



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **31.07.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/213(CHE)2023
NAME OF THE PETITIONER(S) : Babitha Sancheti
NAME OF THE RESPONDENTS : Sakthi Ganesh Textiles Pvt Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Ms. Chinna Abraham for the Applicant.

None for the Respondent.

Vide separate order pronounced in Open Court, the application is allowed. CIRP be initiated against the Respondent / Sakthi Ganesh Textiles Pvt Ltd.

Shri. Mr. S.Kangayan is appointed as the IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/213(CHE)/2023

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule
6 of the Insolvency and Bankruptcy (Petition to Adjudicating Authority)
Rules, 2016)*

In the matter of **M/s. Sakthi Ganesh Textiles (P) Ltd.**

Ms. Babitha Sancheti,
Proprietor of Ms. Pioneer Enterprises,
11-5-63, Jain Colony,
Bresthwarpet,
Raichur,
Karnataka-584 101

... Applicant / Operational Creditor

-Vs-

M/s. Sakthi Ganesh Textiles (P) Ltd.,
CIN: U17111TZ1996PTC007019,
Door No.2A,
3rd Floor, Mayflower Valencia,
336/2, Avinashi Road,
Nava India,
Coimbatore-641 004, Tamil Nadu

... Respondent / Corporate Debtor

Order Pronounced on 31st July, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor: Ms. Chinna Abraham, Advocate

For Corporate Debtor: Mr. Prajeeth Prem, Advocate



ORDER

(Hearing conducted through VC)

This application under Section 9 of the Insolvency and Bankruptcy, 2016 ("**IBC**") read with Rule 6 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) has been filed by **Ms. Babitha Sancheti, Proprietor of M/s. Pioneer Enterprises** hereinafter referred to as "**Applicant/Operational Creditor**") against **M/s. Sakthi Ganesh Textiles (P) Limited** (hereinafter referred to as ("**Respondent/Corporate Debtor**") for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor.

2. **Part-I** of the application sets out the particulars of the Applicant/Operational Creditor. Its office is situated at No. 11-5-63, Jain Colony, Bresthwarpet, Raichur, Karnataka-584 101. **Part-II** sets out the details of the Corporate Debtor. It has its Registered Office at Door No. 2A, 3rd Floor, Mayflower Valencia, 336/2, Avinashi Road, Nava India, Coimbatore, Tamil Nadu-641 004 within the jurisdiction of this Tribunal. The Corporate Debtor as per the details was incorporated on 08.03.1996 with Nominal Share Capital of



Rs.70,000,000/- (Seven Crores only) and Paid-Up Share Capital of Rs.70,000,000/- (Rupees Seveenn Crores only).

3. In **part-III** of the application, the Applicant has not proposed the name of the Interim Resolution Professional.

4. **Part-IV** sets out the details of the debt i.e. Rs.3,83,01,309/- (Three Crores Eighty Three Lakhs One Thousand Three Hundred and Nine only) and date of default as **31.10.2022**.

FACTS OF THE CASE:

5. As per the averments made, the Operational Creditor is engaged in the business of trading of cotton bales and cotton seeds, ginning and pressing of raw cotton into cotton bales and cotton seeds. It is registered as a Small Enterprise with the Ministry of Micro, Small and Medium Enterprises. The Corporate Debtor herein is engaged in the business of spinning, weaving and finishing of textiles.

6. It is stated that the Operational Creditor was introduced to the Corporate Debtor by a broker/middleman, namely M/s. Bhavesh



Cotton Company, represented by its Proprietor Mr. Bhavesh Shah, for supply of cotton bales to the Corporate Debtor. As per the request of the Corporate Debtor, Sales Confirmations were issued by M/s. Bhavesh Cotton Company to the Operational Creditor, following which the cotton bales were delivered by the Operational Creditor as per the requirements of the Corporate Debtor. Simultaneous to the delivery made, the Operational Creditor raised the Invoices on the Corporate Debtor. As per the terms of the Sales Confirmation, the Corporate Debtor was to make payments within 30-40 days. It is alleged that since June 2022, the Corporate Debtor defaulted in making payments to the Operational Creditor for the goods supplied. However, in furtherance to the non-payment of the dues, on 25.04.2023, the Corporate Debtor herein confirmed its liability towards the Operational Creditor by issuing a Balance Confirmation letter along with supporting ledgers. It is stated that as per the Balance Confirmation letter, the outstanding payable by the Corporate Debtor to the Operational Creditor is Rs. 3,18,66,758.00 (Rupees Three Crore Eighteen Lakhs Sixty-Six Thousand, Seven Hundred and Fifty Eight Only) as on 25.04.2023.



7. It is stated that in the Balance Confirmation Letter, the Corporate Debtor had stated that the reason for non-payment was the continuous down trend in the textile industry, however, it promised to clear all dues at the earliest. It is stated that despite the Corporate Debtor assuring to clear the outstanding dues at the earliest, no payment has been made by the Corporate Debtor to the Operational Creditor till date.

8. It is stated that owing to the default in payment by the Corporate Debtor, the Operational Creditor issued Demand Notice under Form 3 & 4 dated 25.10.2023 via SPAR to the Registered Office of the Corporate Debtor at Door No.2A, 3rd Floor, Mayflower Valencia, 336/2, Avinashi Road, Nava India, Coimbatore, Tamil Nadu- 641004 and also at the Branch Office at 204, Sundakapalayam, Nambiyampalayam Post, Avinashi to Annul. Road, Avinashi Taluk, Tirupur District- 641 670.

9. It is stated that the Demand Notice issued at the Registered Office Address returned as "*Addressee Left Without Instructions*", while the Demand Notice issued at the Branch Office returned as "Refused".



10. It is stated that the Operational Creditor then issued the Form 3 & 4 Demand Notices at the two other Branch Office addresses as provided in the Balance Confirmation Letter dated 25.04.2023 issued by the Corporate Debtor. It is stated that the Demand Notice issued at the Branch Office at SF 18, 144 & 143, SLV Noble Embassy, Nava India Road, Peelamedu. Coimbatore- 641005 was "Delivered" on 09.11.2023, while the Demand Notice issued at the Branch Office at 617/3, Ayyepalaym, Siruvalui Post. Gobi 1K, Erode- 638054 was "Delivered" on 08.11.2023.

11 It is stated that the Demand Notice was also sent via emails on 25.10.2023 to the registered email-ID of the Corporate Debtor as available on the website of the Ministry of Corporate Affairs, as well as at the additional email IDs available with the Operational Creditor.

12. It is stated that the Corporate Debtor herein failed to respond to the Demand Notice within 10 days. Thereafter, vide Reply Notice dated 20.11.2023 (received by the Operational Creditor on 25.11.2023), the Corporate Debtor raised several baseless allegations against the Operational Creditor for the first time alleging that the cotton bales



supplied were of inferior quality and that the Balance Confirmation Letter of the Corporate Debtor dated 25.04.2023 was issued under force and coercion. It is alleged that no such allegations were previously raised by the Corporate Debtor and no supporting documents were submitted in support of its claims. It is alleged that the Corporate Debtor has raised spurious and illusory disputes to evade its liability.

13. It is stated that the date of default is 31.10.2022 (being the date on which payment on last invoice was due) and the total debt due to be paid by the Corporate Debtor is Rs.3,83,01,309/- (Rupees Three Crores Eighty Three Lakhs One Thousand Three Hundred and Nine only) i.e., Principal amount of Rs.3,18,66,758.00 + 64,34,551 as interest as on 25.10.2023.

14. It is stated that it is amply clear that the Corporate Debtor has committed "default" in payment of the unpaid operational debt within the meaning of Section 3(12) of the IB Code and hence, the present application has been filed.



15. Notice of the application was given to the Respondent. The Respondent appeared and sought time to file the reply. The Respondent e-filed the Reply, however since the Registry had noted defects in the hard copy of the Reply, it returned the hard copy. The Applicant also filed the Rejoinder.

16. Since Reply has been e-filed, and Rejoinder is on record, we deem it appropriate to consider the Reply and the Rejoinder.

17. In Reply to the application, the Respondent denied the averments made in the application and alleged that the units of cotton bales delivered by the Operational Creditor were of inferior quality. This fact was informed to the agent several times. It is stated that there was no clarity in the payment terms about the timeline for payment. It is stated that in June 2023, the Operational Creditor called a meeting at Bangalore on the pretext to amicably settle the issue. The husband of the Applicant along with few persons was present in the meeting where the Representatives of the Applicant threatened the Managing Director of the Respondent. One person introducing himself as DSP



also threatened him. They forced him to affix signatures on few blank letters which the Operational Creditor used as the balance confirmation letter.

18. In Rejoinder, the Applicant denied this fact. It is stated that the issue of inferior quality was raised for the first time in the Reply to the demand notice. There were no pre-existing disputes between the parties. Not a single document has been filed by the Respondent in support of its claim that the defects were brought to the notice of the Applicant. The Applicant also denied having used coercion or undue influence. It is stated that balance confirmation letter was issued as early on 25.04.2023.

19. We have heard Ld. Counsels for the parties and perused the record.

20. It is not in dispute that the Corporate Debtor through a broker/middleman viz., Bhavesh Cotton Company, represented by its Proprietor Mr. Bhavesh Shah, had placed orders for supply of cotton bales to the Operational Creditor. The Operational Creditor supplied



the cotton bales and M/s. Bhavesh Cotton Company on behalf of the Corporate Debtor, issued the sale confirmations to the Operational Creditor. Simultaneous to the delivery made, the Operational Creditor raised the invoices on the Corporate Debtor. As per the terms, the Corporate Debtor had to make the payments within 30-40 days from the date of invoice but as seen from the record, since June 2022, the Corporate Debtor defaulted in making payments to the Operational Creditor for the goods supplied. The Corporate Debtor however on 25.04.2023, confirmed its liability towards the Operational Creditor by issuing a balance confirmation letter with the supporting ledger showing the outstanding payable by the Corporate Debtor as Rs.3,18,66,758/- as on 25.04.2023. It had also stated the reasons for non-payment stating that there was a continuous down trend in the textile market. Though it made the assurances to make an early payment but it did not make the payment.

21. It has been alleged in reply to the legal notice that the letter dated 25.04.2023 was obtained by coercion but no such complaint has been placed by the Respondent on record. The Applicant has denied



having coerced the Corporate Debtor to sign the balance confirmation letter.

22. The Respondent/Corporate Debtor in reply to the notice had also alleged that the cotton bales supplied were of inferior quality but is no document has been filed by the Respondent to substantiate this fact. As seen from the record, no such dispute was raised prior to the demand notice sent by the Operational Creditor.

23. The Respondent even in the Reply / Counter took similar defence as taken in the notice but the Respondent did not file any document to substantiate this fact. The Applicant has denied that the bales delivered to the Corporate Debtor were of inferior quality. As regards that allegation that coercion or force was used on the Respondent while obtaining his signature on the balance confirmation letter, no such complaint / FIR has been placed by the Corporate Debtor. Even no notice was given by the Corporate Debtor to the Operational Creditor thereafter except the Reply to the demand notice. The Applicant has denied the said allegation in the Rejoinder.



Considering the above facts, the defence taken by the Corporate Debtor seems to be illusory and spurious.

24. In the present case, the Applicant has claimed principal sum of Rs.3,18,66,758/-. It added the interest of Rs. 64,34,558/- till 25.10.2023 thus claiming the total sum of Rs. 3,83,01.309/-. The debt amount thus exceeds the threshold limit of Rs.1.0 Crore as provided under Section 4 of the IBC. The date of default has been stated as 31.10.2022. The last balance confirmation issued by the Corporate Debtor bears the date of 25.04.2023. This application has been filed on 20.12.2023. Therefore, the application is within limitation.

25. In this case, the Applicant/Operational Creditor has proved the debt and default. There is no evidence indicating pre-existing dispute inter se the parties.

26. In the light of the above, we admit the Corporate Debtor viz., *Sakthi Ganesh Textiles Pvt Limited* into Corporate Insolvency Resolution Process (CIRP).



27. The Applicant has proposed the name of **Shri. S. Kangayan**, **Reg.No. IBBI/IPA-002/IP-N00866/2019-2020/12770**, **e-mail ID: kangayan.s@gmail.com** to be appointed as the Insolvency Resolution Professional (IRP). He has also given his consent to act as IRP. Upon verification from the IBBI website, it is seen that the said person holds valid Authorization for Assignment till 15.10.2024. We therefore appoint **S. Kangayan** as the IRP. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

28. 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

29. 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
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

30. 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.



31. 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. 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 be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)