

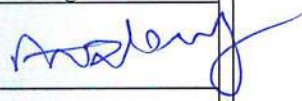
NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATHI BENCH

PRESENT: HON'BLE JANAB MOHAMMED AJMAL – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	TCP NO. 104/9/AMR/TP/2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 370/9/HDB/2018
NAME OF THE COMPANY	Venkatadri Spinning Mills Pvt Ltd
NAME OF THE PETITIONER(S)	K R R & Company
NAME OF THE RESPONDENT(S)	Venkatadri Spinning Mills Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

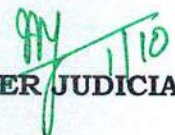
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
A Nagaraj Kumar	Adv	9963033314	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

Order pronounced vide separate sheets. Company Petition is admitted.

  
MEMBER JUDICIAL

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IN THE NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD

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TCP No. 104/9/AMR/2019  
[CP (IB) No .370/9/HDB/2019]

In the matter of VENKATADRI SPINNING MILLS  
PRIVATE LIMITED

*In the matter of Section 9 of IBC 2016, read with Rule 6 of Insolvency and  
Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

Between:

**M/s K.R.R. & Company**

Registered Office: 10-2-10, 2<sup>nd</sup> Line,  
Sambasivapet,  
Guntur – 522 001,  
Andhra Pradesh.

..... **Petitioner / Operational Creditor**

And

**Venkatadri Spinning Mills Private Limited,**

Registered Office: Door No.7/248,  
Amiigunta, Chikkala Village,  
Chagallu Mandal,  
West Godavari District – 534 342,  
Andhra Pradesh

..... **Respondent / Corporate Debtor**

**Date of Order: 01.10.2019**

**C O R A M:**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

**Appearance:**

**For Applicant (OC) : Mr. A. Nagaraj Kumar, Advocate**

**For Respondent (CD) : Mr. Ravindra, PCS**

**ORDER**

1. In this Petition under section 9 of the Insolvency & Bankruptcy (the Code) an Operational Creditor (OC) seeks Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD).
2. The facts culminating in the petition may thus be stated. The Petitioner is a proprietary concern registered as a Micro, Small and Medium Enterprise (MSME). It is engaged in the business of trading cotton with

*M. J. Ajmal*  
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an annual average turnover of around Rs.15,00,00,000/- (Rupees Fifteen Crores).

3. The Respondent Company registered under the Companies Act, 1956 with its registered office in the State of Andhra Pradesh is engaged in the business of manufacturing of Cotton Yarn. The Petitioner supplied bales of cotton between 16.09.2015 and 19.09.2017 under various invoices amounting to Rs.10,44,49,428/- (Rupees Ten Crores Forty Four Lakhs Forty Nine Thousand Four Hundred and Twenty Eight only). The Respondent made periodical payments till 24.07.2017. It also issued two cheques dated 14.10.2017. The cheques respectively to the tune of Rs.13,68,530/- and Rs.13,69,140/-. The cheques were presented for collection but were dishonoured and returned on 18.10.2017. A total of Rs. 9,32,18,389/- had been paid by 24.07.2017. The Respondent did not clear the balance dues despite repeated requests. An amount of Rs. 1,12,31,039/- remained outstanding as on 18.10.2017. This being an operational debt the Petitioner issued a notice dated 21.01.2019 in Form-3, under section 8 of the Code. The notice was delivered at the registered office of the Respondent Company as well as its Managing Director respectfully on 25.01.2019 and 29.01.2019. The notice was not responded to. The Petitioner accordingly came up with the present petition on 03.06.2019.
4. The Respondent being noticed and appeared and contested the petition by filing a counter. It is admitted that the Petitioner has supplied bales of cotton till 16.09.2015 but there were reciprocal exchanges where under the Respondent had supplied yarn to the Petitioner. According to the Respondent the records of the petition showed that the invoices were raised between 16.09.2015 and 18.03.2016. The Application having been filed more than three years after 18.03.2016 the same is hit under section 137 of Limitation Act and hence is bared by limitation. In a suit filed by the Petitioner for the recovery and the dues the court has passed orders of attachment of the assets of the company. When the Petitioner has already taken action for recovery of dues a petition under section 9 would not be maintainable in view of the provisions contained under section 10 of the Code of Civil Procedure (CPC). The

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present petition thus is liable to be dismissed. The Petition was transferred to this Tribunal, after its establishment.

5. The rival pleadings raise the following issues for determination.
  - I. Whether the Company Petition is maintainable?
  - II. Whether the Company Petition is barred by limitation?

**Issue Nos. I & II:**

6. Both the issues being intrinsically connected by facts are taken up together for the purpose of convenience and proper appreciation. Section 10 of the CPC provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties where such suit is pending in the same or any other court in India having jurisdiction to grant reliefs claimed. The contention that because of the pendency of the suit OS No. 42/2018 in the Court of III Additional District Judge, Guntur, the present proceeding could not be maintained or needs to be stayed, could not be accepted for the following reasons. First, the Application under Section 9 of the Code is not a Suit. The same has also been observed by the Hon'ble Apex Court in Civil Appeal No. 4952/2019 - **Gourav v. Asset Reconstruction Company** decided on 18.09.2019. Secondly, the matter in issue before the Court of III Additional District Judge, Guntur is not directly and substantially in issue before this Authority. It is settled that the Adjudicating Authority under the Code is not a Forum for recovery of outstanding debt/dues. The Application under section 9 triggers the process of Insolvency Resolution of a Company, independent of powers of the Civil Court. Section 238 of the Code provides that the provision of this Code shall have overriding effect over any other law for the time being in force. The petition would accordingly be maintainable in the present Forum. Issue No. I is answered in the affirmative.

7. The relationship between the parties is admitted. It is admitted that the Petitioner supplied bales of cotton to the Respondent for manufacturing of cotton yards. As revealed from the statement of outstanding balance

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and receivable from the Respondent maintained by the Petitioner, the latter had supplied cotton bales worth of Rs.10,44,49,428/- between 20.08.2015 and 18.09.2017. The entries in the statement enclosed along with the entries in Form – 3 under section 8 of the Code have not been disputed. The statements also indicate that receivables in the nature of yarn received from the Respondent had been credited and taken into account against the outstanding dues. The last of such payment was credited on 18.09.2017. The process of supply of cotton bales was a continuous process so was the payment against them. In addition the Respondent supplied yarn to the Petitioner and the Petitioner in his accounts discounted the cost of the yarns received against the outstanding payments. From the statement of outstanding balance and receivables maintained by the Petitioner in due course of business it is clear that the last of such invoices was raised on 19.9.2017. The last adjustment against the receipt of yarn was made on 18.09.2017. Besides the Respondent had issued two cheques on 14.10.2017 respectively for Rs. 13,68,530/- and Rs.13,69,140/-. The cheques were dishonoured for want of sufficient funds on 18.10.2017. After that there has been no payment. Therefore the date of default would be 18.10.2017 and not any time sooner. The limitation accordingly would begin to commence from that date and not from 18.03.2016 as pleaded by the Respondent. The present petition is filed on 03.06.2019 within 3 years of the date of default i.e., 18.10.2017, which squarely falls within the time prescribed under Article 137 of the Limitation Act read with Section 238 (A) of the Code. Issue No. II is answered in the negative.

8. In the result, the default having been proved and the Respondent having failed to reply to the notice in Form – 3 within 10 days of its receipt, the present Petition deserves to be admitted. The petitioner has not proposed the name of the Insolvency Resolution Professional (IRP) and prayed this Adjudicating Authority to appoint IRP. The Petition thus needs to be admitted. Hence ordered.

**ORDER**

The Company Petition is admitted on contest.

*Handwritten signature and date:*  
11/10/19

- i. The Corporate Insolvency Resolution Process of the respondent shall commence from this date and shall be completed within 180 days hence, as provided under Section 12(1) of the Code.
  - ii. Shri Rajesh Chhaparia, Chartered Accountant [Registration No. IBBI/IPA-001/IP-P00474/2017-2018/10817, having office at B-3, Magadha Empire, 8-6-42/7, 2<sup>nd</sup> Floor, Pedawaltair, Visakhapatnam, Andhra Pradesh – 530 017; e-mail ID: rajesh\_chhaparia@yahoo.co.in; Mobile No. 96521 84801] is appointed as the Interim Resolution Professional (IRP). No disciplinary proceeding is pending/proposed against him as per the IBBI website. He is requested to furnish his consent in Form No.2.
  - iii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of IBC and Rules made thereunder.
  - iv. Moratorium under Section 14 of the IBC in respect of the respondent is hereby declared.
  - v. The Directors, Promoters or any other person associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effective discharge of his functions thereunder.
  - vi. The Registry is directed to communicate the order to the Petitioner/Financial Creditor and the Respondent/Corporate Debtor.
9. The petitioner/OC and the Registry are also directed to send the copy of this order to IRP for necessary compliance.

  
MOHAMMED AJMAL  
MEMBER JUDICIAL