

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/599/(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. Vishnu Sudha Textiles

Vs.

M/s. KAC Yarn Private Limited

Order delivered on 21st of November, 2017

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN MEMBER (TECHNICAL)

For Operational Creditor(s) : Mr. A. K. Mylsamy, Sr. Counsel
For Corporate Debtor (s) : Mr. N. Anbazhagan

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)


1. Under Adjudication is CP/599/(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 against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard ~~Se~~^{Mr} Counsel for the Operational Creditor, Counsel for Corporate Debtor and perused the record.


3. It is stated that the Operational Creditor had supplied Polyester Staples Fibre to the Corporate Debtor from 10.07.2015 to 04.09.2015 vide Invoice Nos. 2387, 2413, 2414, 2458, 2489, 2559, 2591 and 2639. The copies of invoices are placed at pages 259 to 266 of the typed set filed with the Application. The payments in respect of these supplies were due to be made within 10 days of sale. But, the Corporate Debtor had defaulted in making payment. The Operational Creditor has claimed an amount of

Rs.50,29,864/- along with interest @ 18% p.a. The Operational Creditor has issued notice under Section 8 of the I&B Code, 2016 which is stated to have been delivered to the Corporate Debtor. The track delivery report and [✓]poof_^ of sending the notice are placed at pages 280 and 281 respectively of the typed set filed with the Application. The reply given by the Corporate Debtor is placed at pages 23 to 25 of the typed set filed with the Application.

4. In the reply, the defence taken by the Corporate Debtor is that the products supplied by the Operational Creditor were defective in quality and it did not match the specifications given by the Corporate Debtor. It has been stated that there was no contract between the Operational Creditor and Corporate Debtor. It has further been averred that no credit was given to the payments made by the Corporate Debtor in cash which was said to have been made w.e.f. 01.10.2016 onwards. In para 7 of the reply, it is stated that the 


claim made by the Operational Creditor is false and baseless.

5. The Counsel for the Corporate Debtor did not rebut the Invoices placed at pages 259 to 266 of the typed set filed with the Application and also did not show any receipt^{for}~~of~~ payments made in cash. During the course of arguments, the Counsel for the Corporate Debtor fairly admitted that there is no documentary evidence to support his contention. The defence taken by the Counsel for the Corporate Debtor is contradictory in nature^{and}~~,~~ therefore, stands rejected. Moreover, the Corporate Debtor has admitted the liability vide communication dated 01.10.2016 for an amount of Rs.65,87,673/-. The Copy of the confirmation of accounts is placed at page 296 of the typed set filed with the Application.

6. The Operational Creditor has complied with the requirements under Section 9 (3) (b) and (c) of the I&B Code, 2016 by filing an Affidavit and Bank certificate 

issued by Indusland Bank that are placed at pages 12 to 14 and 29 to 229 respectively of the typed set filed with the Application.

7. The Operational Creditor has fulfilled all the requirements of law for admission of the Application and has also proposed the name of IRP after obtaining the written consent in Form-2. We are satisfied that Corporate Debtor committed default in making payment of the outstanding debt. Therefore, CP/599/(IB)/CB/2017 is admitted and we order the commencement of the Corporate Insolvency Resolution Process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

8. We appoint Mr. S. Muthuraju, as IRP, who has been proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP 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 by the creditors in the manner as prescribed.

9. We declare the moratorium 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. We order to prohibit all of the following, namely

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(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.

10. 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.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging 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. S. Muthuraju,
Regn No: (IBBI/IPA-002/IP-N00009/2016-17/10013)
35, 2nd Floor, North Masi Street,
Madurai – 625 001
Email: smrajunaidu@gmail.com
Mobile No: 9994103021.



S. VIJAYARAGHAVAN
MEMBER (Technical)
PAM



CH. MOHD SHARIEF TARIQ
MEMBER (Judicial)