

**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. 340/BB/2019	For pronouncement of order	Sec 9 of I&B code 2016	M/s Suryawanshi Garments LLP	Sudarshan suresh , Advocate	M/s Kapuyt Clothing Pvt Ltd	

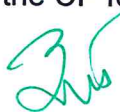
ADVOCATE FOR PETITIONER/s: **SUDARSHAN SURESH**

ADVOCATE FOR RESPONDENT/s: **ORDER**

Heard Shri Sudarshan Suresh, learned Counsel for the Petitioner through video conferencing.

CP (IB) No.340/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.340/BB/2019
U/s. 9 of IBC, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

Between:

M/s. Suryawanshi Garments LLP
No. 103 & 107, Samaruddha Apartment,
Paud Road, Kothrud,
Pune - 411 038.

-Petitioner/Operational Creditor

AND

Kapuyt Clothing Private Limited
No. 22, 3rd Floor, International
Airport Road (Bellary Main Road),
Above TVS Showroom,
Ganganagar,
Bangalore – 560 032.

-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 Petitioner: Mr. D. N. Narayan Babu with
Mr. Sudarshan Suresh

For the Respondent: None

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Company Petition is filed by M/s. Suryawanshi Garments LLP (hereinafter referred to as 'Petitioner/Operational Creditor') under Section 9 of the Code, 2016 R/w Rule 6 of the I & B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Kapuyt Clothing Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor) on the ground that



it has committed default for a total outstanding amount of Rs.66,95,321/- (Rupees Sixty Six Lakhs Ninety Five Thousand Three Hundred and Twenty One Only).

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

- 1) M/s. Suryawanshi Garments LLP is the 'Petitioner/Operational Creditor', with Identification Number AAJ - 4086 and having its registered office at No. 103 & 107, Samaruddha Apartment, Paud Road, Kothrud, Pune – 411 038.
- 2) M/s. Kapuyt Clothing Private limited (Respondent/Corporate Debtor) is a Company incorporated on 20.03.2015 under Companies Act, 2013 with CIN: U17120KA2015PTC079397 and having its registered office at No. 22, 3rd Floor, International Airport Road (Bellary Main Road), above TVS Showroom, Ganganagar, Bangalore-560032.
- 3) It is stated that Suryawanshi Garments LLP, the Operational Creditor is a registered partnership concern, in the business of sale and supply of fabrics, garments and textile goods. Kapuyt Clothing Pvt. Ltd ("Corporate Debtor") had approached the Operational Creditor for supply of fabrics, garments and textile goods. The Corporate Debtor proceeded to issue purchase orders and orders for goods upon the Operational Creditor. These goods were delivered to the Corporate Debtor and invoices were raised for the supply of these goods.
- 4) It is further stated that after supplying goods, such as garments and textiles, the Operational Creditor had raised several invoices from 17.02.2018 to 18.06.2018 which holds an outstanding principal sum of Rs. 66,95,321/- on the Corporate Debtor. Further the Corporate Debtor has admitted its liability to the entire outstanding amount. In light of the above, the Operational Creditor issued a demand notice dated 05.06.2019 under Section 8 of the Code of 2016. It is also mentioned that the Operational Creditor has not received any reply to the Demand Notice, as on the date of filing of this petition.
- 5) It is also stated that no payment whatsoever of the outstanding amounts has been forthcoming from the Corporate Debtor till date. The Corporate Debtor has not disputed the contents of the notices issued to them. No dispute was raised by the Corporate Debtor regarding the unpaid operational debt. The

Operational Creditor has not received any payment from the Corporate Debtor towards goods supplied till date, even after the debt fell due and payable on 18.06.2019, ten days after demand notice was delivered to the Corporate Debtor.

3. The respondent has not filed any statement of objections with regard to the present petition. No reply was also given by the Corporate Debtor to the demand notice U/s 8. The Operational Creditor has filed a certificate dated 18.07.2019 under section 9(3)(b) of the IBC, 2016 confirming that there is no payment of the unpaid operational debt by the Corporate debtor. A copy of the bank statement of the Operational Creditor issued on 19.06.2019 has also been filed.

4. On 25.10.2019 the Registry of this Tribunal was directed to prepare the notice for the counsel for the Petitioner, who was permitted to collect the same and serve it personally on the MD of the respondent company and also on the respondent company and to file the proof of service. The Counsel for the Petitioner has filed a Compliance affidavit dated 26.11.2019 affirming that the Order dated 25.10.2019 has been complied with.

5. Heard Shri D.N. Narayan Babu along with Shri Sudarshan Suresh, learned Counsels for the Petitioner. We have carefully perused the pleadings and the extant provisions of the Code and the Rules made thereunder.

6. The present case was posted on the following dates i.e. 25.10.2019, 27.11.2019, 05.12.2019, 31.12.2019, 03.01.2020, 07.01.2020 for admission. However, it is observed that the respondent did not make any appearance in the present case and also has not raised any objections in relation to the present petition filed against it, despite being afforded ample opportunities for the same, and also having received the Demand Notice from the Operational Creditor. Therefore, there is no other alternative for the Adjudicating Authority but to decide the case for admission as per merits.

7. The learned Counsels for the Petitioner, while pointing out various averments made in the Petition and the Summary, as briefly stated Supra, have further submitted that the Corporate Debtor has not disputed the contents of the notices



issued to them and no dispute was raised by the Corporate Debtor regarding the unpaid Operational Debt. It has been stated that the Operational Creditor has not received any payment from the Corporate Debtor towards goods supplied till date. It is further submitted that the debt and default in question are not in dispute. We also find that the instant company petition is filed in accordance with law. The Operational Creditor has also suggested a qualified Resolution Professional, namely, **Mrs. Medha Kulkarni having Regn. No. IBBI/IPA-001/IP-P00121/2017-2018/1026**. She has filed a written consent in Form-2 dated 10.10.2019, by inter alia declaring that she is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending against her with the Board or Indian Institute of Insolvency Professionals of ICAI.

8. The above facts and circumstances of the case, clearly show that the goods were delivered to the Corporate Debtor by the Operational Creditor at different locations and invoices were raised for the supply of these goods. The Respondent failed to pay the outstanding amount of Rs 66,95,321, comprised in these Invoices, as mentioned in the Petition. Copies of Invoices in respect of which the demand has been raised are enclosed with the petition. These Invoices show payment terms of 45 days and interest payable @18% for late payment. The debt fell due and became payable after the lapse of the respective credit period as per the invoices and the default occurred on each such date. The demand Notice dated 05.06.2019 was issued to the Respondent. As per the submissions made, at page 56 is placed the acknowledgement of Receipt of Form 3 and 4 under the IBC dated 05.06.2019, which has been received by Sri Lollen Tellis, Director of the Corporate Debtor on 07.06.2019, whose name also appears on the Invoices as the Contact person. No reply to the same was received by the Petitioner within 10 days. Also brought on record is the certificate dated 18.07.2019 under section 9(3) (b) of the IBC, 2016, confirming that there is no payment of the unpaid operational debt by the Corporate debtor. Copy of the bank statement of the Operational Creditor issued on 19.06.20 has also been filed. We have to hold therefore that the debt and default are clear as no dispute or denial has been raised by the Respondent in respect of the same. The Respondent has not even pleaded that the Company is solvent and there are no liabilities pending against it.



9. A perusal of the Financial Statements filed by the Petitioner along with additional documents on 07.01.2020 shows that the Corporate Debtor has been incurring losses. For the period ending 31.03.2016 it had a loss of Rs 24,68,511, and had the burden of Current Liabilities of Rs 77,45,033. Similarly for the year ending 31.03.2017 also it had a loss of Rs 24,62,165, and had Current Liabilities of Rs 1,15,75,780. In both the years it had meagre revenue of about Rs 25,00,000 only from its operations and is low on assets that can pay off the liabilities. Thus it is clear that the Corporate Debtor had lost its ability to pay its debts. In spite of several opportunities being afforded by this Adjudicating Authority, the Corporate Debtor has not come forward with any objection or statement with regard to its solvency.

10. The instant Petition is filed in accordance with law. The Respondent has failed to avail the opportunities to defend its case. In view of the facts narrated above, we are of the considered view that the debt and default in question are not in dispute and the Corporate Debtor is in no position to pay its debts. Thus it is a fit case to trigger a Corporate Insolvency Resolution Process. In these circumstances, this Adjudicating Authority has no option but to admit the Petition by initiating CIRP in respect of the Corporate Debtor with consequential orders/directions.

11. Hence, by exercising the powers conferred by Section 9(5)(1)(d) and other extant provisions of the Code, C.P. (IB) No. 340/BB/2019 is hereby admitted with the following directions:

- 1.) We hereby appoint **Mrs. Medha Kulkarni with Regn. No. IBBI/IPA-001/IP-P00121/2017-2018/1026**, who is a qualified Insolvency Professional, as an interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process in respect to the Corporate Debtor namely, M/s Kapuyt Clothing Private Limited, to carry out functions under the Insolvency and Bankruptcy Code, 2016, and the Rules made by the IBBI from time to time. Her consent and eligibility certificate are on record.



- 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 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 Securitization 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 the Moratorium period.
 - f. The order of moratorium shall have effect from the date of this order till the completion of the CIRP.
- 3.) The IRP is directed to follow all extant provisions of the IBC, 2016 and the rules including fees rules as framed by the IBBI from time to time.
- 4.) The Board of Directors and all the staff of the Corporate Debtor hereby is directed to extend full Co-operation to the IRP, in carrying out her functions as such, under the code and rules made by the IBBI.



- 5.) The IRP is directed to file her progress reports to the Adjudicating Authority from time to time about the steps taken in pursuance to the CIRP, and to take expeditious steps so as to complete the CIRP within the stipulated time.
- 6.) Post the case for report of the IRP on **15th July, 2020**.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

Shruthi