

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 894/ND/2018

(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:

MR. ASHVIN KUMAR BABULAL DAVE, SOLE PROPRIETOR, M/S.

R. ASHVIN KUMAR & Co.

...Applicant/

Operational Creditor

VERSUS

M/S. ALKA FABRICS PVT. LTD.

...Respondent/

Corporate Debtor

Pronounced on: 30.10.2018

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant : Mr. Dhruv Gupta, Adv.

For the Respondent : ---

MEMO OF PARTIES

MR. ASHVIN KUMAR BABULAL DAVE,

Sole Proprietor,

M/s R. Ashvin Kumar & Co.

Registered Office:

59, NandBhavan, 2nd Floor, R.No.42,

New Hanuman Lane, Kalbadevi Road,

Mumbai-400002

...Applicant/

Operational Creditor

VERSUS

M/S ALKA FABRICS PRIVATE LIMITED

Registered office at:

454, 1st Floor, Haveli HaiderQuli,

Chandni Chowk, Delhi- 110006

...Respondent/

Corporate Debtor

ORDER

1. The present application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Ashvin Kumar Babulal Dave as

the sole proprietor of M/s R. Ashvin Kumar & Co. (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s Alka Fabrics Private Limited (for brevity 'The Company').

2. The Applicant M/s R. Ashvin Kumar & Co. is a reputed, renowned firm engaged in the business of supplying good quality of cloth and fabrics.
3. The principal place of business of applicant is having its registered office at 59, NandBhavan, 2nd Floor, R.No.42, New Hanuman Lane, Kalbadevi Road, Mumbai-400002.
4. The Respondent (for brevity 'The Company') namely M/s Alka Fabrics Private Limited is the company incorporated on 20.11.1990 under the provisions of Companies Act, 1956 with CIN No. U74899DL1990PTC04213.
5. The company is having its registered office at 454, 1st Floor, Haveli HaiderQuli, Chandni Chowk, Delhi-110006.
6. The Authorised Share Capital of the company is Rs. 3,50,00,000/- and Paid Up Share Capital of the company is Rs. 2,88,72,000/- as per Master Data of the company.

7. It is the case of the Applicant that the Applicant and the Respondent company shared a long business relationship wherein the Company placed huge orders for grey mulmul cloth and other types of cloth and the Applicant supplied the corresponding orders placed by corporate debtor on day to day basis.
8. The applicant claims that since 2009 several orders were placed by the company, which were duly delivered by the applicant for which several invoices were raised by the applicant.
9. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 62,59,723/- inclusive of interest at the rate 18% per annum as on 01.06.2018.
10. The Applicant wrote a letter dated 08.01.2014 requesting the company to make the payments of outstanding operational debt. The respondent company vide its letter dated 06.02.2014, admitted the outstanding operation debt of Rs. 34,23,433/- and requested a period of 6 months to clear the dues mentioning that the company

was facing financial problems and assured the applicant that the payment shall be made in full by the end of July-August,2014.

11. The Applicant vide its letter dated 15.03.2015 acknowledged the fact that the Director of the respondent company visited the Applicant's office at Mumbai personally on 10.03.2015 and requested not to take any legal action against the respondent company and further requested for another 2 years time to clear the outstanding dues. However, upon such pleading and requests of the respondent company, the Applicant conditionally agreed that the respondent company shall acknowledge the debt outstanding by sending the ledger account statement between the parties at the end of every financial year.
12. In response to the applicant's letter dated 15.03.2018, the respondent company has replied vide series of letters wherein the respondent had admitted the due amount and also annexed ledger account statements of every financial year along with the letters confirming the due amount, details of which are as follows:

- a) Letter dated 10.04.2015 with ledger accounts for a period of 01.04.2014 to 31.03.2015 showing closing balance of Rs. 34,23,784/-.
 - b) Letter dated 16.04.2016 with ledger accounts for a period of 01.04.2015 to 31.03.2016 showing closing balance of Rs. 34,23,784/-.
 - c) Letter dated 13.04.2017 with ledger accounts for a period of 01.04.2016 to 31.03.2017 showing closing balance of Rs. 34,23,784/-.
13. The Applicant from time to time requested the Company to clear the outstanding amount vide various letters however, the respondent company failed to honor its commitment and failed to pay the unpaid debt of the Applicant. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code was issued on the Company.
14. Despite the demand notice sent u/s 8 of the Code, the Company has failed to pay the amount demanded nor has replied to the demand notice raising any dispute, hence this application, seeking to unfold the process of CIRP.

15. This Tribunal is constrained to proceed with the matter *exparte* in relation to the Corporate Debtor, since the Section 8 notice and the present application were duly served on the respondent company and proof of service along with service affidavit is duly filed by the applicant and inspite of service on company none appeared for corporate debtor.
16. An affidavit u/s 9(3)(b) is filed by the Applicant. The applicant has attached the copy of the **Ledger Account statement** from 1st April 2010 upto 31st March 2014 maintained by the applicant showing all the transactions between the applicant and the company.
17. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. The amount of default exceeds Rs. 1,00,000/- as per the requirement under section 4 of the Code, 2016. Hence, this application is within the purview of section 9 of the IBC, 2016.

19. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
20. As a consequence of the above facts and record, application is admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:
- 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.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) 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.

(3) The provisions of sub-section (1) shall not apply to—

a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(4) The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

21. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Mr. Lekhraj Bajaj having registration no. IBBI/IPA-002/IP-N00039/2016-17/10078 having email address lekhrajbajaj@rediffmail.com as the IRP of the Corporate Debtor. The IRP is directed to take all such

steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

22. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016
23. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)