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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

CP (IB) 307/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.05.2020

Name of the Company: HJM Fuels Pvt Ltd
V/s.
Sambhu Textiles Mills Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.

2.

ORDER


The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court.

The present matter i.e. CP (IB) No. 307/9/NCLT/AHM/2018 is admitted as order in detail
is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 28th day of May, 2020.

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

C.P. (I.B.) No. 307/9/NCLT/AHM/2018

In the matter of:

HJM FUELS PVT. LTD

Having its Registered Office at:
A-301, "Aaryam" Near Pumping Station,
Fatehpura, Paldi,
Ahmedabad-380007,
Gujarat

..... Petitioner

Versus

SHAMBHU TEXTILES MILLS PVT. LTD

Having its Registered Office at:
Ranipur, Near. Ranipur Bus Stand, Narol
Ahmedabad, 383405
Gujarat.

.....Respondent

Order delivered on 28.05.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Kamlesh Vaidankar, Ms. Neelu K Vaidankar & Jinal
shah, Advocates, for the Petitioner.

Mr. Nandish Chudgar, Advocate for the Respondent.

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[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, HJM Fuels Pvt Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the **Corporate Debtor Company, namely, Shambhu Textiles Mills Pvt. Ltd.**

2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U50500GJ2010PTC061576. The registered office of the Petitioner is situated at A-301, "Aaryan", Near Pumping Station, Fatehpura, Paldi, Ahmedabad. The present Petition is filed through Authorised Person Shri Maulik Harishbhai Mehta, residing at A-6, Nikita Apartment, Opp. Fathnagar, Tubewell, Paldi, Ahmadabad.

3. The Respondent/Corporate Debtor, namely, Shambhu Textiles Mills Pvt. Ltd. was incorporated on 23.09.1996 with CIN: U17110GJ1996PTC030772. The authorised capital of the company is INR.4,55,000,00.00 (Rupees Four Crore Fifty Five Lakh

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Only) and the paid-up capital is INR.4,20,980,00.00 (Rupees Four Crore Twenty Lakh Ninety Eight Thousand Only). The registered office of the Corporate Debtor Company is situated at: Ranipur, Near Ranipur Bus Stand, Narol, Ahmadabad.

4. The present petition has been preferred by the Operational Creditor, HJM Fuels Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor Company, namely, **Shambhu Textiles Mills Pvt. Ltd.**

5. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for **INR.87,23,817** (Rupees Eighty Seven Lakh Twenty Three Thousand Eight Hundred Seventeen Only) **along with interest @ 18% per annum** pending payment. That the Operational Creditor was supplying Steam Coal to the Respondent used in the boiler of the Respondent during its manufacturing process. The Respondent used to make part payments periodically in random manner, towards the goods sold and supplied to it by the Petitioner. That by the end of November, 2017, the outstanding amount became huge and the

Respondent was making part payment. That the record of the ledger accounts revealed that the bill raised during the period from 26.06.2015 to 28.11.2017 were not paid by the Respondent. It is very pertinent to know that during the said period **26.06.2015 to 28.1.2017**, the Petitioner had supplied goods (Steam Coal) to the Respondent in around 35 different trucks loads at different point of time.

In this regard various invoices/bills were raised by the Operational Creditor in proportion to the work carried on by the Operational Creditor and the same were duly accepted by the Corporate Debtor.

Details of invoices	Date of invoices	Amount(INR)	Outstanding amount	Interest in outstanding amount @ 18% P.A
106	26.06.2015	245524	245524	119991
112	27.06.2015	208553	208553	101820
124	30.06.2015	212940	212940	103646
126	30.06.2015	180823	180823	88014
16	03.07.2015	159939	159939	77612
34	08.07.2015	166608	166608	80437
63	13.07.2015	164268	164268	78903
87	16.07.2015	290277	290277	138999
122	20.07.2015	287761	287761	137227
132	22.07.2015	163566	163566	77839
166	27.07.2015	354919	354919	168027
196	31.07.2015	114543	114543	54002
222	31.07.2015	226863	226863	106955
17	03.08.2015	117877	117877	55399
51	07.08.2015	115128	115128	53880
57	10.08.2015	111222	111222	51887
65	10.08.2015	121621	121621	56739
72	12.08.2015	259887	259887	120986
105	17.08.2015	110445	110445	51144
114	18.08.2015	139527	139527	64542
132	22.08.2015	123765	123765	57006
137	22.08.2015	134850	134850	60112
155	24.08.2015	86296	86296	39663
14	08.05.2016	117180	117180	38949
83	20.10.2016	102866	102866	25821
29	07.02.2017	124975	124975	24591
49	10.02.2017	166287	166287	32474
101	16.02.2017	183681	183681	35327
135	21.02.2017	164780	164780	31286

139	22.02.2017	196121	196121	37139
141	23.02.2017	202270	202270	38204
153	25.02.2017	182735	182735	34334
685	20.11.2017	222952	222952	12424
690	25.11.2017	214334	214334	11415
694	28.11.2017	216442	216442	11208
Total		6381365	6360924	2362893
Total outstanding amount	INR 87,23,817.00			

6. It is submitted that the said invoices/bills are still outstanding and have remained unpaid till date. That as on date there is an outstanding amount of **INR.87,23,817** (Rupees Eighty Seven Lakh Twenty Three Thousand Eight Hundred Seventeen Only) **along with interest @ 18% per annum**), which is **due and defaulted and payable by** the Corporate Debtor. **Date on which the first Default occurred is 26.06.2015.**
7. It is submitted that the Form No.3 demand notice was issued by the operational creditor on 13.04.2018 under the provisions of Insolvency and Bankruptcy Code, 2016.
8. It is submitted that the Respondent kept paying till **28.11.2017** i.e., till the time the Petitioner was supplying the goods. However, the moment Petitioner called upon the Respondent to make payment towards huge outstanding amount before any more supply, the Respondent stopped transferring even the part payment. Thus, there was no dispute as to quality and

quantity of the goods, supply to the Respondent. By making part payment towards earlier outstanding, the Respondent kept luring, the Petitioner to keep supplying the further goods to it.

9. It is submitted that the Petitioner is not the only victim of the Respondent. The Respondent has trapped and financially ruined several other suppliers, vendors and consequently, the other vendors/suppliers have filed Insolvency Petitions against the Respondent.
10. It is submitted that **the last payment received from the corporate debtor was on 28.11.2017 for INR. 1,99,996.46.** It shows that the Petitioner had maintained the running account in respect of goods supplied to the Respondent and the Respondent was making part payments randomly, sometimes twice or thrice a month.
11. It is submitted that after issuance of Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, the Respondent came out with false, fabricated and baseless theory of dispute by fabricating to back dated letters, debit note, reports etc. Thus, by making up back dated documents, the Respondent makes a weak an unsustainable attempt to wangle out the provision of the IB Code. The Petitioner took strong

objection against these fabricated **back dated document and made a clear statement before this Hon'ble Tribunal** during the hearing that the Petitioner had never received any such documents and all these documents have been fabricated in back date to deceive not only the Petitioner but also to this Hon'ble Tribunal. In view of this, the Hon'ble Tribunal passed the judicial order dated 30.09.2019 directing the Respondent to produce the proof to show the documents which were sent and delivered to the Petitioner at the alleged point of time.

12. It is submitted that upon insistence by this Hon'ble' tribunal as well as by the Petitioner herein as to the proof of dispatch and delivery of these alleged documents, the Respondent ultimately produced an **affidavit by its Peon stating that they have a practice of sending documents through ordinary post and hence there is no proof of dispatch of delivery.**

13. It is further submitted that the Respondent had produced debit note dated 12.04.2017 **along with its reply to the petition is afterthought and fake.** It is submitted the bare look of the said debit note shows that it was hurriedly prepared and back dated after service of demand notice under Section 8 of Insolvency

and Bankruptcy Code, 2016. Whenever, a debit notes in **respect of goods returned or rejection of goods** is prepared, the debit note must reflect the bifurcation between the amounts of the **goods and application VAT/GST** paid on it. This enables the seller to reserve VAT/GST **genuine goods return/ good rejection** cases. Hence, in the present case the debit note is hurriedly drafted for the entire amount of **INR. 27,50,000.00 with any such bifurcation. So the debit note implies that the said amount of towards the goods supplied and not sales tax is included.**

14. It is submitted that the Respondent has nowhere **pleaded** that it has **returned the goods to the Petitioner**. On the contrary, the Respondent argues that it consumes the entire quantity of Steam-Coal supplied to it one after another in total around 35 Trucks during two years and after consumption of the coal supplied during two years in different consignment, it realised that the coal was of inferior quality. So the Respondent has not returned any of the goods supplied to it and hence, consumed the entire quantity of the coal in its boiler. Hence, the Respondent cannot claim that the coal was an inferior quality.

15. It is submitted that Petitioner had paid applicable sales tax on the goods supplied by it to the Respondent and

the Respondent must have taken in put tax credit of the same, however, with the malicious intention, the Respondent deliberately **did neither produce its ledger account nor did it produce its GST** returns to prove that it has rejected the goods supply by the Petitioner. Thus, it is apparent that there was **no existing dispute between the parties and the defence taken by the Respondent is not only moonshine** defence but also serious contempt of the Court.

In response to the present I.B. Petition, filed by the Petitioner, **the Respondent has filed its written submission as follows:**

15.1 It is submitted that the O.C has suppressed the fact that there was a pre-existing dispute with regard to the aforesaid allege outstanding dues. It is the case of the Respondent that the alleged payment has not been made to the Petitioner, not because the Respondent is unable to pay but because there is a pre-existing dispute with the Petitioner on account of the fact that the goods in question (Steam-Coal) supplied by the Petitioner were a sub-standard quality as a result the Respondent suffered huge losses inasmuch as the quality of the finished products manufactured by the Respondent were not

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of required quality and hence, the customers of the Respondents made several complaints and did not make the payments to the Respondents. That the Respondent reportedly sent several complaints to the Petitioner, much before the present proceedings, in the year 2015-2017. The Petitioner had also agreed to compensate the Respondent for losses suffered by the Respondent. Accordingly, a debit note was also issued by the Respondent to the Petitioner. However, the Petitioner did not fulfil its assurance and did not compensate the Respondent.

15.2 It is submitted that the Respondent, much before the present proceeding, on 24.07.2015, issued a letter to the Petitioner raising concerns about the quality of coal supplied by the Petitioner. In the said letter, the Respondent also conveyed the Petitioner that the random samples tested by laboratory (Independent laboratory) showed higher moisture content and less than permissible GCV. **The laboratory analysis report is at page no.177 of the written submission of the Corporate Debtor).**

15.3 It is further submitted that the random sampling and analysis, on 24.08.2015, it is revealed that the moisture of the coal supplied is against the normal standard. Therefore, again on 05.11.2016, the

Respondent issued another letter complaining about the inferior quality. In the said letter, it was mentioned that because of the assurance given by the Petitioner that the goods would be of required quality, the **Respondent had again started giving orders to the Petitioner, however, the quality of the goods of the Petitioner has not improved.** It was also conveyed to the Petitioner that the Respondent is incurring losses on account of the substandard quality of the goods supplied by the Petitioner. It is further stated that the laboratory analysis report on **page no. 184 and 185 are annexed with the reply of the Respondent.**

16. It is submitted that in view of the standard quality of the goods the Respondent again stopped accepting the goods of the Petitioner and issued a Debit Note of an amount of INR. 27,50,000.00 dated 12.04.2017.**(at page no. 189 of the at annexure F, of the paper book).**

17. It is further submitted that since there was no improvement in quality of goods, the Respondent again issued another letter dated 08.12.2017 complaining about the inferior quality of goods and calling upon the Petitioner to compensate the

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Respondent for the losses suffered by it. **(at page no. 192 of paper book.)**

18. It is submitted that during the course of arguments, the counsel for the Petitioner denied the receipt of the above referred letters (letters dated 24.07.2015, 05.11.2016, 12.04.2017 and 18.12.2017). The Respondent, therefore, filed an additional affidavit dated 14.10.2019. **(at page 195 /251)**. It has been stated on affidavit by the Director of the Respondent that as is the usual practice in business, the aforesaid letters were issued to the **Petitioner by regular post through Indian Postal Department. It has been also mentioned in the affidavit that as per the usual practice, the peon of the company was dispatching all the letters by dropping it into the nearby post box or at nearby Post Office. An affidavit of the Peon is also filed in the present proceeding which is at page 199/255.**

It is further submitted that the laws of India permits issuance and dispatch of the letters by ordinary post. All over the country for years together the business community send the letters by ordinary post and, therefore, no fault can be found with the Respondent if the letters in usual course of business are sent by ordinary post. **The insistence of the Petitioner to**

require the Respondent to produce proof of receipt of such letters by the Petitioner is absolutely ill-founded. The provisions of the IBC about dispatch of notice by Registered Post is only with **regard to Notice to be issued under Section 8(1) of IBC, which cannot apply to letters issued in usual course of business between the parties.**

19. It is submitted by the Applicant that there is no suit or arbitration pending between the parties. The petition filed by the Petitioner is otherwise complete in all respects.

20. It is further submitted by the Applicant that in the matter of ***Mobilex Innovation Pvt ltd Vs. KarusaSoftwere Pvt Lts.***, Hon'ble Supreme Court has made it very clear any dispute raised by the corporate debtor after service of Demand Notice envisaged u/s 8 of IBC shall not be construed to be an existing dispute. In present case, the corporate debtor **has not produced any single document to prove that there is any dispute between the parties prior to the demand notice.**

21. It is submitted that the present petition is complete in all respects. The present petition is filed within limitation period. The resent petition fulfils all criteria

laid down under the provisions of Insolvency and Bankruptcy Code, 2016 for admission of the present petition.

22. In light of the abovementioned facts and circumstance the Applicant's Prayer before this Adjudicating Authority **is to Cause public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission** of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 to be admitted and be pleased to pass any further order in the interest of justice.

23. Now, the Petition is filed on 26.06.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.87,23,817** (Rupees Eighty-Seven Lakh Twenty-Three Thousand Eight Hundred Seventeen Only) **along with interest @ 18% per annum)**

24. The case was taken up by this Adjudicating Authority on 16.07.2018, 27.08.2018, 11.10.2018, 29.11.2018, 02.01.2019, 13.02.2019, 05.04.2019, 18.06.2019, 30.07.2019, 19.08.2019, 05.09.2019, 17.09.2019,



30.09.2019, 16.10.2019 and 20.11.2019. The Arguments of the counsels of the Operational Creditor and Respondent were heard. On 26.11.2019 written submission was submitted on behalf of the applicant. On 11.07.2019, rebuttal affidavit was filed on behalf of the Petitioner/Operational Creditor.

25. The matter was finally heard on 20.11.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may **be admitted** and an Interim Resolution Professional **appointed in** accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

26. Further, the Operational Creditor **has suggested** name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

OBESRVATIONS

27. The Application has been filed on 26.06.2018 for **operational debt due** and defaulted of **INR.87,23,817.00** (Rupees Eighty-Seven Lakh Twenty Three Thousand Eight Hundred Seventeen Only) as per the respective Invoices enclosed.

27.1 Date of invoice is from 16.12.2014 to 29.04.2015.

27.2 Date of first default is **26.06.2015**

27.3 Application is filed within the limitation period **as the date of default is 26.06.2015 and the date of filing this petition under Section 9 of IBC is 26.06.2018. the last payment received from the corporate debtor was on 28.11.2017 for INR. 1,99,996.46.**

ORDER

28. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. 27, 27.1,27.2 and 27.3 this Adjudicating Authority is satisfied that,

- a) Existence of operational debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on 26.06.2015

Petition has been filed within the limitation period as the date of default started 26.06.2015 and the petition has been filed on 26.06.2018 and the last

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payment received from the corporate debtor was on 28.11.2017 for **INR. 1,99,996.46.00**

d) Existence of dispute prior to the notice issued by the Operational Creditor is not found.

29. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this Adjudicating Authority shall declare 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

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(a) 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 this order till the completion of the Corporate Insolvency Resolution Process.

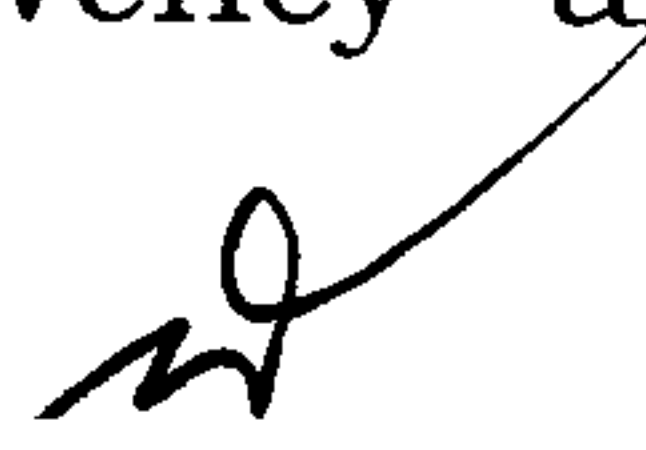
30. The Petitioner/Operational Creditor has suggested the name of KedarLaddha to act as Interim Resolution Professional in the present Petition

31. **Hence, this Adjudicating Authority hereby appoints Mr. Kedar Laddha, having Insolvency Professional Registration Number IBBI/IPA-001/IP.P00586/2017-2018/11115, having Email-Id: Kladdha@kpsjca.com Address: 6/5 Sahyog Apt, B/h Keshavnagar, NrSubhash Bridge, RTO Circle, Keshavnagar, Ahmedabad-380027an Interim Resolution Professional.**

The IRP is advised to file declaration disclosure statement within two days with this Registry.

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

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Bankruptcy Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case, there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

32. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution

Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP (IB) No.307/9/NCLT/AHM/2018 is admitted on 28.05.2020 with the **above Observations and Directions.**


(Prasanta Kumar Mohanty),
Adjudicating Authority
Member (T)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)

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