

In the National Company Law Tribunal  
Mumbai Bench.

C.P. (IB)-1980/MB/2018

Under Section 9 Insolvency & Bankruptcy Code, 2016

In the matter of

Shanaya Fashions : Petitioner/ Operational Creditor

V/s

Oneworld Industries Pvt. Ltd. : Respondent/ Corporate Debtor

Heard on 12.11.2018

Order delivered on: 16.11.2018

Coram:

*Hon'ble Shri M.K. Shrawat, Member (Judicial)*

For the Petitioner(s) : 1. Mr. Anil D'Souza, Advocate.

For the Respondent(s) : 1. Mr. Chandrakant Mhadeshwar, Advocate.

*Per M.K. Shrawat, Member (Judicial).*

**ORDER**

1. A Petition was filed in Form No.5 by M/s. Shanaya Fashions, Operational Creditor, under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as "Rules") in the capacity of "Operational Creditor" on 07.06.2018 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("The Code").

2. In the requisite Form-5, under the Head "Particulars of Corporate Debtor" the description of the Debtor is stated as "Oneworld Industries Pvt. Ltd., Todi Estate, 1<sup>st</sup> Floor, 'B' Wing, Sunmill Compound, Lower Parel (West), Mumbai-400013".

3. Further, under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹ 7,78,18,809/-, payable as on 21.03.2018.

**Submissions by the Operational Creditor**

4. The Ld. Counsel of the Operational Creditor submitted that the Operational Creditor sold, supplied and delivered to the Corporate Debtor certain Goods i.e. Fabric, pursuant to the orders placed by the Corporate Debtor and raised Invoices Nos. from SF/FEB/-08/2018/18 to SF/MAR-21/2018/13 dated 21.03.2013 for an amount of ₹7,78,18,809/- on the Corporate Debtor.

4.1. The Corporate Debtor received the Goods supplied, however, allegedly failed and neglected to pay the agreed consideration for the sale of the Goods i.e. ₹7,78,18,809/-.

5. As a consequence, the Operational Creditor sent a Demand Notice dated 09.05.2018 in Form 3 u/s.8 of The Code read with Rule 5 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, along with a copy of said defaulted Invoices, wherein informed that the Debtor Company had placed an Order for Suiting and Fabrics with quantity and specification which was supplied as per the Invoices annexed therein. The said Section 8 Notice contains the evidence of Purchase Order and evidence of Supply of Goods as per the Invoices. In the said Notice it is also alleged that the Operational Debtor had utilized the said Goods without any objection, however, not honoured the commitment of payment.

6. The Corporate Debtor after receipt of the said Demand Notice dated 09.05.2018 allegedly acknowledged the same as also the Debt. It is stated that no “dispute” was raised by the Corporate Debtor, however, not paid the impugned outstanding Debt amount.

**Submissions by the Corporate Debtor**

7. The Respondent/ Corporate Debtor submitted that Oneworld Industries Pvt. Ltd. is engaged in trading in premium suiting material for all men’s wear. The Company

procures Indian made and Imported fabrics made in China and Other Overseas countries and sells to various garment manufacturers/Vendors/brands in India.

7.1. According to the Respondent Debtor, the Petitioner and the Respondent had business relationship. It is stated that the Corporate Debtor, being Trader and Dealer, used to place various purchase order for fabrics materials as per the requirement of its own clients and used to supply fabrics materials received from the Petitioner to its clients.

7.2. Further stated that the Debtor Company was facing acute difficulties in realisation of receivables mainly on account of Demonetisation, implementation of GST by the Government and related procedural technicalities of e-way Bill etc. and unfavourable market conditions which have affected fabrics business across the country. It is also alleged that many of the parties started returning the fabrics supplied on account of various reasons like (i) their financial difficulties due to Demonetization, Implementation of GST etc., (ii) Defective/ Sub-standard/ difference in quality supplied (iii) Short supplies of the ordered fabrics. Thus these receivable amounts are also held up adversely affecting the liquidity position of the Company and operations of the Company.

8. It is worth to mention at this juncture that the Respondent Debtor has "Admitted" the impugned outstanding Debt amount and cited the reason for outstanding as *"not received the payment from our client's to whom the material was supplied"*.

### **Findings**

9. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established. Demand Notice has been issued to the Respondent Debtor, however, the Respondent Debtor has not raised any "dispute" of the outstanding claim within the 10 days' time prescribed u/s.8(2) of The Code. Rather, the Debtor has admitted the default in repayment of the outstanding Debt amount adducing reasons for non-payment as due

to implementation of Demonetization and GST, non-receipt of dues in time from his clients, etc.

10. As a consequence, after the expiry of the period as prescribed and keeping the admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Applicant, it is my conscientious view that this Petition deserves "Admission".

10.1. It is also worth to note that in one of the case of a sister-concern as a Corporate Debtor, viz. "Zephyr Fabric Trading LLP", Mumbai-400013 an Order has been passed "Admitting" Corporate Insolvency Resolution Process (CP No.1978/IB Code/NCLT/MB/MAH/2018) almost on identical circumstances.

11. The Operational Creditor has proposed the name of the Interim Resolution Professional Mr. Ajay Gupta, A-701/ 702 La-Chapelle, Evershine Nagar, Malad (West), Mumbai – 400 064, email address: fca.ajaygupta@gmail.com, Registration No. IBBI/IPA-001/IP-P00192/2017-18/10371. The IRP has submitted his consent in Form No.2 and also certified that no Disciplinary Proceedings are pending against him. The proposed IRP is hereby appointed. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

12. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the

Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during “**Moratorium** Period”. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

13. Accordingly, this **CP (IB)-1980/(MB)/2018 stood** Admitted.

14. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-  
**M.K. SHRAWAT**  
Member (Judicial)

Date : 16.11.2018.  
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