

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

C.P. (IB)No.214/BB/2019
U/s. 9 of the IBC, 2016
R/w Rule 6 of the I&B (AAA) Rules, 2016

In the matter of:

M/s. Madura Coats Private Limited
R/o. at No.144, M.G.Road,
Bengaluru – 560 001 - Petitioner/Operational Creditor

Versus

M/s. Unitex Apparels Private Limited
No.24, Pete Channappa Industrial Estate,
Sumanahalli Circle,
Kamakshipalya – 560 079 - Respondent/Corporate Debtor

Date of Order: 29th October, 2019

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

Parties/Counsels Present:

For the Petitioner : Ms. V. Sai Sampreetha
For the Respondent : Shri Rajeev H.R., Director,
Party-in-person

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.214/BB/2019 is filed by M/s. Madura Coats Private Limited (Petitioner/Operational Creditor) U/s. 9 of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to



initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Unitex Apparels Private Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed default for an amount of Rs.1,04,34,644/- (Rupees One Crore Four Lakhs Thirty Four Thousand Six Hundred and Forty Four only) which includes principal amount and interest.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, as follows:

- (1) M/s. Madura Coats Private Limited (Petitioner/Operational Creditor) is a Company incorporated under the Companies Act, 1956, they manufactured and sell complete range of cotton, synthetic and core spun threads/yarns in India and also exports the same to foreign markets.
- (2) M/s. Unitex Apparels Private Limited (Respondent/Corporate Debtor) is a Private Limited Company was incorporated on 10.11.1994 bearing CIN:U18101KA1994 PTC016528 under the Companies Act, 1956. Its Nominal Share Capital of Rs.4,60,00,000/- (Rupees Four Crores Sixty Lakhs only) and the Paid-up Share Capital is Rs.3,00,49,000/- (Rupees Three Crores Forty Nine Thousand only). Its main object of the Company is in the business of manufacture of readymade garments. The representatives of the Corporate Debtor approached the Operational Creditor, for supply of threads/yarns (Goods).
- (3) Based on the representations made by the representatives of the Respondent/Corporate Debtor and the Purchase Orders placed by them from time to time by email, the Petitioner/Operational Creditor supplied certain goods to them and the same was accepted by them without any



demur. There was not even one instance where the goods were returned. The Operational Creditor raised various running bills/invoices for the Goods delivered to the Corporate Debtor.

- (4) It is submitted that the goods were supplied under the cover of invoices between 25.06.2016 and 21.08.2018 and the value of goods was a sum of Rs.81,90,603/- (Rupees Eighty One Lakhs Ninety Thousand Six Hundred and Three only) the credit period on each invoice was 90 days. Even after the credit period was completed, the Corporate Debtor failed to make payments. Belated payments attracted interest in terms of the contract and the Corporate Debtor was liable to pay a sum of Rs.22,44,041/- towards interests as in August, 2018. The Respondent/Corporate Debtor was liable to pay the Operational Creditor, a total sum of Rs.1,04,34,644/-. The Respondent/Corporate Debtor has even admitted liability vide Confirmation of Balance dated 09.08.2018.
- (5) The Petitioner/Operational Creditor issued a demand notice to the Corporate Debtor under the provisions of the Code in Form No.3. However, no reply was received from the Corporate Debtor. It is submitted that the demand notice in Form 3 was made for a sum of Rs.1,04,34,644/-.
- (6) In the light of the above, due to the failure of the Corporate Debtor to pay its admitted debts, despite repeated reminders and requests, the Operational Creditor is constrained to approach the Adjudicating Authority. In the circumstances, the Corporate Debtor is clearly unable to discharge its legally admitted operational debt, and therefore, it would be just and equitable to commence an



Insolvency resolution process against the Corporate Debtor.

3. The Respondent/Corporate Debtor has filed Statement of Submissions dated 21.10.2019, by inter alia contending as follows:

- (1) The Operational Creditor has filed the caption Petition alleged default of debt of Rs.1,04,34,644/- by the Corporate Debtor which became due in lieu of the goods supplied by the Operational Creditor to the Corporate Debtor. It admits the debt in question which has arisen out of the goods supplied by the Operational Creditor. However, the Corporate Debtor is unable to pay the same due to the reason mentioned hereinafter.
- (2) The operations of the Company have come to a complete standstill since 2018. While the CDR employed more than 3000 employees in its prime, the CDR stated defaulting on its debt obligations due to a major loss of Rs.40.44 Crores in its export business. It has borrowed heavily to supply goods to an export Client – *'Triburg USA'* which is a wholly owned subsidiary of Triburg Sportswear Pvt. Ltd., New Delhi, but the said Client defaulted in paying its dues compelling the Company to shut down the manufacturing activity of all its units due to working capital crunch and further resulting in default of its debt obligations.
- (3) Subsequently, SVC Co-op Bank Ltd., one of the secured creditors, have filed OA.No.1804/2018 in the Debts Recovery Tribunal – I for recovery of Rs.41,59,87,237/- against the CDR and its Director and the said OA is pending adjudication.
- (4) In the meanwhile, the Bank has disposed mortgaged properties belonging to Unitex Apparels Pvt. Ltd., during



June 2018 and recovered partial dues. The property disposed is situated at No.1, situated at BDA new road in Corporation Ward No.38, Govindarajanagar presently Moodalapalya, Bangalore (earlier bearing survey No.50/1 of Nagarabhavi Village, Yeshwanthapur Hobli, Bengaluru North Taluk) with assigned New Municipal Corporation No.1, bearing New PID No.38-114-1.

- (5) It is further submitted that, the Bank has issued paper notification for possession of assets (Plant and Machinery) dated 20.05.2019 and also issued a public notice for sale and recovery of assets (plant and machinery) dated 23.05.2019. Resulting, the Bank had sold Plant and Machinery of one unit of the Company i.e. Unit-3 and the same has been taken over the Buyer. The other Two Units of the Company, has been taken over by the bank and it is currently, in their possession. The Plant and Machinery and movable assets of these two units were valued at Rs.23.6 Crores as per Valuation report submitted to bank.
- (6) Apart from the secured creditors, there are also innumerable Operational Creditors, who have initiated various recovery proceedings against the Company across the Country. In fact, some of them have also initiated Cheque Bounce cases against the Company and its Directors which are pending adjudication.
- (7) Pertinently, the Statutory, viz., PF/ESI/IT/TDS and employee wages are outstanding to an extent of Rs.10 Crores approximately and various matters initiated by our erstwhile employees for recovery of their employee dues is pending in the Labour Court.
- (8) Additionally, all the licenses obtained by the Company like



boiler license, PCB, license necessary for running the factories have expired. There are no legal proceedings or stay order in any of the proceedings of the Company before the High Court or the Apex Court.

4. Heard Ms. V. Sai Sampreetha, learned Counsel for the Petitioner and Shri Rajeev H.R, Director of the Corporate Debtor Company, Party-in-person. We have carefully perused the pleadings of both the parties and the extant provisions of the Code and Rules made there under.
5. The case was listed for admission on various dates viz., 24.06.2019, 10.07.2019, 24.07.2019, 31.07.2019, 22.08.2019, 16.09.2019, 27.09.2019, 10.10.2019, 21.10.2019 and on 29.10.2019, and it is adjourned on those dates at the request of the parties, in order to serve the notice and also to give an opportunity to explore the possibility of settlement, etc. However, Director of the Respondent submits that the Company became insolvent and thus the Adjudicating Authority has no other alternative except to consider the case as per merits.
6. Ms. V. Sai Sampreetha, learned Counsel for the Petitioner/Operational Creditor, while reiterating the various averments made in the instant Company Petition, as briefly stated supra, has further submitted that the instant Company Petition is filed in accordance with law and there is an admitted debt and default and the same is not in dispute. They have also filed proof that the Corporate Debtor is insolvent, as it is not able to pay its debt apart from other liabilities and the Respondent/Corporate Debtor also admitted its liabilities. And a qualified Resolution Professional namely Shri Ratnakar Shetty,



bearing Registration No. IBBI/IPA-001/IP-P01630/2019-2020/12718 is proposed to appoint him as Interim Resolution Professional, who has filed Written Communication dated 24.09.2019, in a prescribed forum. Therefore, the learned Counsel for the Petitioner/Operational Creditor urged the Adjudicating Authority to admit the instant Company Petition by initiating CIRP as prayed for.

7. Shri Rajeev H.R, Director of the Corporate Debtor Company, who is present today, has submitted that there is no possibilities of paying debt as raised in the Company Petition and apart from the secured creditors, there are also innumerable Operational Creditors, who have initiated various recovery proceedings against the Company across the Country. He has no objection to initiate Corporate Insolvency Resolution Process (CIRP) against them.
8. The above facts and circumstances clearly established that the Debt and default in question is admittedly is not in dispute and the Corporate Debtor became insolvent and it is suffering other legal proceedings for its failure to pay its outstanding amounts to the other Creditors. And the instant Petition is filed in accordance with requisite provisions of Code and a qualified Resolution Professional Shri Ratnakar Shetty, is suggested, who has registered his name with Indian Institute of Insolvency Professionals of ICAI bearing IP Registration No. IBBI/IPA-001/IP-P01630/2019-2020/12718, who also has filed his Written Consent in Form-2 dated 24.09.2019, by inter alia affirming that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against him with



the Board or Indian Institute of Insolvency Professional of ICAI; he is currently serving as an Interim Resolution Professional/ Resolution Professional/Liquidator in NIL proceedings. Therefore, it is a fit case to admit to initiate CIRP against the Corporate Debtor by appointing IRP, imposing moratorium etc.

9. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, the following orders are passed:

- (1) C.P.(IB)No.214/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Unitex Apparels Private Limited, Corporate Debtor;
- (2) Shri Ratnakar Shetty, bearing IP Regn. No. IBBI/IPA-001/IP-P01630/2019-2020/12718, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- (3) 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 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 as also not applicable to surety.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
 - h) 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 Adjudicating Authority from time to time.
- (4) The Board of Directors and all the staff of 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.
- (5) IRP is further directed to strictly adhere time schedule as mentioned under the Code. And he is directed to file



progress reports from time to time to the Adjudicating Authority.

- (6) Post the case for submission of report of the IRP on **02.12.2019.**



**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**



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

Shruthi