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NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court I)
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH
NATIONAL COMPANY LAW TRIBUNAL, HELD AT ON 10.01.2022 at 10.30 AM
THROUGH VIDEO CONFERENCING

PRESENT: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : IBA/587/2020
NAME OF THE PETITIONER(S) : K R T Mills Pvt Ltd
NAME OF THE RESPONDENTS : Kikani International Pvt Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

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ORDER

The Petitioner is represented by the Ld. PCS Mr. Kunjal Dalal and the Respondent is represented by the Ld. Counsel Mr. Amit Joshi through video conferencing mode.

This is an Application filed under Section 9 of the IBC, 2016 by the Operational Creditor to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

The Applicant in this matter had supplied Cone Yarn as per the Purchase Order issued during the period from 30.05.2019 to 01.11.2019. As per the terms of the invoice, which is enclosed in this Application, the payment is due on the 10th day of the invoice raised for the goods supplied.

There has been continuous default in payment of the amount except a small portion. The Applicant issued notice in Form-3 on 30.12.2019 on a total outstanding of Rs.28,91,342/- Annexure 1 to the notice and the amount claimed to be default and the working sheet providing the computation of default at Annexure 2 to the 30.12.2019 notice Exhibit 'D' at Page No.26.

The Applicant also issued notice again in Form-4 at Page No.29 dated 30.12.2019 calling upon the Corporate Debtor to repay the unpaid amount of Rs.28,91,342/- failing which proceedings will be under Section 9 of the IBC, 2016 along with Annexures-1 and 2 giving details of goods sold and delivered indicated as



the default amount therein. This was sent by registered post on 17.01.2020 and delivery report is at Page No.33 showing delivered on 20.01.2020.

Despite notice, no reply to the said notice received from the Corporate Debtor. However, it is pleaded by the Ld. PCS for the Operational Creditor that part payments were made on various dates as per the Exhibit-B to this Application is Rs.38,35,206/- leaving cumulative outstanding amount to Rs.28,91,342/- which is the amount specified in Form-3 and Form-4 notices.

During the hearing, the Respondent's Counsel admitted the debt and default and pleaded more time for repayment.

Hence, in view of the admitted debt on 30.05.2019 which is indicated in the notice as required under the IBC, 2016 and with the admission of Ld. Counsel during the hearing the default is proved, the Application stands **admitted**.

1. Thus, the Operational Creditor has proved that there is an operational debt and debt default which is being committed on the part of the Corporate Debtor. Under such circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the CIRP in relation to the Corporate Debtor.
2. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution

Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. Arpit Kothari, having Reg. No. IBBI/IPA-001/IP-P-02140/2020-2021/13287, having e-mail ID : ak@nirmalandarpit.com** as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named. As a consequence of the Application being admitted in terms of Section 9(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.
3. However, during the pendency of the moratorium period in terms of Section 14 (2) (2A) 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.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
4. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:
- (4) The order of moratorium shall have effect from the date of such 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.

5. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date and shall continue till the time the same is lifted by this Adjudicating Authority. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
Justice RAMALINGAM SUDHAKAR
Hon'ble PRESIDENT