

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-3170/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/S ITOCHU PLASTICS PTE. LIMITED

Having its office at: -
1, Wallich Street,
#32-02 Guoco Tower
Singapore-078881

...Operational Creditor/Petitioner

VERSUS

M/S BINDAL POLYMERS PTE. LTD.

Having its Registered office at: -
O-112, Sector -1,
Bawana Industrial Area

New Delhi- 110039...Corporate Debtor/Respondent Company

Order Delivered on:30.07.2021

CORAM:

DR. P.S.N. PRASAD,
HON'BLE MEMBER(JUDICIAL)

SH. HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)

For the Petitioner: Mr. Nishant Menon, Ms.Kavita Sarin & Mr. Deepesh,

Advocates.

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ORDER

Per P.S.N. PRASAD, Hon'ble Member (Judicial)

1. This is a petition filed by M/S Itochu Plastics Pte. Ltd (Operational Creditor) seeking to initiate CIRP against the Respondent company /Corporate Debtor M/S Bindal Polymers Pte. Ltd , under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor for an amount of Rs.1,132,200/- along with the interest at 14.6% being the unpaid amount after utilizing the goods/products supplied by the Operational Creditor. The Operational Debt fell due on different dated during the financial year 2019.
2. The Operational Creditor is a company incorporated in Singapore and engaged in the business of trading polyolefins, engineering plastics and finished products such as oil jugs and food containers.
3. The Corporate Debtor is a private limited company which was incorporated in the name of M/S Bindal Polymers Pvt. Ltd. under the provisions of the Companies ACt, 1956 with the Registrar of Companies, Delhi on 24.06.2019. The Corporate Debtor is engaged in the Business of importing and distribution of Polymers.
4. The unpaid Operational Debts arises out of the proforma invoice/ contracts nos. HI-TW1901014 dated 25.01.2019 for USD 232,050, HW-TW1902088 dated 26.02.2019 for USD 461,550, HI-TW1903026 dated 28.03.2019 for



USD 438,600. As per the Contracts, the Operational Creditor supplied CGPC PVC Resin to the Corporate Debtor.

5. The case of the applicant is as follows:

- i. On 25.01.2019 the proforma invoice/contracts Nos. HI-TW1901014 for USD 232,050 was executed between the Operational Creditor and Corporate Debtor.
- ii. On 26.02.2019 the proforma invoice/contracts nos. HW-TW1902088 for USD 461,550 was executed between the Operational Creditor and Corporate Debtor.
- iii. On 28.03.2019 the proforma invoice/ contracts nos. HI-TW1903026 for USD 438,600 was executed between the Operational Creditor and Corporate Debtor.
- iv. On 13.02.2019 Letter of credit for USD 232,050 was issued in favour of Operational Creditor.
- v. On 05.03.2019 Letter of Credit for USD 461,550 was issued in favour of the Operational Creditor.
- vi. On 10.04.2019 Letter of credit for USD 438,600 was issued in favour of the Operational Creditor.
- vii. On 22.02.2019 Commercial invoices for USD 232,050 was issued by the Operational Creditor.
- viii. On 25.03.2019 Commercial invoices for USD 230,775 was issued by the Operational Creditor.

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ix. On 01.04.2019 Commercial invoices for USD 230,775 was issued by the Operational Creditor.

x. On 05.05.2019 Commercial invoices for USD 219,300 was issued by the Operational Creditor.

xi. On 06.05.2019 Commercial invoices for USD 219,300 was issued by the Operational Creditor.

xii. On 01.07.2019 the Operational Creditor sent a demand letter for payment of the Operational Debt to the Corporate Debtor and calling upon the Corporate Debtor to make payment of the outstanding Operational Debt with interest.

xiii. On 19.08.2019 the Operational Creditor sent a demand letter for payment of the Operational Debt to the Corporate Debtor and calling upon the Corporate Debtor to make payment of the outstanding Operational Debt with interest.

xiv. On 28.08.2019 the director of the Corporate Debtor acknowledged the outstanding Operational Debt, but also issued a letter admitting the Corporate Debtor's liability. The Director of the Corporate Debtor also rendered an unconditional personal guarantee/undertaking for making payment of the outstanding operational debt with 14.6% interest per annum.



xv. On 29.08.2019 the Corporate Debtor also executed a Memorandum of Understanding with the Operational Creditor whereby the Corporate Debtor assured to provide a Standby Letter of Credit of Hongkong and Shanghai Banking Corporation Limited by 20.09.2019 for payment of the outstanding amount.

xvi. On 24.09.2019 the Operational Creditor sent a legal notice to the Corporate Debtor through its lawyer seeking strict compliance of the Memorandum of Understanding and Personal Gurantee/ Undertaking.

xvii. On 07.10.2019 the Operational Creditor issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. However, no reply has been received by the Operational Creditor.

xviii. On 11.11.2019 the Operational creditor addressed a letter to Sumitomo Mitsui Banking Corporation requesting for a certificate confirming that there is no payment of an unpaid Operational Debt by the Corporate Debtor. The Sumitomo Mitsui Banking Corporation has confirmed that no payment of the Operational Debt has been made by the Corporate Debtor.



6. The Operational Creditor on 07.10.2019 issued a demand notice under Section 8 of Insolvency and Bankruptcy Code, 2016 which was duly delivered at the Registered Office of the Corporate Debtor through registered post. However, the Corporate Debtor has not replied to the notice neither made the outstanding payment to the Operational Creditor till date.
7. Despite several opportunities none appeared on the behalf of Corporate Debtor. Hence the corporate debtor was proceeded ex-parte vide order dated 08.04.2021 passed by this Tribunal.
8. Heard the parties and perused the documents.
9. There is no dispute that the goods were supplied by the applicant to the corporate debtor and invoices were raised accordingly. Additionally, after due service of the demand notice, as well as despite various opportunities, no one was present on the behalf of Corporate Debtor at the time of final hearing of the matter and raised any objection against the present application. The Corporate Debtor has not shown any interest to defend the claim filed against him. The applicant has placed sufficient evidence in support of its claim. Going by the above details, the operational creditor has clearly established the existence of debt and default on the part of the corporate debtor. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.



10. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

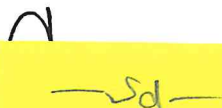
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate 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.
- (2) 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.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

11. The Operational Creditor has not proposed the name of the IRP in part III of the application. Accordingly, we appoint Rajesh Kumar Parakh RegistrationNo.IBBI/IPA-001/IP-P00272/2017-18/10516,email parakh.rajesh@gmail.com duly empanelled with the IBBI as the IRP.




There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.

12. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accounted for by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIRP costs.
13. The office is directed to communicate a copy of the order to the Operational Creditor, the corporate debtor and the Interim Resolution Professional at the earliest possible, but not later than seven days from today.


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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)


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(P.S.N PRASAD)
MEMBER (JUDICIAL)