

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1443/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

Vikash Parasprampuria

Sole Proprietor of Chiranjilal Yarn
Traders

(PAN: AFVPP0517M)

...Operational Creditor

v/s.

Bombay Rayon Fashions Limited

[CIN: L17120MH1992PLC066880]

...Corporate Debtor

Order Delivered on:07.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Viraj Parikh i/b Mr. Saurabh
Pandya, Advocate.

For the Respondent:

Mr. Sunil A.Vyas a/w Mr. Deep
Morabia i/b Fox Mandal & Association,
Advocate.

ORDER

Per: Kishore Vemulapalli Member, Judicial

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Vikash Parasprampuriah Sole Proprietor of Chiranjilal Yarn Traders, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Bombay Rayon Fashions Limited (“the Corporate Debtor”), [CIN: L17120MH1992PLC066880].
2. The Corporate Debtor is a company incorporated on 21.05.1992 under the Companies Act, 1956, as a public company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is L17120MH1992PLC066880. Its registered office is at 3rd Floor, DLH Mangal Murti Building, Linking Road, Santacruz (West) Mumbai-400054. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.1,60,87,838/- (Rupees one crore sixty lakh eighty-seven thousand eight thirty eight only) including the interest at the rate of 18% p.a. The date of default is 1.11.2020.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor i.e. Chiranjilal Yarns Private Limited is an established trader and supplier of different types of yarns to manufacturers in India. On basis of the Petition the default of an amount of Rs. 1,60,87,138/- (“**Debt Amount**”) of which the principal amount is Rs. Rs. 97,87,220/- and the remaining amount is interest. The amount is due and payable under 9 invoices, of which 5 invoices are fully unpaid and 1 is partly paid.
 - b) For this purpose, the Operational Creditor has raised various invoices in respect of supply of Goods to the Corporate Debtor as

listed below which are attached as Annexure I B placed at pp No.19-27 of the Petition.

Sr. No	Invoice No.	Date	Invoice Amount	GST Amount	Total Amount Due	Due Date for payment
1.	E664	22/05/2017	24,98,429	-	24,98,429	06/06/2017
2.	GSTSL/168	29/07/2017	38,41,085	1,92,054	40,33,139	13/08/2017
3.	GSTSL/243	08/08/2017	25,16,573	1,25,829	26,42,401	23/08/2017
4.	GSTSL/577	19/05/2018	20,64,000	2,47,680	23,11,680	03/06/2018
5.	GSTSL/4063	16/01/2020	26,01,300	3,12,156	29,13,456	18/01/2020
6.	GSTSL/4064	16/01/2020	26,01,300	3,12,156	29,13,456	18/01/2020
7.	GSTSL/4114	21/01/2020	13,70,685	1,64,482	15,35,167	23/01/2020
8.	GSTSL/4176	25/01/2020	9,00,450	1,08,054	10,08,504	09/02/2020
9.	GSTSL/4257	01/02/2020	3,30,165	39,620	3,69,785	03/02/2020
	TOTAL				2,02,26,017	

c) The Operational Creditor submits that, the Corporate Debtor accepted the goods without any demur or any protest or dispute there by further made **Part Payments** on the invoices. The details of the invoices are as follows:

- I. Sr. No 5 to 9 the Corporate Debtor has failed to make any payment.
- II. Sr. No 4 has made only part payment.
- III. For remaining 3 invoices the Corporate Debtor has made payment of Principal amount with substantial delay.

d) The operational Creditor submits that, the latest reminder sent to the Corporate Debtor was on 14/09/2020 and 28/09/2020 to make payment of pending invoices as on date of letter, as maintained in the books of the Operational Creditor. The emails are attached as Annexure C placed at pp No.29-40 of the Petition.

- e) The Operational Creditor had served a Demand Notice dated 5.11.2020 to the Corporate Debtor which is at pp11 of the Petition in terms of section 8 of the IBC. The Demand Notice was duly served and delivered on corporate debtor dated 07.11.2020 through Speed post. The Corporate Debtor has not replied to the said Demand Notice.
- f) The Operational Creditor in its Written Submissions has stated that it is now settled law that where interest is a part of the agreement between the parties, it is considered to be a part of the Operational Debt. This has been conclusively decided by the Hon'ble NCLAT in para. 4 of its judgement dated 27th July 2018 in Company Appeal No.148 of 2018 in Pavan Enterprises v. Gammon India, wherein the NCLAT has held that *"If in terms of any agreement interest is payable to the Operational of Financial Creditor then the debt will include interest"*. A copy of the judgement is annexed as Exhibit B in Written Submissions.

Findings:

- 5. It is observed that, the corporate debtor had not filed the reply. Both the parties were directed to file Written Submissions, but only Operational Creditor has filed and the same is taken on record. The case was extensively argued by Counsel from both the sides.
- 6. The Last date of invoice is 01.02.2020 and the date of filing is 30.12.2020 and it is well within the Limitation. This Bench has jurisdiction to deal with this Company Petition.

7. It is observed by the Bench that the Corporate Debtor had time and again by its letter, invoices and by making part payment acknowledged its liability. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Therefore, the Application filed by the Operational Creditor is liable to be admitted.
8. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
9. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.
10. Under these circumstances, this Tribunal is of the considered opinion that the above company petition is liable to be admitted by passing the following order

ORDER

11. The petition bearing CP(IB) 1443/MB-IV/2020 filed by Vikash Parasprampuria Sole Proprietor of Chiranjilal Yarn Traders, (“the Operational Creditor”), under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Bombay Rayon Fashions Limited (“the Corporate Debtor”), [CIN: L17120MH1992PLC066880], is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- b) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) Mr. Santanu T Ray, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-02/IP-PN00360/2017-2018/11055. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of

one week from the date of receipt of this Order, in default of which coercive steps will follow.

- g) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Kishore Vemulapalli
Member (Judicial)

07.06.2022

Sd/-

Rajesh Sharma
Member (Technical)