

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**IN THE MATTER OF:**

**M/s INSTYLE OVERSEAS LLP**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s SARTHAK FIBROTEX PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on: 18.09.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

For the Applicant: Mr. Dushyant Tiwary, Adv.

For the Respondent:

(IB)-225/(ND)/2019  
M/S INSTYLE OVERSEAS LLP Vs. M/S SARTHAK FIBROTEX PVT. LTD.

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## **MEMO OF PARTIES**

### **M/s INSTYLE OVERSEAS LLP**

Having its registered office at:

5158/4, Krishan Nagar,

Karol Bagh

New Delhi-110005

**...Applicant/Operational Creditor**

## **VERSUS**

### **M/s SARTHAK FIBROTEX PRIVATE LIMITED**

Having its registered office at:

53, Swarn Apartments,

Pitampura,

New Delhi-110034

**...Respondent/ Corporate Debtor**

## **ORDER**

**PER- SHRI HEMANT KUMAR SARANGI, MEMBER (T)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Instyle Overseas LLP (for brevity 'Applicant') through its

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(IB)-225/(ND)/2019

M/S INSTYLE OVERSEAS LLP Vs. M/S SARTHAK FIBROTEX PVT. LTD.

- partner Mr. Prem Krishan Goel, with a prayer to initiate the Corporate Insolvency Resolution process against M/s Sarthak Fibrotex Pvt. Ltd. (for brevity 'Respondent').
2. The Applicant, the Operational Creditor namely, M/s Instyle Overseas LLP is a Limited Liability Partnership concern with CIN No. AAB-5455, having its registered office at 5158/4, Krishan Nagar, Karol Bagh, New Delhi-110005.
  3. The Respondent, the Corporate Debtor namely M/s Sarthak Fibrotex Private Limited is a company incorporated on 13.01.2007, under the provisions of Companies Act, 1956 with CIN No. U18204DL2007PTC157659, having its registered office at 53, Swarn Apartments, Pitampura, New Delhi-110034.
  4. The Authorised Share Capital of the respondent company is Rs. 10,00,000/- and Paid Up Share Capital of the company is Rs. 1,00,000/- as per Master Data of the company.
  5. It is the case of the applicant that Respondent company approached the applicant and placed several purchase orders at various occasions, and it was unequivocally agreed

between both the parties that transactions would take place on cash and credit basis and in case of credit transactions, the invoices would be paid by the corporate debtor within a period of 21 days from the date of invoice. The Applicant supplied the goods as per the orders placed by corporate debtor and raised running invoices against the said supply and consequently payments used to be credited to the account of the Operational Creditor.

6. The applicant further states that, the respondent failed to make the payment to the applicant on invoice to invoice basis. As a result of this a sum of Rs. 28,89,840.65/- (Rupees Twenty Eight Lakhs Eighty Nine Thousand Eight Hundred Forty and Sixty Five Paise Only) fell due and payable by the respondent to the applicant. Three Cheques amounting to Rs.5,00,000/- all drawn on Allahabad Bank, G.T Road, Kundli, Sonapat Branch, Haryana, were issued as part payments by the respondent. The said cheques of Rs.2,00,000/-, Rs.1,50,000/- and Rs.1,50,000/- dated 16.08.2019, 18.08.2017 and 21.08.2017 respectively bounced

due to insufficient funds. Even after repeated reminders, the Corporate Debtor has failed to make payment of Rs.28,89,840.65/- in lieu of the invoices issued. The copies of above mentioned cheques along with the return memo are annexed along with the application.

7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 28.11.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire outstanding payments of Rs.28,89,940.65/- (Rupees Twenty Eight Lakhs Eighty Nine Thousand Eight Hundred Forty and Sixty Five Paise Only) along with interest at the rate of 18% per annum, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent. The applicant has also placed on record the legal notice under the Negotiable Instruments Act, issued to the respondent for the dishonor of the cheques.

8. The applicant has annexed postal receipts and copy of email showing service of section 8 notice to the respondent at its registered email id recorded on the MCA master data.
9. Despite the demand notice sent under Section 8 of the Code, the Respondent has failed to pay the amount demanded and has neither raised any notice of dispute nor replied to the said notice, hence this application, seeking to unfold the process of CIRP.
10. The applicant has stated that total debt due and payable is Rs.28,89,940.65/- (Rupees Twenty Eight Lakhs Eighty Nine Thousand Eight Hundred Forty and Sixty Five Paise Only) along with interest at the rate of 18% per annum.
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP the applicant has also filed affidavit of dasti service wherein he states dasti service has been conducted on 02.02.2019 at the registered office of the respondent company as well as on two of its directors and notice issued by this Hon'ble Tribunal has been delivered against proper receipt of the corporate Debtor. He also states

that service has also been done through email on the email id available on the MCA Master Data of the respondent on 28.02.2019.

12. In spite of dasti service of application under section 9, none appeared for the corporate debtor nor is any reply filed.
13. This Tribunal is constrained to proceed with the matter ex-parte against the Corporate Debtor as per order dated 08.04.2019 since the Corporate Debtor has not appeared though Section 8 notice and the present application were duly served on the Respondent and proof of service is filed by the applicant.
14. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
15. The applicant has attached the copy of Bank statements issued by Bank of India, Corporation Bank, HDFC Bank Limited. The operational creditor has also placed on record the CA certificate showing balance of Rs.28,89,840.65/- (Rupees Twenty Eight Lakhs Eighty Nine Thousand Eight Hundred

Forty and Sixty Five Paise Only) due from Ms. Sarthak Fibrotex Private Limited, in compliance with the requirement of Section 9(3)(C) of the IBC 2016.

16. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. On perusal of the record it is clear that the default has occurred on 20.03.2018. Hence, the claim is not time barred. And the present application is well within the limitation period.
18. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
19. The Applicant has proposed the name of Interim Resolution Professional, Mr. Vijender Sharma having registration no. IBBI/IPA-003/IP-N0003/2016-17/10022 and email address vijender@vsa.net.in, who is appointed as the IRP of the

Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

21. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Vijender Sharma to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by

Interim Resolution Professional and shall be paid back to the Operational Creditor.

22. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd-

(HEMANT KUMAR SARANGI)

**MEMBER (Technical)**

Sd-

(DR. DEEPTI MUKESH)

**MEMBER (Judicial)**