

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No.2776/I&BP/2018

Under section 9 of the IBC, 2016

In the matter of

TCPL Packaging Limited.

Empire Mills Complex, 414, Senapati

Bapat Marg, Lower Parel, Mumbai-

400013, Maharashtra

....Applicant

v/s.

Prothom Industries India Private Limited

Survey no. 78/1, Dynamic Logistics Trade

Park, Bhosari- Alandi Road, Dighi, Pune-

411 015, Maharashtra

....Respondent

Order delivered on: 28.02.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Ms. Chitrangada Singh, Advocate i/b Clove Legal

For the Respondent: None Present.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by TCPL Packaging Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Prothom Industries India Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 05.02.2017 in making payment to the extent of Rs. 3,54,66,955/-, the principal being Rs. 2,91,56,767/- and interest of Rs. 63,10,187/- calculated @ 18% p.a. from the date of default till 3rd July, 2018, by invoking the provisions of Sections 8 and 9 of I & B Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The petition reveals that the petitioner has supplied printing materials to the Corporate Debtor during the period 2015 to 2016 and raised the invoices to the extent of Rs. 8,56,65,604/- and received the payment to the extent of 5,65,09,301/- and still there is a principal balance due of Rs. 2,91,56,767/-. The petitioner submits that the invoices provide for claiming of interest on the delayed payment @ 18% p.a. The Petitioner submits that several emails were sent to the Corporate Debtor demanding payment but the Corporate Debtor dis-regarded all the requests.

3. The Petitioner sent a demand notice to the Corporate Debtor under Section 8 of the Code on 23.10.2017 demanding a sum of Rs. 3,17,28,498/- including interest @ 18 % p.a. The Corporate Debtor has not sent any reply to the demand notice and the petitioner has filed affidavit under Section 9(3)(b) of the Code stating that the Petitioner neither received the payment nor any dispute was raised by the Corporate Debtor. The Petitioner also filed certificate issued by their Bankers as required under Section 9(3)(c) of the Code.

4. The Petitioner produced the ledger account of the Corporate Debtor which shows that there is principal due of Rs. 2,91,56,767/- as claimed in the petition.

5. The Petitioner further produced a copy of the letter dated 26.06.2017 addressed by the Corporate Debtor to the Petitioner and the same is produced below;

"Dear Sir,

We thank you for your letter dated the 13th June, 2017 in respect of the outstanding dues against your supplies of packaging material.

Since Mr. Bose is travelling, I am taking the liberty of writing to you on his behalf.

With respect to your outstanding dues, you would be pleased to know that we are re-capitalising our business and consequently, there would be improvement in our cash flows during the next 2-3 weeks.

Accordingly, we would be reverting to you by the first week of July, 2017.

We take this opportunity to thank you for your contained support."

6. The ledger account produced by the Petitioner and the letter dated 26.06.2017 cited above clearly shows that the Corporate Debtor is indebted to the petitioner and defaulted in making payment to the Petitioner.

7. The Petitioner submits that the copy of the petition sent to the Corporate Debtor was returned with a remark as "left address". Their attempt to serve by email also failed. Subsequently the Petitioner has taken out paper publication in English and Marathi newspaper and filed proof of service. However, the Corporate Debtor failed to appear before this Tribunal.

8. This Bench having satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

i) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv) That the order of moratorium shall have effect from 28.02.2019 till the 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.

v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

vi) Mr. Vinodkumar Pukhraj Ambavat, Reg. No. IBBI/IPA-001-IP-P00420/2017-18/10743, having address at Room No. 40, 9/15 Morarji Velji Bldg., 1st Floor, Dr. M. B. Velkar Street, Kalbadevi Road, Mumbai – 400002, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

9. Accordingly, this Petition is admitted.

10. The Registry is hereby directed to communicate this order to both the parties and the IRP immediately.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Bhaskara Pantula Mohan
Member (Judicial)