

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

CP (IB) No. 254/Chd/Hry/2020

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

In the matter of:-

Induskleed Export Pvt. Ltd.

having its Registered Address at

94, Civil Lines Sitapur (U.P.) India-261001.

Business Address at Amar Nagar, Biswan, Sitapur-261201

through its Authorized Representative-cum-Director Sh. Vivek Gupta.

...Petitioner-Operational Creditor

Vs.

M/s Pala Decor Pvt. Ltd.

having its registered address at 319,

Sector-22, Gurgaon, Haryana-122015

through its Directors.

CIN No: U17200HR2013PTC049962

...Respondent-Corporate Debtor

Judgement delivered on:15.03.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor:- : Mr. Lakshay Jindal, proxy counsel for Mr. Aman Bansal, Advocate

For the Respondent-Corporate Debtor : Mr. Anish Verma, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Induskleed Export Pvt. Ltd.** through its Authorized Representative-cum-Director Sh. Vivek Gupta (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate a Corporate Insolvency Resolution Process (**CIRP**) in the case of **Pala Decor Pvt. Ltd (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, Pala Decor Pvt. Ltd., is a Company incorporated on 30.07.2013 under the provisions of the Companies Act with CIN No: U17200HR2013PTC049962 with its registered office at 319, Sector 22, Gurgaon, Haryana through its Directors. Hence, the territorial jurisdiction lies with this Adjudicating Authority. A copy of master data of the corporate debtor is attached with the main petition and marked as Annexure 1.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor was in business of manufacturing rolls. The Corporate Debtor started working with Operational Creditor in the year 2014 onwards and goods i.e. rolls were sold and sent to Corporate Debtor vide various invoices. There are 24 invoices pending till 26.09.2018 amounting to Rs.59,90,628/- (Rupees fifty nine lakhs ninety thousand six hundred twenty eight only/-) (principal amount). The Corporate Debtor neglected to pay the outstanding amount despite admission to pay the dues. The Operational

Creditor made several requests to Corporate Debtor requesting him to make the said payments but in vain.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 59,90,628/- (Rupees Fifty Nine Lakhs Ninety Thousand Six Hundred Twenty Eight Only). The default occurred on 13.01.2018 i.e. 1st invoice bearing No.IKL-226 (2017-18) (partially paid), paid-amount- Rs.16,93,588/- and unpaid amount Rs.2,51,291/- was issued and last invoice No.IKL-93 (2018-19) was issued on 26.09.2018 for Rs.7,500/- Copy of invoices whose non-payment debt fell due (Annexure 3), WhatsApp chat between the parties (Annexure 4), ledger account maintained with respect to Corporate Debtor (Annexure 7), Statement of Account of Corporate Debtor (Annexure 8) are attached with the main petition.

5. A demand notice dated 17.12.2019 is stated to be issued by the operational creditor and the same has been delivered to the corporate debtor vide registered post tracking receipts and the delivery report is attached as Annexure A-5 and A-6 of the petition and corporate debtor had not replied to demand notice till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide diary No.02245/1 dated 09.03.2021. The corporate debtor has filed a reply vide diary No.02245/3 dated 19.07.2022, wherein it is stated that the matter of the dispute is regarding the settlement of accounts between two companies, due to the ignorance of the Directors of Operational Creditor, it is unable to get settled. The Corporate Debtor is still willing to

settle the accounts after reconciling the outstanding dues between the Companies who are parties to the application. There is no cause of action to file the present application and Mr. Vivek Gupta, Director of the company is liable for perjury u/s 340 CrPC. The rejection of the goods was already in the knowledge of the applicant and they are agreed to lift back the goods from the office of the Debtor. The rejection of goods by the buyers was mailed to the applicant Company and its Officer Incharge dated 26.05.2013 (Annexure A-2). The applicant is liable to pay a sum of Rs. 24,00,000/- (Rupees Twenty Four Lakhs) to the Corporate Debtor towards the amount that Mr. & Mrs. Jolly, the Directors of Pala Decor Pvt. Ltd. had invested at the start of business. The application is not maintainable as it is based upon the settlement of dues. The Creditor in the grab of liquidation proceedings wants to illegally recover the amount which the Debtor is supposed to pay totally. For the settlement of accounts, the said dispute is of civil nature which is trailable under Civil Courts and not under IBC proceedings. The invoices do not form part of the operational debt as the goods were rejected. The present bank statement is not supported with a cogent piece of evidence nor the same is duly verified.

7. The rejoinder was filed vide Diary No.02245/4 dated 16.08.2022, wherein it is stated that Corporate Debtor cannot deny the fact that the amount claimed to be in default occurred is genuine. The documents appended with the Company Petition are admitted on the part of the Corporate Debtor to make payments and were never denied after receiving the statutory notice. It is not in dispute that the Corporate Debtor had placed an order with the Operational Creditor for the supply of carpets which has

admittedly being supplied to the Corporate Debtor within a reasonable time and invoices were raised. There is no dispute regarding the price and quantity, it cannot be said that the invoices are disputed therefore, the Operational Creditor is entitled to recover the said operational debt on 13.01.2018 from Corporate Debtor and it was assured that the outstanding payments will be made but no payments were made. The allegation regarding quality of stock is baseless as there is an admission on the part of the Corporate Debtor to make payments. The Corporate Debtor offered three cheques of Rs.10,00,000/- each however, there is a principal amount of Rs.59,90,628/- (Rupees Fifty Nine Lakhs Ninety Thousand Six Hundred Twenty Eight Only) which is not in dispute.

8. The short written submissions have been filed by the applicant vide Diary No.02245/7 dated 16.11.2022 and by respondent-corporate debtor vide Diary No.02245/8 dated 21.11.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice dated 17.12.2019 was properly served. The same has been delivered to the corporate debtor vide registered post tracking receipts and the delivery report are attached as Annexures A-5 and A-6 of the petition. The corporate debtor has not replied to the demand notice neither any payment has been made. Therefore, the demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by operational creditor that neither the payment has been made nor any reply

has been received. The Corporate Debtor has no legitimate defence for non-payment of the amounts due and payable by the Corporate Debtor to the Operational Creditor. No amount has been received by Operational Creditor from the Corporate Debtor in satisfaction of any part of the mentioned invoices issued by the Operational Creditor to the Corporate Debtor. It is seen from the records that there the corporate debtor had admitted to release the payments in the chat between the parties on 20.06.2018 (Annexure-A4). In Vide email dated 30.05.2018, the corporate debtor has again admitted its liability to pay the outstanding dues. Therefore, there is no pre-existing dispute between the parties. The debt and default is undisputed. Further, it is submitted by the operational creditor that operational debt is not in dispute as carpets were supplied within reasonable time. There was no dispute regarding the price and quantity when the goods were supplied and unpaid invoices. Neither the payment was made nor the goods were sent back by the corporate debtor. Furthermore, there was no debit note issued by the corporate debtor for the payment of the supplied goods, which amounts to the outstanding operational debt and default in making the payment.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 17.12.2019 attached as (Annexure A-5) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 13.01.2018 i.e. 1st invoice bearing No.IKL-226 (2017-18) (partially paid), paid amount- Rs.16,93,588/- and unpaid amount Rs.2,51,291/- was issued and last invoice No.IKL-93 (2018-19) was issued on 26.09.2018 for Rs.7,500/-. This

application was filed vide Diary No.1615 on 27.02.2020. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 59,90,628/- (Rupees Fifty Nine Lakhs Ninety Thousand Six Hundred Twenty Eight Only) is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of invoices whose non-payment debt fell due (Annexure 3), WhatsApp chat between the parties (Annexure 4), ledger account maintained with respect to Corporate Debtor (Annexure 7), Statement of Account of Corporate Debtor (Annexure 8) is attached with the main petition. Although learned counsel for respondent agreed that goods were of inferior quality and were rejected. However, this contention is devoid of legal force as the said rejected goods were never sent back and corporate debtor continued to place order despite alleged inferior quality of goods. No debit note or detailed calculations for counter claim of Rs. 30 lakhs have been put forth by the corporate debtor. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is

undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Pala Decor Pvt. Ltd.** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Naveen Singal and there is nothing adverse against him. In view of the above, we appoint Mr. Naveen Singal, Registration No.IBBI/IPA-001/IP-P01650/2019-2020/12520, E-mail: naveen.singal@yahoo.co.in, Mobile No.+91-9871808788 from the list provided by Insolvency and Bankruptcy Board of India, panel valid from January 01, 2023 to June 30, 2023, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Naveen Singal shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;
- ii.) 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;

iii.) 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 moral;

iv.) 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;

v.) 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;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the

Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with the request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

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

17. 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 Operational 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified if any, shall not be terminated or suspended or interrupted during the 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. 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.

20. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to

send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

March 15, 2023
PRF/TB

