

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

IBA/840(CHE)/2020

*(Under Section 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency
& Bankruptcy (Application to Adjudicating Authority) Rules, 2016))*

In the matter of Kumaran Gin & Pressing Private Limited

Mr. V. UMADEVI

Proprietrix of Uma Devi Cottons,
47/4, 1st Street Amarjothi Narayanasamy Nagar,
Kangayam Road, Tirupur – 641 604

... Petitioner

-Versus-

KUMARNA GIN & PRESSING PRIVATE LIMITED
SF No. 33/1 & 33/2S, Kulathu Palayam Pirivu,
S. Periapalayam, Uttukuli Main Road,
Tirupur – 641 607

... Respondent

Order Pronounced on 28th April, 2023

CORAM

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Petitioner : V. Kuberan, Advocate
For Respondent : P. Valliappan, Senior Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under consideration is a petition filed by Mr. G. Venkatesh (*hereinafter referred to as 'Operational Creditor'*) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the IBBI (Application to Adjudicating Authority) Rules, 2016 against Kumaran Gin & Pressing Private Limited (*hereinafter referred to as 'Corporate Debtor'*). The prayer made is to admit the Application, to initiate Corporate Insolvency



Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part – I of the Application sets out about the Operational Creditor, which states, that the Operational Creditor is a Proprietary concern with its office address at 47/4, 1st Street Amarjothi Narayanasamy Nagar, Kangayam Road, Tirupur – 641 604. Part -II brings out the particulars of the Corporate Debtor, which is a Private Limited Company with CIN- U17111TZ1995PTC006570 incorporated on 28.09.1995 under the Companies Act, 1956. The registered office of the Corporate Debtor stated it is situated at SF No. 33/1 & 33/2S, Kulathu Palayam Pirivu, S. Periapalayam, Uttukuli Main Road, Tirupur– 641 607, Tamil Nadu. From Part-III of the application, the applicant has not proposed any name for appointment of “Interim Resolution Professional” and has left it to the discretion of this Authority to appoint the same. An affidavit verifying the instant application has been placed between Pg. no. 7 – 10 of the typed set filed along with the application.

3. As per Part-IV of the Application, a sum of Rs. 1,10,03,812/- which includes Principal to the tune of Rs. 91,90,827/- and interest @ 24% to the tune of Rs. 18,12,985/- till 05.10.2020 is being claimed by the Operational Creditor along with further interest @ 18% per annum till the date of payment. The date of default as stated in the application is 05.12.2019.

4. Part-V of the Application, describes the documents/record to prove the 'Debt & Default' on the part of the Corporate Debtor. The list of documents attached along with the application is as hereunder,

- a) Demand Notice in Form – 3 dated 08.02.2020
- b) Copy of Accounts of the Corporate Debtor in the books of the Operational Creditor for the period between 01.04.2019-31.03.2020.
- c) Copy of Bank Statement of "Umadevi Cottons" for the period between 01.04.2019 – 24.06.2020

5. It is averred by the Ld. Counsel for the Applicant that the Corporate Debtor herein has incurred "debt" due and payable to the Applicant. The Applicant herein had advanced a sum of Rs. 1,10,03,812/- for purchase of multiple quantities of yarn from the Corporate Debtor. The relationship between the parties as averred in the Affidavit filed by the Applicant is as extracted hereunder,

"3. I submit that, M/s. Uma Devi Cottons (Operational Creditor), approached M/s. Kumaran Gin & Pressing (P) Ltd., (Corporate Debtor) for purchasing multiple quantities of yarn for their business and Commercial purpose. As, the Corporate Debtor expressed an interest in catering to the said needs, the Operational Creditor went on to proceed to purchase Yarn. Pursuant to which M/s. Uma Devi Cottons has paid a sum Rs. 91,90,827/- (Rupees Ninety-one lakh ninety thousand eight hundred & twenty-seven only). However, the Corporate Debtor suddenly expressed its inability to cater to the needs and deliver the yarn."

6. It is averred by the Applicant that the Demand Notice under Form- 3 dated 08.02.2020 is served on the Corporate Debtor, however, no reply for the same was received by the Applicant. An affidavit to that effect that no notice of dispute has been given by the Corporate Debtor has been filed with the application.

7. The Corporate Debtor by way of its reply vide Sr. No. 3115 dated 29.07.2021 has pleaded that the payments reflected in the statement submitted by the Applicant is only for the yarn supplied by the Corporate Debtor not otherwise. The respondent in para 6 of their reply has stated that the operational creditor has failed to produce any purchase orders specifying the variety, count, quantity etc., relating to the advances alleged to have been made towards the supply of yarn. It is that the Operational Creditor has failed to produce any material documents to prove its claim. The Corporate Debtor by way of written statement/synopsis vide Sr. No. 1167 dated 21.02.2022 has also stated that the instant application cannot be maintained as the debt is lesser than the minimum threshold limit of Rs. 1 crore.

8. The Corporate Debtor emphasised on the following Judgments,

- *In the matter of CBRE South Asia Private Limited -Vs- Messrs United Concepts and Solutions Private Limited in IB-797(ND)2021 (National Company Law Tribunal – New Delhi);*
- *In the matter of Hemalatha K. Reddy -Vs- KPN Travels India Limited in IB/788/CHE/2021 (National Company Law Tribunal – Division Bench – I)*

9. The Corporate Debtor states that the claim of the Operational Creditor can be maintained only if the “Operational Debt” crosses the limit of Rs. 1,00,00,000/- as on 24.03.2020, without inclusion of any interest. It is also stated that the Operational Creditor herein has cleverly waited for a while to make sure the claim amount is grown above Rs. 1 crore.

10. Heard the submissions made by the Ld. Counsel for the parties and perused the pleadings and documents placed on record.

11. Be that as it may, before venturing into the facts & Circumstances of the instant case, it is prima facie necessary to verify that if the "debt" as claimed by the applicant is a "qualified debt" under the preview of Section 9 of the code or not. On perusal of the application and the averments made thereunder by way of affidavit by the applicant, it is manifest that the Applicant herein is not a "Operational Creditor". Not moving further, and to make it crystal clear, we refer to the para 3 of the affidavit,

"3. I submit that, M/s. Uma Devi Cottons (Operational Creditor), approached M/s. Kumaran Gin & Pressing (P) Ltd., (Corporate Debtor) for purchasing multiple quantities of yarn for their business and Commercial purpose. As, the Corporate Debtor expressed an interest in catering to the said needs, the Operational Creditor went on to proceed to purchase Yarn. Pursuant to which M/s. Uma Devi Cottons has paid a sum Rs. 91,90,827/- (Rupees Ninety-one lakh ninety thousand eight hundred & twenty-seven only). However, the Corporate Debtor suddenly expressed its inability to cater to the needs and deliver the yarn."

12. From the extract of the Applicant's affidavit, it is crystallised that the "Operational Creditor" herein cannot be captioned as an "Operational Creditor" as he is not a provider of any goods or service to the Corporate Debtor. However, it is the other way round. Thus, in order to trigger a Corporate Insolvency Resolution Process against a Corporate Debtor under Sec 9 of the code, it is sine qua non to prove that the applicant is a "Operational Creditor" as defined under the Sec 5 (20) of the Code r/w Sec 5

(21) which defines "Operational Debt". At this Juncture, we would like to place reliance on the order passed by the *Hon'ble NCLAT – Delhi* in "*Kavita Anil Taneja -Vs- ISMT Ltd.*, ((2019) ibclaw.in 504 NCLAT) wherein it was held "*The person who had not supplied any goods or provided any services but had paid an advance to receive supply of goods from the Company would not come within the meaning of "Operational Creditor".*

13. Thus, we are of the considered view that, the applicant herein is not an "Operational Creditor" as such the debt due and payable is not an "Operational Debt" and there is nothing vital to admit the Corporate Debtor into Corporate Insolvency Resolution Process as prayed by the Applicant.

14. Assuming even for a moment, that the Applicant is an eligible "Operational Creditor", it is imperative to examine whether the claim of the "Operational Creditor" makes way across the minimum threshold of Rs. 1 crore which was enhanced vide S.O. 1205(E) dated 24.03.2020, a deemed prospective amendment in Section 4 of the Code. Admittedly, the instant application was filed on 10.11.2020, on perusal of Part-IV of the application it is seen that the Principal amount due & payable by the Corporate Debtor is to the tune of Rs. 91,90,827/-. The date of default is mentioned as 05.12.2019. It is reiterated by the Appellate Authority and this Tribunal that, the applications under Sec. 7 & 9 are summary in nature as such the applicants are required to satisfy the Adjudicating Authority with the essential

documents in order to show the existence of debt, interest if any and the default committed on the part of the Corporate Debtor. In the absence of the same, it would be onerous on the part of this Adjudicating Authority to determine the debt & default. In the instant matter, it is seen that the Operational Creditor has not placed any written agreement or material records to show that she is entitled to claim the debt due & payable along with interest from the Corporate Debtor. Thus, in the absence of any specific document to show that the Operational Creditor is entitled to claim interest, this Adjudicating Authority cannot proceed further as the same cannot be determine by this Adjudicating Authority. As such be the case, in the event of not meeting the minimum threshold, the instant application cannot be maintained even if the applicant is a competent "Operational Creditor".

15. Since, the citations given by the Corporate Debtor are related to threshold & lack of documents for admission, the same are not applicable in the present matter as the application is dismissed on other grounds too.

16. Accordingly, the Application in IBA/840/CHE/2020 is **dismissed** and **disposed of**. No orders as to cost.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Mohanapriya