

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP (IB) No. 717/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 10.03.2021

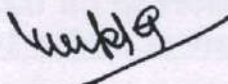
Name of the Company: Korea trade Insurance Corporation (KSURE)
V/s
Shivshakti Barrels Pvt Ltd

Section: 9 of the Insolvency & Bankruptcy Code, 2016

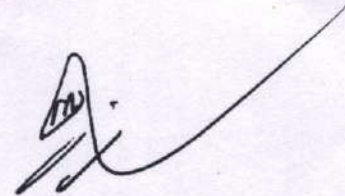
ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 10th day of March, 2021.



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.717/9/NCLT/AHM/2019

(Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

**M/s Korea Trade Insurance Corporation
CIN No. 102-82-06816**

14, Jongno, Jongno-gu, 110-729,
Seoul, South Korea

Address for Serving in India at;
Unit No. 605, 6th Floor, Global Foyer
Building, Sector- 43, Gurugram- 122009
Haryana

..Operational Creditor

Versus

**M/s. Shivshakti Barrels Private Limited
(CIN NO. U29309GJ2000PTC038177)**

Having an address at:
Opposite Gujarat Metal Cast
Village- Dunia Halol Godhra Road
Halol, Gujarat- 389350,
India

...Corporate Debtor

**Order reserved on 02.03.2021
Date of Pronouncement of Order 10.3.2021**

**Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**



Appearance:

Ld. Counsel Mr. Harshrajsingh Vaghela appeared for the operational creditor.

Ld. Counsel Mr. Arpit Singhvi appeared for the corporate Debtor.

ORDER

[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IB Code**") by Operational Creditor M/s Korea Trade Insurance Corporation to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Shivshakti Barrels Pvt. Ltd for the default amount of USD 345,130/- and in Indian rupees of Rs. 2,47,46,959.90/- including interest .
2. The operational creditor submitted that the debt was assigned by M/ Kolon Global Corporation to the application vide assignment letter dated 22..09.2016, the applicant being the insurer had paid the entire amount to the M/s Kilon Global Corporation.
3. The operational creditor supplied the goods to the corporate debtor as per the specification given by the corporate debtor, and the operational creditor raised two invoices dated 02.12.2015 and 14.12.2015 for the total amount of USD 410,130/- The corporate debtor has admitted the debt vide letter dated 14.01.2016 and



assured to make the due payment till 31.12.2016. The corporate debtor revised the date for making the payment of the due amount till Oct- Nov 2016 through an email dated 07.05.2016. But, the corporate debtor had not paid the due amount as on said agreed date.

4. The operational creditor submitted that both transactions were insured by the applicant company i.e. Korean Trade Insurance Corporation. The applicant reimbursed the loss to the M/s Kolon Global Corporation. The debt was assigned to the applicant by M/s Kolon Global Corporation vide assignment letter dated 22.09.2016. This fact was informed by the applicant to the corporate debtor vide email dated 07.11.2016. The applicant had also requested the corporate debtor for making the payment of outstanding amount.
5. The operational creditor sent a demand notice on 12.04.2017 asking for the payment of USD 410,130/-. The corporate debtor vide its letter dated 06.06.2017 once again admitted the debt and assured that the due debt shall be paid in a phased manner. On the objection by the applicant on the aforesaid payment plan, the corporate debtor vide letter dated 20.06.2017, proposed a new payment plan to the applicant vide letter dated 20.06.2017 that



all the due amount shall be paid by September 30, 2019 to the operational creditor. The operational creditor agreed with this revised payment plan and informed the same to the corporate debtor vide letter dated 20.07.2017 and also instructed the corporate debtor for adherence on this payment plan failing which interest shall be charged @18% per annum on due amount. The same was also acknowledged by the corporate debtor through a letter dated 21.07.2017.

6. The operational creditor submitted that the corporate debtor made the total payment of USD 65,000/- till September 2018. The corporate debtor sent an email on 08.09.2020 after making the payment of USD 5,000/- to the applicant. However, as per the records the corporate debtor failed to make the payment thereafter even after regular follow-up by the operational creditor.
7. The operational creditor sent a demand notice to the corporate debtor under section 8 of Insolvency and Bankruptcy Code, 2016 read with rule 5 (1) of IBBI (Application to the Adjudicating Authority) Rules, 2016 in form 3 for the payment of the remaining amount of USD 345,130/- on 28.05.2019. The corporate debtor replied to the said demand notice on 07.07.2019



and again admitted the due amount. But, the corporate debtor miserably failed to make the payment of the due amount till date.

8. Thereafter, the operational creditor filed present application on 28.09.2019 for initiation of the Corporate Insolvency Resolution Process. The corporate debtor filed its reply to the present application and submitted that the present application is not maintainable as the application is not filed by the operational creditor. The operational creditor has supplied the goods to the corporate debtor and the present application is filed by a third-person, therefore, there is no relation of creditor and debtor between the applicant and corporate debtor.
9. The corporate debtor further submitted that the assignment of debt by the operational creditor to the applicant was not informed to the corporate debtor and consent of the corporate debtor was not taken by the operational creditor for such assignment of debt.
10. The corporate debtor stated that the debt is time-barred as the invoices were raised in August 2015 and the present application was filed in August 2019 after more than three years. It is also stated by the corporate debtor with respect to acknowledgment made by the corporate debtor that such dead and time-barred debt can't be revived by the alleged acknowledgment or



repayment. Therefore the present application is liable to be dismissed on this ground.

11. The corporate debtor has stated the applicant does not fall under the definition of the person as given under section 3(23) of IB Code. As admittedly the applicant is a company and as per definition of the company under section 2 (20) of the Companies Act, 2013 wherein it is stated that "company" *means a company incorporated under this Act or under any previous Company Law; hence, the present application does not fall under the definition of the person. Therefore, the present application is liable to be dismissed on this ground. The Corporate debtor took the plea that Mr. Abhishek Aggarwal is not authorized to initiate this proceedings by the board of the applicant company.*

12. The corporate debtor has also submitted and denied for making the payment of interest @ 18% per annum as demanded by the applicant on the ground that there is no agreement for interest on outstanding amount.

13. The operational creditor filed the rejoinder to the reply and submitted that the corporate debtor has admitted the debt, however, for misleading this Adjudicating Authority has raised a few grounds. The IB code recognizes the right of an assignee to



file and maintain an application in respect of outstanding dues. Therefore, the defense raised by the corporate debtor in respect of that assignment does not constitute the operational debt is baseless.

14. The operational creditor further submitted and rebutted the contention of the corporate debtor in the respect that the present application is time-barred on the ground that the corporate debtor, again and again, acknowledgment of the due amount.
15. Heard both counsels of operational as well as corporate debtor and perused the record. It appears that the contentions raised by the corporate debtor that there is no relation of operational creditor and debtor between the applicant and corporate debtor are baseless. Though the goods were not supplied by the applicant but, the debt was assigned by the operational creditor vide assignment letter dated 22.09.2016 to the applicant, and the same was informed to the corporate debtor by the operational creditor through an e-mail dated 07.11.2016. Therefore, the assignment of operational debt is not required to be informed to the corporate debtor nor any consent of the corporate debtor is required as per the provisions of IB Code.



16. The contentions of the corporate debtor in respect that the present petition is time-barred and not maintainable are also not valid. On perusal of the invoices, it appears that two invoices were raised by the operational creditor on 04.08.2015 and 15.07.2015 and the due date of both the invoices was on 02.12.2015 and 14.12.2015 respectively. However, a number of times, the corporate debtor through its letters acknowledged the debts. The debt can be said as dead debt only if the said debt is not acknowledged within the original period of limitation i.e. 3 years from the date of default. In this case, the corporate debtor has vide letter dated 14.01.2016, 06.06.2017, 20.06.2017, and 21.07.2017 acknowledged the debt which complies with the terms of section 18 of the Limitation Act, 1963. More so, the corporate debtor has paid the amount of USD 5000/- and sent an email on 08.09.2018 and acknowledged the due amount. Thus plea made by the corporate debtor is rejected.

17. As far as the plea of the Corporate Debtor that the applicant is not eligible to file this application for the reason that it does not fall within the definition of "Person" as well as "Company" as mentioned in Section 2(20) of the Companies Act, 2013, we hold that such plea is without any merit for the reason that Section 3(23)(g) of IB Code provides any



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entity established under a statute and it also includes a person resident outside India. The definition of the "Person" as per this clause itself includes a company, hence, a company established under any statute outside India would also be considered as a person eligible to file this application under Section 9 of IBC, 2016. Section 2(25) of the IB code also provides a "person resident outside India" means a person other than a person resident in India having read both the provisions i.e. section 3 (23) and 3 (25) remains no doubt that foreign entity can file an application under section 9 of IB Code. This view is supported by the judgment of The Hon'ble NCLT, Mumbai Bench in *C.P (IB) No. 3735 of 2018 in the matter of M/s Forever Glory Trading Limited Verus M/s Global Powersource (India) Limited*. Apart from this, Section 2(42) of the Companies Act, 2013 also defines a foreign company and considering that definition as well, the applicant is eligible to file this application.

18. The contention raised by the corporate debtor in respect that the board of operational creditor has not authorized Mr. Abhisekh Aggarwal to initiate the proceedings under the insolvency and Bankruptcy Code is wrong and baseless. On perusal of the power



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of attorney dated 14.11.2018, Mr. Abhisekh Aggarwal was authorized by the Chairman and President Mr. Kang, Byung Tae of the applicant company to initiate the appropriate legal proceedings including liquidation on behalf of the applicant company.

19. The present application is defect-free and complies with the relevant provisions of the IB Code and Rules formed thereunder. The name of Resolution Professional is not mandatorily to be recommended by the operational creditor in the instant application, and the operational creditor has also not recommended the Resolution Professional to appoint as an IRP. In view of the above observations, we allow the present applications with the following directions;

ORDER

- I. The instant application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- (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;
- (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.

II. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

III. The operational creditor has not recommended any Resolution Professional to appoint as an IRP, hence, we hereby appoint **Mr. Hitesh Ratilal Abhani** having registration No. **IBBI/ IPA-001/IP-P02068/2020-2021/13231**, email Id, **habhani@gmail.com** to act as an IRP under Section 13 (1) (c) of the Code.

IV. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of



the Corporate Debtor are under a legal obligation under Section 19 of the IB Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

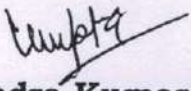
- V. This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- VI. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- VII. The IRP shall be under duty-bound to protect and preserve the value of the property of the Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- VIII. The Operational Creditor is directed to pay an advance of Rs.

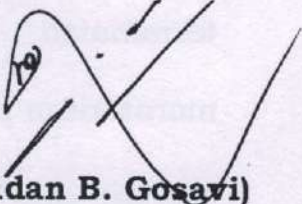


25,000/- (Rupees Twenty five thousand Only/-) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

IX. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

X. Accordingly, CP(IB) No. 717/9/NCLT/AHM/2019 is allowed and disposed of.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)



Certified to be True Copy of the Original


Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

RB