

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. 3643/I&BP/2018

Under Section 9 of I&BC, 2016

In the matter of:

M/s. Fair Mate Chemicals Pvt. Ltd.

8/1, Sai Sudha Arunoday Society,
Alkapuri, Vadodara- 390007, Gujarat.

...Petitioner

vs.

M/s. SAPS Infrastructure Pvt. Ltd.

401-B, 4th Floor, B Wing, Durvankur
Chs Ltd., Dadoji Kanddeo Cross Road,
Opp. Sussex Industrial Estate, Byculla
(E), Mumbai - 400027

...Corporate Debtor

Order delivered on: 07.03.2019.

Coram: Hon'ble Mr. Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Rushabh H. Shah, Advocate.

For the Respondents: Mr. P. S. Thakre, Practising Company
Secretary.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Insolvency and Bankruptcy Petition filed by Fair Mate Chemicals Pvt. Ltd. (hereinafter called 'Petitioner') against SAPS Infrastructure Pvt. Ltd. (hereinafter called the 'Corporate Debtor'), a Company incorporated under the Companies Act, 1956, seeking to invoke the Corporate Insolvency Resolution process under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule 2016, on the ground that the Corporate Debtor defaulted in making payment to the extent of Rs. 63,54,850/- on 15.10.2016 along with interest @ 15% p.a.

2. The Petition reveals that on a summary suit filed by the Petitioner against the Corporate Debtor, on the file of the Principal Senior Civil Judge, Vadodara a decree was passed on 15.10.2016 for RS. 46,27,743/- along with interest @ 15 % p.a. from the date of filing the suit till realization.
3. The Petitioner issued Demand Notice in Form 3 on 18.06.2018 demanding a sum of Rs. 64,35,917/- along with the interest @ 15% p.a. on the principal from 17.03.2017 till the actual date of payment. The Corporate Debtor replied on 26.06.2018 stating that the Petitioner is not an operational creditor under the Code, the amount claimed is not supported by any documentary proof and there is a dispute falling within the ambit of Civil Court.
4. The Corporate Debtor filed reply stating that –
 - a. The claim is false, frivolous and vexatious.
 - b. The Petitioner concealed material facts relevant to the case before this Tribunal and the Petition is a misuse of process of law.
 - c. The Corporate Debtor is only a commission agent for the Petitioner and the supply of material were made to the third parties and not to the Corporate Debtor.
 - d. The Invoices raised by the Petitioners for year 2009, 2010 and 2011 and hence the debt is time barred for which the Corporate Debtor relied on the Judgment of the Hon'ble Supreme Court of India in the case of "B. K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates".
 - e. The Petitioner obtained an ex-parte decree on 15.10.2016, against the Corporate Debtor for Rs. 46,27,743/- along with the interest @15% p.a. from the date of suit till the realization of the entire decretal amount from the Corporate Debtor. The passing of the decree in favor of the Petitioner was known to the Corporate Debtor only on 27.10.2017. The Corporate Debtor on 24.11.2017 filed civil miscellaneous application no. 617 of 2017 for setting aside the above said decree. Execution application no. 142 of 2017 is pending against the Corporate

Debtor before the City Civil Court of Bombay for recovery of Rs. 63,54,851/-.

- f. There is an existing dispute between the parties and relies on the judgment of the Hon'ble Supreme Court in the case of "Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd."
5. From the submissions of the Corporate Debtor it is clear that a decree has passed against the Corporate Debtor and an Execution Petition is also pending. The decree against the Corporate Debtor is in force and the application for setting aside the decree is also filed belatedly. The other contentions of the Corporate Debtor that the debt is time barred and there is an existence of dispute is totally unacceptable in view of the fact that a decree is subsisting against the Corporate Debtor and the judgment referred supra by the Corporate Debtor is of no assistance to them. In view of this the debt and the default is clearly proved by the Petitioner.
6. 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 Petition declaring Moratorium with the directions as mentioned below:
 - a. 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.

- b. 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.
- c. 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.
- d. That the order of moratorium shall have effect from 07.03.2019 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.
- e. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- f. That this Bench hereby appoints Mr. Kairav Trivedi, Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332, office at 23 A 5th Floor Jyoti Building, Barquatali Dargah Marg, Wadala East, Mumbai City – 400037, Email: kairavtrivedi2002@yahoo.co.in as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.

8. The Registry is hereby directed to communicate this order to both the parties.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Bhaskara Pantula Mohan
Member (Judicial)