

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SINGLE BENCH, CHENNAI**

CP/345/2018 filed under Section 9 of the  
Insolvency and Bankruptcy Code, 2016  
r/w Rule 6 of the Insolvency and  
Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016

In the matter of **M/s. PINTER FA.NI ASIA PRIVATE LIMITED**

**M/s. T4 TEXULTANTS PRIVATE LIMITED**

*... Operational Creditor*

-vs-

**M/s. PINTER FA.NI ASIA PRIVATE LIMITED**

*... Corporate Debtor*

Order delivered on 26<sup>th</sup> of April, 2019

CORAM :

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

*For Operational Creditor* : *Dr. K.S.Ravichandran, PCS,  
Ms. S.Manjula Devi & Ms. Preetha, Counsel*

*For Corporate Debtor* : *Mr. A. Bobblie, Counsel*

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Adjudication is CP/345/2018 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, to declare moratorium and to appoint Interim Resolution Professional (IRP).

2. Heard the representative for the Operational Creditor, Counsel for the Corporate Debtor and perused the pleadings including the documents placed on file.

3. The Operational Creditor has claimed an amount of Rs.1,83,59,520/- as principal amount along with interest @ 21% interest per annum till 31.12.2017, totaling Rs.2,82,99,314/- as outstanding against the Corporate Debtor, which the Corporate Debtor has failed to pay.

4. The brief facts of the case are that the Operational Creditor is engaged in the business of Marketing of Textiles Machinery and the Corporate Debtor is engaged in the business of Manufacturing of Textile Machinery and

Accessories. The Corporate Debtor appointed the Operational Creditor as an agent to market initially in Northern India for sales and service of their products in the year 2007. Gradually, the Operational Creditor developed the market for slab products and core equipment etc., which made the Corporate Debtor No.1 seller in India. Thereafter, the Corporate Debtor offered agency services during December, 2013 to market to South India. Buoyant with the sales generated through the Operational Creditor, the Corporate Debtor decided to start manufacturing in India and formed a Company *Datalog Pinter Technologist Pvt. Ltd.*, which is now *Pinter FA.NI Asia Pvt. Ltd.*

5. During the course of business, the Corporate Debtor and the Operational Creditor had entered into an Agency Agreement dated 01.01.2013 wherein the terms and conditions of the services which were to be rendered by the Operational Creditor to the Corporate Debtor are given in detail. Copy of the Agency Agreement dated 01.01.2013 is

placed at pages 98 to 101 of the typed set filed with the Application.

6. Clause 5.2 of Article 5 of the Agency Agreement stipulates that if the Operational Creditor acts as Intermediary Agent and the Principal sell and invoice directly to end user through the intermediation of Agent, the Operational Creditor will receive the commission for the sale. The standard for commission is also provided as Rs.15.00 for per spindle for Sensor Fil at selling price of Rs.250 and Rs.20.00 per spindle for Roving Stop at selling price of Rs.280.00. The Agreement also contemplates that the commission will be calculated on the total amount of invoices less taxes, freight and packing. It is further incorporated in the said Agreement that depending on the size of the project and the selling prices, both parties will agree on the variation of the standard rate of commission. Another important condition <sup>is</sup> ~~which~~ incorporated in the Agreement is that the commission will be paid only in

Indian Rupees and it will be payable after a particular business is completed (payment and installment). Besides above, the Article 6 of the said Agreement states that the contract is for a period of three years from 1<sup>st</sup> January 2013 and it was automatically renewable. In the process, it was agreed between the Corporate Debtor and the Operational Creditor that the payments will be dealt with directly by the Agent in writing who will take care of successful conclusion of the sales in the mutual interest, by using any appropriate influence in order to obtain punctually in payments by the customers. In view of the Agreement, the Operational Creditor claims that it has rendered its services as agreed between both the parties.

7. It is pertinent to note that on 06.06.2014 the said Agency Agreement dated 01.01.2013 was revoked with stipulation that the termination of the relationship will come into effect after three months reckoning from communication dated 06.06.2014. In other words, the

relationship between Corporate Debtor and Operational Creditor remain continued till 05.09.2014.

8. The details of the services rendered by the Operational Creditor to the Corporate Debtor and the commission became due by the Corporate Debtor are given in the Tabular form which is placed at page 16 of the typed set filed with the Application which reflects that the balance amount of Rs.1,83,59,520/- is due to the Operational Creditor. The Operational Creditor has sent the Legal Notice dated 04.06.2015 to the Corporate Debtor claiming Rs.1,83,59,520/- from the Corporate Debtor towards the unpaid commission to it. Copy of Notice is placed at pages 87 to 91 of the typed set filed with the Application to which the Corporate Debtor has given Reply on 02.07.2015 which is placed at pages 92 to 97 of the typed set filed with the Application. In the Reply, it has specifically been stated that the Operational Creditor is entitled to a commission of Rs.46,96,560/- which will be payable only upon securing and passing on the payment of Rs.1,42,87,504/- due and

payable from the customers. It has further been stated by the Corporate Debtor in its Reply that the statement of orders procured, commission payable thereof and the balance outstanding to be realized from the customers is stated to be enclosed with the Reply. The statement that was enclosed with the Reply is placed at page 97 of the typed set filed with the Application, which reflects that an amount of Rs.46,96,560/- was payable by the Corporate Debtor to the Operational Creditor. The said statement also reflects in the last column that an amount of Rs.1,42,87,504.40p is pending towards the customers which is receivable.

9. The Operational Creditor has issued a Demand Notice dated 19.09.2017 under Section 8 of the I&B Code, 2016 to the Corporate Debtor, wherein the particulars of the operational debt due are mentioned. Copy of the Notice is placed at pages 78 to 80 of the typed set filed with the Application to which a reply was given by the Corporate Debtor to the Operational Creditor on 12.10.2017, copy of

which is placed at pages 81 to 82 of the typed set filed with the Application, wherein the claim of the Operational Creditor was denied *in toto* and termed as fictitious by the Corporate Debtor.

10. As regards the compliance of Section 9 (3) (b) of the I&B Code, 2016, the representative for the Operational Creditor has contended that it is applicable only when there is no reply notice received from the Corporate Debtor to the Demand Notice issued by the Operational Creditor. In this case, the Corporate Debtor has given a reply notice to the Demand Notice sent by the Operational Creditor. In this regarding, the submission made by the representative for the Operational Creditor is convincing. With regard to the compliance of Section 9 (3) (c) of the I&B Code, 2016, the Bank certificate issued by the State Bank of India is placed at page 77 of the typed set filed with the Application.



11. The Counsel for the Corporate Debtor has filed Reply stating therein that the claim of the Operational Creditor is untenable on account being contrary to the terms of the Agency Agreement entered into between the Corporate Debtor and the Operational Creditor. It has specifically been stated that the Agreement expressly provides that the Operational Creditor is entitled to commission only after a particular business procured is completed in form of full payment and installation, accordingly the Operational Creditor is not entitled to payment of any commission, unless and until the full payment from the customers are received against the orders procured by the Operational Creditor.

12. The second objection that has been raised by the Counsel for the Corporate Debtor is that the Application is barred by limitation. Rebutting the objection raised by the Counsel for the Corporate Debtor, the representative for the Operational Creditor has submitted that in reply to the Legal Notice of the Operational Creditor dated 04.06.2015,

the Corporate Debtor on 02.07.2015 has acknowledged the debt and the instant Application has been filed on 27.03.2018 which is within the period of limitation. The submission of the representative for the Operational Creditor is supported with the document, so the instant Application is not hit by the law of limitation. Therefore, the objection that the Application is barred by limitation is spurious because in its reply notice dated 02.07.2015, the Corporate Debtor has clearly admitted the claim of the Operational Creditor and the Application has been filed within the period of limitation as stated above. Hence, the objection taken by the Counsel for the Corporate Debtor stands rejected

13. It has been noted during the course of argument that the Counsel for the Corporate Debtor ~~has~~<sup>is</sup> at the first instance has denied the Reply dated 02.07.2015, then took a 'U' turn and started to narrate the recitals of the Reply dated 02.07.2015 and admitted that the Reply was given.

He blows hot and cold in the same breath. The Counsel for the Corporate Debtor has raised defence that as per the terms and conditions of the Agreement, the Operational Creditor has to fulfill the requirements of the said Agreement for getting the commission from the Corporate Debtor and he has denied that the Corporate Debtor has made any admission of debt in the reply whereas, his submission is contrary to Para 3 of the Reply as noted hereinabove.

14. A specific question has been raised by this Authority to the Counsel for the Corporate Debtor that at any point of time before the issuance of notice under Section 8 of the I&B Code, 2016, any communication was made by the Corporate Debtor to the Operational Creditor raising the dispute in relation to the unpaid operational debt. The Counsel for the Corporate Debtor has fairly admitted that there was no such communication between the parties.

15. The Counsel for the Corporate Debtor has submitted that there has been a breach of terms and conditions of the Agency Agreement dated 01.01.2013 by the Operational Creditor, due to which, the said Agreement was terminated vide communication dated 06.06.2014. During the course of arguments, the Counsel for the Corporate Debtor has given a detailed reasoning for the termination of the Agency Agreement dated 01.01.2013, but all the said detail given by the Counsel for the Corporate Debtor is contrary to the detail given in the communication dated 02.07.2015. In support of the submissions that are made by the Counsel for the Corporate Debtor, no documentary evidence is placed on record. Therefore, the defence is purely spurious and stands rejected.

16. The Counsel for the Corporate Debtor has submitted that there is no Invoice(s) placed on record for demanding the outstanding debt and without such demand as to how the Corporate Debtor can make payment to the Operational

Creditor. The Counsel for the Corporate Debtor has submitted that the account statement filed shows that it is a "bad debt" and it refers to difficulty in recovering the debt from the party concerned, and further the Operational Creditor has not shown any amount due from the Corporate Debtor, and therefore, the Applicant cannot be an 'Operational Creditor'. Repudiating the submissions made by the Counsel for the Corporate Debtor, representative for the Operational Creditor has referred to the Audited Financial Statement of the Corporate Debtor for the year ending 31.03.2017 which clearly establishes the fact that commission is shown as an expenses item; trade payables are shown in balance sheet; the schedules do not show any debtors' outstanding or bad or doubtful. The Financial statement is placed at Pages 5 to 74 of the typed set filed with Rejoinder. Therefore, the defence raised by the Corporate Debtor is contrary to the said record.

17. The Counsel for the Corporate Debtor has finally referred the judgement in **B.K. Educational Services Pvt. Ltd -vs- Parag Gupta and Associates**, reported in 2018(6) CTC 438 in order to support his arguments. However, the said ruling is not applicable to the facts and circumstances of the case on hand, as has been discussed in the preceding paragraphs.

18. Therefore, the submissions made by the representative for the Operational Creditor are plausible. The defence raised by the Corporate Debtor is spurious and misleading and the same stands rejected.

19. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Authority is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered, which

ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

20. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit all of the following, namely :-

- (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 Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (54 of 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.

21. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

22. The Operational Creditor has not proposed the name of IRP, therefore, Mr. Gopalsamy Ganesh Babu is appointed as IRP, whose name has been in the Panel of Insolvency Professionals recommended by the IBBI, there is no disciplinary proceedings pending against the IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15



of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

23. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

24. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

25. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the

concerned RoC. The address details of the IRP are as follows: -

**Mr. Gopalsamy Ganesh Babu,**  
Reg. No: IBBI/IPA-002/IP-N00246/2017-18/10731,  
Email ID: [babu@onestepsolution.net](mailto:babu@onestepsolution.net)  
Mobile No. 9940550258

26. Order is dictated and pronounced in open Court in the presence of the representative for Operational Creditor and Counsel for Corporate Debtor.

P.ATHISTAMANI

**-SD-**  
**[CH.MOHD SHARIEF TARIQ]**  
MEMBER (Judicial)