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**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**


CP(IB) 225/9/NCLT/AHM/2019

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.01.2020**

Name of the Company: Balabux Synthetics Pvt Ltd.
V/s
Palav Synthetics Pvt Ltd.

Section: Section 9 of Insolvency & Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Kajal R Shingudiper	Adv	Pet.	
2.	For Mr. Dhiren Dure			

ORDER

The Petitioner is represented through respective Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 23rd day of January, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 225/9/NCLT/AHM/2019

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)

In the matter of:

M/s. Balabux Synthetics Private Limited,
105, Hajoori Chambers,
Zampabazar,
Surat, Gujarat,
India.

.....Petitioner/Operational Creditor

Versus

M/s. Palav Synthetics Private Limited,
203, Abhushan Complex,
Parle Point, Ghod Dod Road,
Surat-395001,
Gujarat, India.

.....Respondent/ Corporate Debtor

Appearance:

Mr. Dhiren R. Dave, PCS for the Petitioner.
Mr. Rushin G. Patel, PCA, for the Respondent.

Order delivered on 23rd January, 2020.



ORDER

1. The petitioner, M/s. Balabux Synthetics Private Limited, being Operational-Creditor has filed the present I.B. Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016. The Operational Creditor in this petition has prayed for initiation of the Corporate Insolvency Resolution Process (“CIRP” in Short) for the Corporate-Debtor namely, **M/s. Palav Synthetics Pvt. Ltd.**

2. The main facts of the case are that, the Operational Creditor, M/s. Balabux Synthetics Private Limited is having its registered address at: 105, Hajoori Chambers, Zampabazar, Surat, Gujarat and is presently doing the business of synthetic yarn.

3. The Respondent/Corporate Debtor, M/s. Palav Synthetics Private Limited is stated to be incorporated on 29.01.1991 with the CIN: U17119GJ1991PTC014979 and reportedly is carrying the business of manufacturing of fabric from synthetic yarn. The registered office of the Corporate Debtor Company is situated at: 203, Abhushan Complex, Parle Point, Ghod Dod Road, Surat-395001, Gujarat, India. The Corporate Debtor Company is represented by its director



Mr. Dineshbhai Premjibhai Lathidadia in the present I.B. Petition.

4. It is reported that the Corporate-Debtor-Company is having authorised share capital of Rs.1,00,00,000/- (Rupees One Crore only) divided into 1,00,000 equity shares of Rs.100=00 (Rupees One Hundred) and the paid-up share capital of the company is Rs.1,00,00,000/- (Rupees One Crore only) divided into 1,00,000 equity shares of Rs.100=00 (Rupees One Hundred only).

5. The Petitioner/Operational Creditor submits that the Corporate Debtor made an approach to the Petitioner for purchasing of synthetic yarn for its fabric works. The Petitioner/ Operational Creditor, in response to such request, was making supply of goods to the Respondent/ Corporate Debtor from time to time as per purchase order(s). These goods (synthetic yarn) were duly received and has further been utilised by the Corporate Debtor for its fabric work. Therefore, the Petitioner generated invoices against each supply made for claiming payment. It is also contended that the Corporate Debtor made some part payment towards material received through RTGS as well as through cheques. However, certain cheques are reported to have been dishonoured and bounced back.



6. The Petitioner/Operational Creditor has furnished a summary / tabulated detail of the invoices generated and details of amount received from the Corporate Debtor at page no.52 of the present Petition, which is Annexure II-E of the present I.B. Petition.

7. As per the above furnished details, the Total Bill amount comes to **Rs.12,32,203=00** (Rupees Twelve Lakh Thirty-Two Thousand Two Hundred Three only). While, the amount so received from the Corporate Debtor is Rs.3,95,538=00 (Rupees Three Lakh Ninety-Five Thousand Five Hundred Thirty-Eight only). The Operational Creditor has claimed interest at the rate of 24% p.a. by including the same, the gross amount/outstanding comes to Rs.14,61,592=93 (Rupees Fourteen Lakh Sixty One Thousand Five Hundred Ninety-Two and Ninety-Three Paisa). It is contended that the last payment was received from the Respondent/Corporate-Debtor on 14.06.2017. For an amount of Rs.50,000=00 (Rupees Fifty Thousand Only) (Through RTGS/Cheques). While the present I.B. Petition is filed in the year 2019. Hence, it is filed well within limitation.



8. It is also stated that the Petitioner issued a statutory Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy Regulations, 2016 to the Respondent Company demanding payment of an aggregate outstanding amount of **Rs.14,61,592=93** (Rupees Fourteen Lakh Sixty One Thousand Five Hundred Ninety-Two and Ninety-Three Paisa), within stipulated period, i.e. 10 (ten) days from the date of receipt of the demand notice. The Petitioner also annexed a copy of above demand notice to the present petition, which is duly served upon to the Corporate Debtor, however, the Respondent/ Corporate Debtor did not respond to the above stated statutory notice.
9. As per record, the present matter came for hearing from time to time on 04.04.2019 and thereafter on 04.06.2019, 08.07.2019, 01.08.2019, 29.08.2019 and on 20.09.2019 the Respondent/Corporate Debtor earlier did not file its reply / objection to the petition within given period. Hence, it was granted opportunity for filing the same with a cost of Rs.10,500=00. The Respondents further took time on the pretext of making settlement in the matter or to file reply. Hence, the time was further granted with a cost of Rs.25,000=00 payable to the Petitioner, for filing additional objection on maintainability of present petition. However,



the amount of cost is not reported to have been paid to the Petitioner. Thereafter, the arguments from both the parties were heard on 25.11.2019.

10. The Respondent/Corporate-Debtor, in its objection has contended that the yarn supplied was not 'up to the mark.' Its quality and price were unilaterally changed in the invoices. Further, there is no such written agreement of the Corporate Debtor for agreeing to, and accepting the price claimed for yarn supplied. That apart, there is no agreement for making payment of interest or on the rate of interest. Hence, the Corporate Debtor stopped making purchase of the yarn from the Petitioner. It is also submitted that the Respondent made some effort to negotiate for fair prices of goods supplied, with the Petitioner, but it failed. Hence, as per the Corporate Debtor, there is pre-existing dispute of the amount claimed. Hence, the present I.B. Petition is liable to be rejected and the C.I.R.P. cannot be triggered against the Corporate Debtor.

11. By perusal of above stated reply, it is established that the Respondent/Corporate-Debtor has duly received the goods (yarn) supplied by the Petitioner and it utilised the same for fabric work but made only oral grievance/complaint about the quality and price of goods and on the issue of interest



chargeable, but However, the Corporate Debtor did not able to show us any written complaint or notice of refusal /rejection of supplied goods to the Petitioner/ Operational Creditor. He only took such plea that it made effect to settle the matter but the same could not been be materialised.

12. We perused the materials available on record. It is evident from the record that the Respondent/Corporate Debtor has not made payment of the amount outstanding towards the material/ yarn supplied although, undisputedly, it has been utilised by the Corporate Debtor. It is alleged that the Petitioner has charged unreasonable rates for the goods supplied but the Respondent but did not seem to make any written objection for the same though raised invoices from time to time to the Respondent. Therefore, the Respondent's contention for exorbitant rate of the goods supplied appears to be only an afterthought plea, which is not legally sustainable.

13. Thus, it is evident that, the Corporate Debtor has not specifically denied its liability for making payment of goods received by it and the amount of invoices raised for principal amount comes to the tune of Rs.12,32,203=00 (Rupees Twelve Lakh Thirty-Two Thousand Two Hundred Three only). As per record, the Corporate Debtor has made



certain payment to the extent of Rs.3.95 lakh. However, the Corporate Debtor has not replied to the statutory demand notice issued making objection and by pointing out about any pre-existing dispute about the price and quality of supplied goods nor it explained any reason, as to why it could not be able to respond to the statutory demand notice. Hence, its defence as taken in the present petition appears to be an afterthought and feeble, hence, not acceptable.

14. Even its reply objection, the Corporate Debtor did not enclose any document/ correspondence entered with the Petitioner to show that there was any kind of pre-existing dispute nor any explanation is given if, goods were found to be poor or substandard quality, then why the same were not refused to be accepted and returned back. But, contrary to this, it were consumed and utilised for fabric work.

15. The Corporate Debtor also failed to show any reason that if there was dispute of the quality and price of goods, then what prompted it to go on issuing cheques for payment, while some cheques were dishonoured while the Corporate Debtor also made some payment through RTGS. Hence, it is evident established that the Corporate Debtor did not



specifically deny its liability of outstanding, which amounts towards price of goods which is more than of rupees one (01) lakh. Hence, default in making such payment has been occurred. The Corporate Debtor made effort for settlement even during the pendency of the present petition, which also confirm this fact that there is outstanding debt and default has been made and the defence of the Corporate Debtor is feeble and moonshine as per the decision of Hon'ble Supreme Court in the matter of Mobilox case. Therefore, the CIRP in respect of the present Corporate Debtor Company can be triggered.

16. We further considered other aspects of the case that the present I.B. Petition has been filed under Section 9 of the code by the Director, Mr. Prashant Kishanprasad Birla being an authorised signatory. Hence, its filing is found to be in order and hence, the present I.B. Petition is found complete for the purpose of initiation of Corporate Insolvency Resolution Process (C.I.R.P.) in respect of the Corporate Company. Hence, it deserve for admission.

17. In the light of above given facts and circumstances of the case, the present IB petition deserves admission. Hence, it is admitted with following observations and direction:

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18. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority hereby declares moratorium for prohibiting all of the following, namely: -

- I.(a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (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 corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *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.*
- IV. *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.*

19. As the Petitioner/Corporate-Debtor did not suggest name of the Insolvency Professional, this Adjudicating Authority

hereby appoints **Ms.Minal Alpesh Shah**, having Insolvency Professional Registration No. **IBBI/IPA-002/IP-N00407/2017-2018/11187**, **Email ID csmas.brd@gmail.com**, as an **Interim-Resolution-Professional**. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

20. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.
21. The present IB-Petition stands admitted.


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)