

ORDER ON I.A.V

I.A.No.V filed by first party under Section 11 of Industrial Disputes Act R/W Sections 26 & 151 of CPC., to implead the proposed party i.e., 'The management of Vision Textiles (Through the Special Purpose Vehicle (SPV) of SPG Macrocosm Limited) Unit No.1207, B Wing, One BKC, Plot No.C-66, Bandra Kuria Complex, Bandra East, Mumbai-400052, as second party.

2. In the Memorandum of Facts accompanying IA No.V, the Authorized representative for the first party has stated that in the corporate insolvency Resolution Process before the Hon'ble National Company Law Tribunal, Bengaluru in CP(BB) 136/2017, the Resolution Plan of the Resolution Applicant, SPG Macrocosm Limited, through its Special Purpose Vehicle (SPV), Vision Textiles, having their correspondence address at Unit No.1207, B Wing, One BKC, Plot No.C-66, Bandra Kuria Complex, Bandra East, Mumbai 400052 has been approved by the committee of creditors. The Resolution Applicant in the Resolution plan has proposed to run the second party as a going concern. The first party union is given to understand that the Hon'ble NCLT

Bengaluru has approved the Resolution plan of the Resolution applicant. SPG Macrocosm Limited, through its Special Purpose Vehicle (SPV), Vision Textiles, to operate the second party establishment as a going concern. Hence, with abundant caution it is prayed that the Resolution Applicant, SPG Macrocosm Limited, through its Special Purpose Vehicle (SPV), Vision Textiles, is joined as necessary party in the dispute in the interest of justice and equity. The first party reserves its right to challenge the order of Hon'ble NCLT, of approving the Resolution Plan, before the Hon'ble High Court or any other Appropriate Court, if the same is prejudiced to the workers of the second party. Hence, it is prayed to allow I.A.V.

3. The proposed respondent/proposed second party has filed contending that the 2nd party herein was a textile manufacturer, who stopped functioning the manufacturing activity owing to certain reasons since 2013. Consequently the 2nd party became corporate debtor, as per the insolvency and Bankruptcy Code 2016 and the matter was referred to the National Company Law Tribunal, Bengaluru Bench vide Company Petition CP(IB) 136/BB2/2017 filed by the Operational Creditor M/s SF Dyes,

1012, Barton Center, M.G.Road, Bengaluru. In the said Petition, the Operational Creditor sought to initiate CIRP (Insolvency Resolution Process for Corporate Persons) proceedings and impose moratorium etc. Consequently the CIRP proceedings initiated against 2nd party and one Mr.Praveen R.Navandar has been appointed as the interim Resolution Professional (IRP) as per the provisions enumerated in the code. Subsequently the said IRP constituted COC (Committee of Creditors) on 17.03.2018 with the prior approval of the Hon'ble NCLT. Thereafter the COC with approval of the Hon'ble NCLT appointed Shri.Udayaraj Patawardhan as RP (Resolution Professional) vide order dated 28.05.2018 and pursuant to appointment, he took the charge of the 2nd party from 30.05.2018. Subsequently, the Hon'ble Tribunal also extended the CIRP period to another 90 days. Thereafter the RP published Expression of interest and issued the information memorandum, evaluation matrix and invitation for submission of resolution plans (invitation) to prospective resolution applicants. The proposed party being one of the resolution applicant and special purpose vehicle (SPV) of M/s SPG Macrocsm Limited submitted resolution plan to take

over the 2nd party herein. Finally the COC have accepted the resolution plan submitted by the proposed party herein and subsequently the said resolution plan was also approved by the Hon'ble National Company Law Tribunal vide its order dated 10.05.2019. The proposed Respondent submits that the 1st party herein agitated the action of approval of resolution plan by the COC by pleading the same before the Hon'ble NCLT. But the demand of the 1st party came to be rejected by the orders of Hon'ble NCLT in respect of I.A.No.54/2019 on 10.05.2019 itself. In view of order dated 10.05.2019 in respect of I.A.No.40/2019 passed by Hon'ble NCLT Bengaluru Bench, the application filed by the 1st party to implead the proposed respondent is not maintainable as the claim petition made in respect of 1st party herein does not survive for consideration against the proposed respondent herein. The proposed respondent states that in compliance and implementation of the order passed by the Hon'ble NCLT Bengaluru Bench, the proposed respondent was constrained to file a suit for permanent injunction against the 1st party herein in O.S.No.234/2019 and has obtained injunction order against the

1st party herein on 12.07.2019. The first party herein was a party before Hon'ble NCLT Bengaluru Bench, they have suppressed all the relevant aspects before this Tribunal, though having full knowledge of disposal of IA.No.40 before the Hon'ble NCLT Bengaluru Bench. Since the 2nd party herein has ceased to be in existence, the reference made against it will not hold good and maintainable in view of the observation made in IA No.40/2019 before the Hon'ble NCLT, Bengaluru. Hence, prayed for dismissal of the I.A.No.V.

4. Heard arguments of both sides. The Points that arise for consideration are:

- 1. Whether the first party has made grounds to allow I.A.No.V ?*
- 2. What Order?*

5. My findings on the above Points are:

Point No.1: In the Affirmative,

Point No.2: As per Final Order,

for the following,

REASONS**Point No.1:**

6. When the case is set down for cross of WW1, the first party has filed the above IA No.V to implead the proposed respondent.

7. The first party has filed claim statement contending that second party company is a textile manufacturer and more than 100 workers are employed by the second party. The second party company was not paying the salaries regularly and in this regard employees filed application for payment of wages under the Payment of Wages Act. The authority under Payment of Wages Act was pleased to order the payment of wages as per the dues claimed with compensation up to the month of February 2014. The second party failed to pay the wages to the workers. Hence, the order was sent to the Hon'ble Deputy Commissioner for recovery of the amount through due process of Law. But the second party one day before public auction obtained ex-parte stay against the public auction. The management Personnel of the second party left the company and second party had stopped production activity

in the factory without giving any notice. The first party union filed petition before the Assistant Labour Commissioner for illegal suspension of work and matter was considered as industrial dispute. The actions of the second party amounts to illegal Lockout.

8. The first party has contended that in the corporate insolvency Resolution Process before the Hon'ble National Company Law Tribunal, Bengaluru in CP(BB) 136/2017, the Resolution Plan of the Resolution Applicant, SPG Macrocosm Limited, through its Special Purpose Vehicle (SPV), Vision Textiles, having their correspondence address at Unit No.1207, B Wing, One BKC, Plot No.C-66, Bandra Kuria Complex, Bandra East, Mumbai 400052 has been approved by the committee of creditors. The Resolution Applicant in the Resolution plan has proposed to run the second party as a going concern. The first party union is given to understand that the Hon'ble NCLT Bengaluru has approved the Resolution plan of the Resolution applicant, SPG Macrocosm Limited, through its Special Purpose Vehicle (SPV), Vision Textiles, to operate the second party establishment as a going concern.

Hence, with abundant caution it is prayed that the Resolution Applicant, SPG Macrocosm Limited, through its Special Purpose Vehicle (SPV), Vision Textiles, is joined as necessary party in the dispute in the interest of justice and equity. The proposed party in his objections has stated that it had submitted Resolution Plan to take over second party company and its Resolution Plan was approved by Hon'ble National Company Law Tribunal. The proposed party has stepped into the shoes of the second party company. The proposed party has stated that first party had agitated the action of approval of Resolution Plan by the COC by pleading the same before the Hon'ble NCLT and the demand of the first party was rejected by the Hon'ble NCLT therefore, proposed party is not a necessary party and IA is liable to be rejected. The contention of the proposed party that claim of the first party was rejected by Hon'ble NCLT hence, it cannot be impleaded can be considered at final stage on merits. At this stage question for consideration is only regarding impleading a party. In the present case if any orders are passed against the second party it will affect the proposed party. In the absence of proposed

party the above case cannot be adjudicated effectively. Therefore, proposed party is a necessary party. No hardship will be caused to the proposed party if the above IA is allowed. In the light of the above discussions, I answer point No.1 in the **affirmative.**

Point No.2:-

9. In the result, I proceed to pass the following:-

ORDER

I.A.No.V filed by first party under Section 11 of Industrial Disputes Act R/W Sections 26 & 151 of CPC., to implead the proposed party is hereby allowed.

No Order as to costs.

First party to carry out necessary amendment in the claim statement and furnish amended claim statement.

Call on 15.10.2022.

sd/-

**Presiding Officer,
Industrial Tribunal, Mysuru.**