as



mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor/Corporate Debtor 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 Corporate Debtor 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 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;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e) 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;
 - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.



- 4) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- 5) The Board of Directors and all the staff of Corporate Debtor/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 6) Post the case for report of IRP on **15th July, 2020**.

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

Aparna