

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 152/Chd/Hry/2018**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016**

**In the matter of :**

M/s Avon Cottex Private Limited,  
having its registered office at  
Buta Road, Village Mangat,  
Rahon Road,  
Ludhiana, Punjab-141007.

...Petitioner/Operational Creditor

Versus.

M/s Anandtex International  
Private Limited,  
having its registered office at  
Plot No.281, Sector-29,  
HUDA, Panipat,Haryana-132103

...Respondent/Corporate Debtor

**Judgement delivered on: 20.02.2019**

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the Petitioner : 1. Mr. Harsh Garg, Advocate.  
2. Mr. Pulkit Goyal, Advocate.

For the Respondent : 1. Mr. Ashish Midha, Advocate.  
2. Mr. Rajiv Bajaj, Practising Company Secretary.

**Per: Pradeep R. Sethi, Member(Technical)**

**JUDGEMENT**

The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 (hereinafter referred to as Rules). The petition is filed by M/s Avon Cottex Pvt. Ltd. (Operational Creditor) for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/s Anandtex International Pvt. Ltd. The petition is submitted by Shri Gaganjot Singh, Director of the Operational Creditor. He is stated to be authorized to file the petition vide resolution of Board of Directors dated 23.03.2018 (Annexure-3 of the petition). The Corporate Debtor is stated to have CIN U17210HR2012PTC045441 and the date of the incorporation of the Corporate Debtor is stated to be 22.03.2012. As per master data at Annexure-1 of the petition, the registered address is Plot No.281, Sector 29, Part-II, HUDA, Panipat. Therefore the territorial jurisdiction lies with this Bench of the Tribunal.

2. The petition is filed in Form No.5. It is stated in Part IV and Part V of the petition that the Operational Creditor is a composite unit of Fabric Knitting, Fabric Dyeing and Fabric processing and that fabric was supplied by the Corporate Debtor for knitting, dyeing and processing to the Operational Creditor on verbal orders placed by the directors of the Corporate Debtor with promise to make payment against each invoice within a period of 15 days credit period. It is stated that the invoice, transport document towards the acknowledgement of finished goods received back after processing by the Corporate Debtor is annexed as Annexure-7 (colly) and the copy of the ledger maintained by the Operational Creditor of the Corporate Debtor is at Annexure 7A of the petition. It is submitted that for amount of ₹27,80,211/- outstanding from the Corporate Debtor, a demand notice under the Code was sent on 27.02.2018 and that the demand notice sent by post was not delivered. It is stated that the demand notice was sent by e-mail on the e-mail address of the

key managerial personnel of the Corporate Debtor which was duly acknowledged and dispute was raised by the Corporate Debtor firstly by sending an e-mail and then by sending hard copy of dispute dated 16.03.2018.

3. It is stated that the dispute raised regarding delay in shipment and work done not being satisfactory related to the period of August, 2016 to September, 2016 and qua these issues, the matter was already resolved between the parties and an amount of ₹17,00,000/- by way of two debit notes bearing No.84 dated 18.10.2016 of ₹12,00,000/- and debit note bearing No.95 dated 21.11.2016 of ₹5,00,000/- was credited in the running account of the Corporate Debtor. It is submitted that another dispute raised is of 9783 kg of fabric lying with the Operational Creditor for which the Corporate Debtor had raised debit note on 30.06.2017 for ₹23,47,815/-. It is stated that this dispute is completely sham dispute since no such dispute was raised prior to the service of the demand notice . It is also stated that in the invoices issued by the Operational Creditor, full weight of the fabric is mentioned and the invoices are duly entered by the Corporate Debtor in its account and the Corporate Debtor duly issued C Forms to the Operational Creditor for each of the claimed invoices. It is further stated that the Operational Creditor sent its account statement to the Corporate Debtor by e-mail on 30.01.2018 for ratification purpose and even after this e-mail no dispute qua the outstanding amount was raised which fully proves that the dispute is an after thought.

4. In Part III of the petition, Shri Amandeep Singh was proposed as Resolution Professional and written communication in Form No.2 was submitted as Annexure A-4 of the petition. Vide order dated 31.05.2018, it was noted that the learned counsel for the Operational Creditor seeks time to file

up-dated ledger account as the amount claimed as operational debt in the petition did not tally with the ledger account placed on record. The compliance was made by Diary No.2031 dated 06.06.2018 and it was submitted that one of the pages of the ledger account of the Corporate Debtor maintained by the Operational Creditor was missing and the same was filed and thereby, the debit balance as per the ledger as on 01.04.2017 of ₹27,80,211/- tallies with the amount claimed to be in default given in Part IV of Form No.5. In the order dated 10.07.2018, notice of the petition to the Corporate Debtor was directed to be issued.

5. Reply was filed by the Corporate Debtor by Diary No.3216 dated 29.08.2018. Reference has been made to e-mail correspondence and it is submitted that the Operational Creditor was informed about delay in supplying yarn and resultant delay in shipments to foreign buyer and that there was quality issue also. It was stated that there is a difference in the quantity of yarn supplied by the Operational Creditor and the quantity of yarn received back resulting in shortage of material i.e yarn of 9783 kg of fabric/yarn for which the Corporate Debtor had raised a debit note of ₹23,47,815/-.

6. Vide CA No. 529/2018, the Operational Creditor proposed the name of Shri Alok Kaushik as Interim Resolution Professional and accordingly, amended application in Form 5 alongwith written communication in Form 2 from the new Interim Resolution Professional has been filed at Annexure A-1 and A-2 of CA No.529/2018. Vide order 19.11.2018, the application was allowed and the amended application in Form 5 and written communication in Form 2 sent by the new Resolution Professional were taken on record.

7. During the course of the hearing, the learned counsel for the Operational Creditor relied on the contents of the application and pleaded that the dispute is sham and was raised only after receipt of the demand notice by the Corporate Debtor. The learned counsel for the Corporate Debtor has referred to the difference in quantity between the shipments given to the Corporate Debtor and received back and to the debit note dated 30.06.2017 for ₹23,47,815/- (page 551 of the petition) and has pleaded that in view of this debit note, no amount is due to the Corporate Debtor. In rejoinder, the learned counsel for the Operational Creditor has referred to its e-mail dated 30.01.2018 attaching account statement and reconciliation and has pleaded that the Corporate Debtor did not raise any contention at that stage of issue of debit note dated 30.06.2017 of ₹23,47,815/-.

8. We have carefully considered the submissions of the learned counsel for Operational Creditor and Corporate Debtor and have also perused the records.

9. The application is filed in the prescribed Form 5. It is stated in the application that copies of 157 invoices and transport documents towards the acknowledgement of finished goods received back after processing by the Corporate Debtor is annexed as Annexure-7(colly). The total amount of the 157 invoices is stated to be ₹27,80,211/- and this is the amount claimed to be in default.

10. In proof of the contention that the amount of ₹27,80,211/- is pending against the Corporate Debtor, the Operational Creditor has filed copy of the ledger account of the Corporate Debtor in its books of account (Diary No. 2031 dated 06.06.2018). A copy of the email sent on 30.01.2018 to the

Corporate Debtor has also been enclosed as Annexure-14 of the petition to show that the account statement and reconciliation were made available to the Corporate Debtor.

11. It is also stated that a request was made to State Bank of India where the Operational Creditor maintains its account for issuing certificate confirming the non receipt of payment from the Corporate Debtor but the bank refused to issue the certificate (Annexure-6 and 6A of the petition). Copy of the statement of account of SBI from 01.04.2016 to 29.03.2018 is stated to be enclosed as Annexure-5 of the petition.

12. In the reply filed by Diary No.3216 dated 29.08.2018, the major contention is of quality and delay issues in 2016. In the petition itself (Part V of Form No.5), the Operational Creditor has stated that the quality issue and delay in supply relating to the period of August 2016 to September, 2016 were already resolved between the parties and an amount of ₹17,00,000/- by way of two debit notes bearing No.84 dated 18.10.2016 of ₹12,00,000/- and debit note bearing No.95 dated 21.11.2016 of ₹5,00,000/- has been credited in the running account of the Corporate Debtor. We find from the copy of the ledger account (Diary No.2031 dated 06.06.2018) that the two amounts of ₹12,00,000/- and ₹5,00,000/- are credited in the ledger account of the Corporate Debtor in the books of the Operational Creditor on 18.10.2016 and 21.11.2016 respectively. There is no averment from the learned counsel for the Corporate Debtor that the issue was not finally settled through the debit notes.

13. The other major contention in the reply is regarding shortage of material i.e. yarn of 9783 kg of fabric/yarn stated to be still lying with the

Operational Creditor and for which a debit note of ₹23,47,815/- is stated to have been raised on 30.06.2016. The learned counsel for the Corporate Debtor has placed reliance upon the judgement dated 21.09.2017 of the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (Civil Appeal No.9405 of 2017)**. Para No.40 of the judgement is as follows:-

*“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the existence of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

14. The dispute raised by the Corporate Debtor is being examined with reference to the judgement of the Hon'ble Supreme Court (supra). The learned counsel for the Corporate Debtor has referred to the details available at page 553 to 558 of the petition being quantitative account of yarn supplied

by the Corporate Debtor to the Operational Creditor and the material received back. It is pleaded that the yarn supplied during the period 24.10.2015 to 12.11.2016 totals to 113985.799 kg and that the quantity received back totals to 95104.43 kg and thus there is a difference of 18882 kg. It is submitted that a debit note was issued on 30.06.2017 for shortage of 9783 kg @ ₹250/- per kg totalling to ₹23,47,815/- (page 551 of the petition). In Part V of Form No.5, the Operational Creditor has stated that no dispute was ever raised regarding the shortage prior to the service of the demand notice issued under Section 8 of the Code. It is also submitted that in the invoices, full weight of the fabric is mentioned and these invoices were duly entered by the Corporate Debtor in their account and Corporate Debtor had duly issued C Forms to the Operational Creditor for each of the claimed invoices and never disputed this weight throughout the dealing.

15. We note that the evidence of despatch and service of the debit note on the Operational Creditor is not furnished. The claim appears to be that 113985.799 kg of yarn were given to the Operational Creditor for processing and that 95104.43 kg were received back. However, there is no clarification as to why a debit note dated 30.06.2017 was given of almost one half of the shortage. Despite such a heavy claimed shortage of 18882 kg, the learned counsel for the Corporate Debtor has not placed any evidence on record to show that the matter was disputed between the parties before the issue of notice under Section 8 of the Code. The Operational Creditor has pointed out that by e-mail dated 30.01.2018, it had attached an account statement and reconciliation of its account with the Corporate Debtor. In the e-mail, details of debit notes not yet given and not acceptable to the



Operational Creditor were also tabulated. However, this tabulation made no reference to the debit note dated 30.06.2017 issued by the Corporate Debtor for ₹23,47,815/-. Despite the debit note for ₹23,47,815/- not being reflected by the Operational Creditor, the Corporate Debtor did not raise any objection that the debit note of ₹23,47,815/- was not a part of the reconciliation. In view of the discussion, we hold that the Corporate Debtor has not been able to prove that a dispute truly exists in fact and that it is not spurious, hypothetical or illusory. The existence of a dispute prior to the notice under Section 8 of the Code is not proved by the Corporate Debtor.

16. Section 9(5) (i) of the Code reads as follows:-

“The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

17. We have already discussed above that the application under Section 9 (2) of the Code is complete; there is no payment of the unpaid operational debt; the invoices have been delivered by the Corporate Debtor to the Operational Creditor; no notice of dispute has been received

by the Operational Creditor prior to the Demand Notice under Section 8 of the Code; and there are no disciplinary proceedings pending against the Resolution Professional as certified by him (Diary No.4470 dated 16.11.2018). The conditions provided for in Section 9(5) of the Code are satisfied. The petition of M/s Avon Cottex Pvt. Ltd. for initiation of CIRP in the case of Anandtex Pvt. Ltd. is admitted.

18. As regards appointment of Interim Resolution Professional, we have already discussed above that by CA No.529/2018, the Operational Creditor had requested for a change of the Interim Resolution Professional recommended. The Interim Resolution Professional now proposed is Shri Alok Kaushik, Regd. No. IBBI/IPA-002/IP-N00253/2017-2018/10767. Shri Alok Kaushik has filed Form No.2 agreeing to accept appointment as Interim Resolution Professional. He has stated that he is not serving as a Resolution Professional or Liquidator but only serving as an Authorized Representative in the matter of M/s AMR Infrastructure Ltd. He has certified that there are no disciplinary proceeding pending against him with the Board or Indian Institute of Insolvency Professionals and that he is eligible to be appointed as a resolution professional in respect of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. We declare the Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- (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 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 corporate debtor.

20. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of

Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

22. In view of the above, the following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Alok Kaushik, resident of H.No.G-105, Sai Baba Apartments, Sector-9, Rohini, Delhi-110085, having Registration No. IBBI/IPA-002/IP-N00253/2017-2018/10767 and email address [alok\\_kaush@yahoo.com](mailto:alok_kaush@yahoo.com), Mobile No.9811470267 as an Interim Resolution Professional;
- ii) The term of appointment of Mr. Kaushik, shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties

as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iv) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;
- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in

terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- vi) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in open court.

Sd/-

(Justice R.P. Nagrath)  
Member (Judicial)

Sd/-

(Pradeep R. Sethi)  
Member(Technical)

February 20, 2019  
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