

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

C.P. (IB) No. 1133/MB/2023

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

Under the matter of

Shree Hari Yarns Private Limited

(CIN: U17120PN2010PTC136433)

...Operational Creditor

v/s.

Exclusive Linen Fabric Private Limited

(CIN: U17299MH2020PTC336294)

...Corporate Debtor

Order Pronounced on: **05.09.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner : Mr. Rohit Gupta *a/w.* Ms. Poorva
Garg and Mr. Simon M. *i/b.* Mulla &
Mulla and Craigie Blunt & Caroe, Ld.
Counsel for the Petitioner.

For the Respondent : None present.

ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) on 27.11.2023 by **Shree Hari Yarns Private Limited** (“Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against **Exclusive Linen Fabric Private Limited** (“Corporate Debtor”) for the amount(s) payable to the Operational Creditor.
2. The Operational Creditor *viz.* Applicant in the captioned petition is a Private Company engaged in the business of yarn merchandise. The Corporate Debtor is a Private Company incorporated on 20.01.2020 under the Companies Act, 2013, having its Registered Address at Tex Centre Premises Society Gala 202, H Wing, 26/A, Opp. Chandivali Rd, Sakinaka, Mumbai City, Maharashtra - 400072.

Submissions of the Operational Creditor

3. The Operational Creditor submits that, at the oral request of the Corporate Debtor, it supplied the latter with various types and quantities of yarn. As against the said consignment of yarns, invoices were raised from 09.03.2021 till 13.04.2021, aggregating to a principal amount of INR 88,16,301/- as stipulated in the said invoices.
4. In terms of the afore-mentioned invoices, the Operational Creditor submits that amount is due as per its ledger maintained in its usual course of business to the tune of INR 1,29,08,449/- which includes interest @18% *p.a.* amounting to INR 40,92,148/- thereto. The Date of Default, as specified *via* Additional Affidavit *dated* 30.08.2024 filed pursuant to the clarification sought by this Bench in so far as the captioned petition is concerned, is 08.05.2021.

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5. The details pertaining to the said invoices have been extracted as hereunder:

STATEMENT REFLECTING OUTSTANDING PRINCIPAL AND INTEREST ON INVOICES RAISED DUE FROM 09.03.2021 TO 11.09.2023									
Sr. No.	Invoice Number	Invoice Date	Due Date of payment	Principal Amount	Payment Received	Date of Received Payment	No. of days delay till 11.09.2023	Due principal amount	Interest @18% till 11.9.2023
1	GST-8964	09/03/2021	03/04/2021	398,469	390,000	10/03/2021	916		-
					3,985	31/03/2021	916	4,484	2,026
2	GST-8965	09/03/2021	03/04/2021	844,125	825,000	10/03/2021	916		-
					8,441	31/03/2021	916	10,684	4,826
3	GST-8969	10/03/2021	04/04/2021	1,215,425	1,100,000	10/03/2021	915		-
					12,154	31/03/2021	915	103,271	46,599
4	GST-8970	10/03/2021	04/04/2021	664,432			915	664,432	299,814
5	GST-8971	10/03/2021	04/04/2021	550,993			915	550,993	248,626
6	GST-9040	10/03/2021	04/04/2021	1,178,898	1,150,000	10/03/2021	915		-
					11,789	31/03/2021	915	17,109	7,720
7	GST-9041	10/03/2021	04/04/2021	951,468	925,000	10/03/2021	915		-
					9,515	31/03/2021	915	16,953	7,650
8	GST-9090	12/03/2021	06/04/2021	407,764	400,000	10/03/2021	913		-
					4,078	31/03/2021	913	3,686	1,660
9	GST-9162	12/03/2021	06/04/2021	1,727,558	1,700,000	09/03/2021	913		-
					17,276	31/03/2021	913	10,282	4,629
10	GST-9163	12/03/2021	06/04/2021	411,572	300,000	09/03/2021	913		-
					4,116	31/03/2021	913	107,456	48,382
11	GST-9164	12/03/2021	06/04/2021	342,195	300,000	10/03/2021	913		-
					3,422	31/03/2021	913	38,773	17,457
12	GST-9806	22/03/2021	16/04/2021	1,027,630			903	1,027,630	457,619
13	GST-9807	22/03/2021	16/04/2021	293,608			903	293,608	130,748
14	GST-9808	22/03/2021	16/04/2021	1,468,042			903	1,468,042	653,741
15	GST-9924	25/03/2021	19/04/2021	129,645			900	129,645	57,541
16	GST-9925	25/03/2021	19/04/2021	275,496			900	275,496	122,275
17	GST-343	07/04/2021	02/05/2021	2,491,884			887	2,491,884	1,090,012
18	GST-615	13/04/2021	08/05/2021	1,601,873			881	1,601,873	695,959
Total								3,897,284	
GST Paid @ 5%								194,864	
Total				15,981,077	7,164,776			8,816,301	4,092,148

(In Coloum E - Rs.3985, 8441, 12154, 11789, 9515, 4078, 17276, 4116 & 3422 are Cash Discount given to the Corporate Debtor. The Credit Notes issued for the same can be seen at Page 35)

Total outstanding [H+I] as of 11.09.2023 : Rs. 1,29,08,449/-

6. The Operational Creditor claims that despite various reminders issued to Corporate Debtor to make the requisite payments, the same has not been acted upon at the behest of the latter, and more specifically so, at the backdrop of a Demand Notice issued by the Operational Creditor in FORM-3 on 18.09.2023 (and received by the Corporate Debtor on 20.09.2023, as evidenced by Proof of Service which forms part of the record hereto). The Applicant

thus claims that the “..Operational Creditor has not received any payment from the Corporate Debtor with regards to their claim.”

Hence, the present petition.

Submissions of the Corporate Debtor

7. Upon perusal of records, we note that the Corporate Debtor herein was directed to file its Reply *vide* Order dated 31.01.2024. The same was duly dispensed with, and the Corporate Debtor has raised the following contentions *vide* its Affidavit-in-Reply dated 10.02.2024, which duly forms part of the record(s) hereto.

7.1. The Corporate Debtor has disputed the veracity of the invoices along-with the interest component claimed thereupon by the Operational Creditor, in so far as the operational debt owed to the latter is concerned. The Corporate Debtor contends that the Applicant herein “..has not furnished any contract between the parties to substantiate its claim for interest.” and has sought to rely upon the judgements of Hon’ble NCLAT in *Krishna enterprises v. Gammon India Ltd.* [2018 SCC OnLine NCLAT 360] and *S.S. Polymers v. Kanodia Technoplast Limited* [2019 SCC OnLine 1310] to substantiate the same. The Respondent has additionally sought to press upon the object of the Code, and contends that the Applicant herein is “..attempting to misuse the provisions of the Code to initiate CIRP against the Respondent, which is a healthy and solvent company and is regularly meeting all its debt obligations.” Following the afore-stated contentions, the Operational Creditor contends that the scope of ‘debt’ herein falls short of the threshold as mandated under the Code, and that the captioned petition is thus not maintainable.

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Findings

8. Heard the Learned Counsel(s) for the Operational Creditor and the Corporate Debtor.
9. The Date of Default, as specified by the Operational Creditor *via* Additional Affidavit dated 30.08.2024 (filed pursuant to the clarification sought by this Bench) is 08.05.2021. The captioned petition has been filed on 27.11.2023, and is thereby within the Limitation period as specified under law and, this Tribunal thus has the jurisdiction to adjudicate upon the same.
10. Upon perusal of the record files, we note that apropos the provision of yarn consignment(s) by the Operational Creditor to the Corporate Debtor hereto; The invoices raised in lieu thereof and the e-way bills generated by the receiver/ consignee (*viz. the Corporate Debtor herein*), undisputably establish the nature of transaction in the instant case. Further, the interest clause in the said Invoice(s) is legibly clear to the effect of 18% on account of delayed payment, and the Corporate Debtor's contentions in contra-distinction to the same is tantamount to *approbation and reprobation*, and the same does not find favor with this Bench in any way whatsoever.
11. In so far as the Applicant herein *viz.* Operational Creditor is concerned, the records reveal that on account of non-payment by the Corporate Debtor; The Operational Creditor sought to issue multiple payment reminders to the Corporate Debtor *vide* Letter(s) dated 08.08.2023, 16.08.2023 and 30.08.2023 in addition to multiple E-mail(s) spanning across April, 2023 to August, 2023, and we note that the receipt of the said communication(s) has further not been denied by the Corporate Debtor hereto. Pursuant to inaction by the Corporate Debtor apropos the same, the Operational Creditor was constrained to issue the Statutory Demand Notice dated

18.09.2023, containing particulars of the (unpaid) Operational Debt, mandating the Corporate Debtor to settle the same “..within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of *Exclusive Linen Fabrics Private Limited*.” and the receipt of the same has not been disputed by the latter herewith.

12. In the present circumstances, we are of the shared view that there exists an ‘operational debt’ in terms of Section 5(21) of IBC, 2016, to the tune of INR 1,29,08,449/- (*inclusive of interest*), being an amount due under the invoices as afore-established and further validated by the Ledger of Accounts maintained by the Operational Creditor in respect of the Corporate Debtor for F.Y. 2020-21, 2021-22, 2022-23 and 2023-24, and that there exists a ‘default’ in payment thereof in terms of Section 5(12) of IBC, 2016.
13. In light of the afore-stated aspects in relation to existence of ‘debt’ and ‘default’ in so far as the captioned petition is concerned, and in absence of any pre-existing dispute to render the same repudiated hereto, coupled with the dictum laid down in law in this regard; We opine that the captioned petition is complete in all aspects and deserves to be Admitted, and that Corporate Insolvency Resolution Process ought to be initiated in respect of the Corporate Debtor herein.
14. It is accordingly hereby ordered as follows:
 - (a) The captioned Company Petition bearing C.P. No. (IB) 1133/MB/2023 is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process is ordered against **Exclusive Linen Fabric Private Limited**, *viz.* the Corporate Debtor herein.

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- (b) In consonance with the afore-stated, this Tribunal deems it fit to appoint Mr. Rajan Garg, Registration No IBBI/IPA-001/IP-P-02397/2021-2022/13624 (Address: *Flat No. 202, Wing B, 2nd Floor, Safal Twins ,Block Punjabwadi, Sion Trombay Road ,Deonar ,Mumbai Suburban,Maharashtra ,400088* | Email Id: fcaranjangarg@gmail.com), as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC, 2016. The fee payable to the IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- (c) 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, 2016. 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 **two weeks** from the date of receipt of this Order, in default of which coercive steps will effectively follow.
- (d) The Operational Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Two-lakhs only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be Interim Finance and paid back to the Operational Creditor viz. Applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (e) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

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- (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.
- (f)** Notwithstanding the above, during the period of moratorium:
- (i) 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;
- (ii) That the provisions of sub-Section (1) of Section 14 of the IBC, 2016, shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (g)** 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, 2016, or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

- (h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post **and** E-mail 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
05.09.2024
Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
