

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SIGNLE BENCH, CHENNAI**

CP/527/ (IB)/CB/2017

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. Aruppukottai Sri Jayavilas Limited

Vs.

... Operational Creditor

M/s. Sri Renga Creaative Apparels (India) Private Limited

... Corporate Debtor

Order delivered on 23rd of April, 2018

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

*For Operational Creditor(s): Mr. B. Dhanaraj, Counsel
For Corporate Debtor (s) : Mr. Sam Jayaraj Houston for M/s. Sarvabhauman Associates*

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is CP/527/(IB)/CB/2017 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, I&B Code, 2016) r/w the Insolvency &


Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. In this case, this Adjudicating Authority, after hearing the Counsel for the Operational Creditor, has passed an ex-parte order on 19.07.2017 admitting the Application by initiating CIRP against the Corporate Debtor, declaring moratorium and appointing the IRP. Pending CIRP, the Corporate Debtor filed Writ Petition under Article 227 of the Constitution of India before the Hon'ble High Court of Madras challenging the Order dated, 19.07.2017. The Hon'ble High Court, vide its Order in CRP (NPD) No.2552/2017 and CMP Nos.12164 and 13209/2017 dated 24.10.2017 set aside the Order dated, 19.07.2017 passed by this Adjudicating Authority and directed to decide the

matter on merits, after giving opportunity to the Corporate Debtor to put forward their case.

On 27.11.2017, the case was listed and the Counsel for the Corporate Debtor was directed to file counter and the matter was posted on 08.12.2017. On 08.12.2017, the Counsel for the Corporate Debtor submitted that he has not been provided with all the papers by the Operational Creditor, and accordingly, the Counsel for the Operational Creditor was directed to serve all the papers to the Counsel for the Corporate Debtor and the matter was adjourned to 15.12.2017 for arguments. On 15.12.2017, during the course of arguments, the Counsel for the Corporate Debtor has admitted the liability, and prayed for an opportunity to the Corporate Debtor for making payment of the outstanding debt. Therefore, in order to give an opportunity to the Corporate Debtor, time was enlarged to file the schedule of payments. Thereafter, the case was adjourned from time to time for filing revised schedule for payment. On 03.04.2018, the Counsel for the Corporate Debtor has brought two cheques

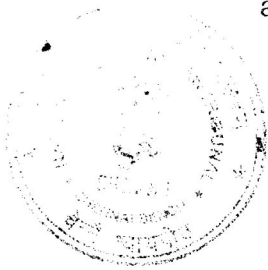
amounting to Rs.10 Lakhs along with revised scheduled for payment. But, the Operational Creditor has not accepted the same, and the Corporate Debtor was directed to arrange Rs.20 Lakhs upfront in order to give life to the proposed terms and conditions of the settlement between the parties. But the said proposal was not acceptable to the Operational Creditor, the Operational Creditor has filed an Affidavit dated, 07.04.2018 stating therein that the proposal made by the Corporate Debtor is not accepted, and offered counter proposal for paying the 1st instalment of Rs.30,00,000/-. But the Corporate Debtor could not arrange the same, due to which the proposal for compromise was defeated. Now, both the sides did agree to argue the case on merits.

Heard the Counsels for the Operational Creditor and Corporate Debtor at length and perused the record. 



3. The Operational Creditor has claimed Rs.1,76,78,612.59p including interest as on 10.04.2013, which the Corporate Debtor failed to pay.

The brief facts of the case are that the Corporate Debtor approached the Operational Creditor for supply of cotton yarn 2/40's DHPR (Hanks). Accordingly, the Operational Creditor has supplied the cotton on various dates to the Corporate Debtor. The details of supply made and Invoices raised by the Operational Creditor to the Corporate Debtor are provided at page 14 of the typed set filed with the Application. The copies of Invoices are placed at pages 47 to 62 of the typed set filed with the Application. The Corporate Debtor has made part payments to the Operational Creditor but has failed to make the rest of the payments even after repeated requests and reminder made by the Operational Creditor, and the opportunities provided during the pendency of the application before this Authority.



4. The Operational Creditor has sent a Demand Notice dated 15.03.2017 under Section 8 of the I&B Code, 2016, to the Corporate Debtor demanding the outstanding debt, the copy of which is placed at pages 20 to 22 of the typed set filed with the Application, wherein the amount of debt due, the details of transaction on account of which debt fell due and the date of default are being mentioned. The postal receipts and acknowledgement as proof of sending the notice and service thereof are also placed on record, to which the Corporate Debtor has given reply which is placed at page 103 of the typed set filed with the Application wherein it has been claimed that it has paid more than what was due.

5. The Corporate Debtor has confirmed the claim made by the Operational Creditor vide its communication dated 19.01.2012 which is placed at page 45 of the typed set filed with the Application and also vide its e-mail dated 06.11.2013 placed page 72 of the typed set filed with the Application, the Corporate,

Debtor has stated that it is confident to complete the entire payment on or before the financial year 2013 - 2014. Similarly, in an e-mail communication dated 28.03.2014 which is placed at page 64 of the typed set filed with the Application, there is an admission on the part of the Corporate Debtor with regard to the payments due, which were to be made to the Corporate Debtor.

6. The Operational Creditor has complied with Section 9 (3) (b) of the I&B Code, 2016, by filing Affidavit, wherein under para 2, it has been deposed that the Corporate Debtor has not given notice as regards any pending litigation or arbitration proceedings initiated by it in connection with dispute on the unpaid operational debt. The certificate attested and issued by the Chief Manager of the State Bank of India dated, 10.07.2017 has been placed on record wherein it has been stated that no payment towards the unpaid operational debt has been received by the Operational Creditor from the Corporate Debtor from 10.04.2013 till date.

7. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt as claimed by the Operational Creditor. Therefore, CP/527/(IB)/CB/2017 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

8. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit 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 (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.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government. ✓

10. Mr. R. Raghavendran has been proposed by the Operational Creditor as IRP whose name appears in the Panel of Insolvency Professionals recommended by the IBBI. Therefore, Mr. R. Raghavendran is hereby appointed as IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

12. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

13. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

The address details of the IRP are as follows: -

Mr. R. Raghavendran,

Regn.No: IBBI/IPA-001/IP-P00211/2017-18/10411

Flat No.3, "Dhruvatara"

Apartments, 241,


Dr. Rajendra Prasad Road,

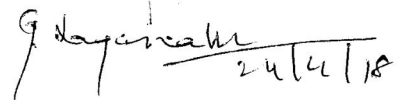
Tatabad, Coimbatore-641 012.

Email: ragavca@hotmail.com

14. Order is dictated and pronounced in open court in the presence of the Counsels for Operational Creditor and Corporate Debtor.

P.ATHISTAMANI


[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)


24/4/18

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