

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-462/(ND)/2020

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:

SHERWIN WILLIAMS COATINGS PVT. LTD.

Registered office at:
A 91, TTC Industrial Area,
MIDC Khairane, Navi Mumbai,
Mumbai 400701

... Operational Creditor/ Applicant

Versus

HARSH SPECIALITY COATING PRIVATE LIMITED

Registered office at:
Shop No. 23, Block-D, East of Kailash,
New Delhi- 110065

...Corporate Debtor/ Respondent

Coram:

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

SH. RAHUL BHATNAGAR,
Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Mayank Kshirsagar, Advocate
Counsel for Corporate Debtor:



ORDER

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

Date: 22.12.2021

1. This is an application filed by the Operational Creditor, 'M/s Sherwin Williams Coatings Pvt. Ltd.' through its Authorized Representative, Mr. Rajendra Saxena, seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Corporate Debtor, 'M/s Harsh Speciality Coating Private Limited' for the alleged default on the part of the Corporate Debtor in clearing the debt of Rs. 58,08,111/- (Rupees Fifty Eight Lakhs Eight Thousand One Hundred and Eleven only Four), as alleged by the Operational Creditor, towards the goods supplied. The details of transactions leading to the filing of this application as averred by the Operational Creditor are as follows:

- i. The Operational Creditor submitted that the Corporate Debtor in regular course of business used to send their orders for Wood coating products of different types such as PU, Polyester, Water Base, etc. and different pack sizes such as 25,12.5,5,1, etc. for sales to both Industrial and

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retail customers. That the Operational creditor based on the orders have delivered the goods and have raised the invoices. It was submitted that the operational creditor raised invoices aggregating to a sum of Rs. 5,15,21,777.

- ii. The Operational Creditor submitted that against the aforesaid invoices the Corporate Debtor has made payments aggregating to a sum of Rs. 4,57,13,666/-. The balance outstanding debt is of Rs. 58,08,11/-.
- iii. The Operational Creditor stated that they have been regularly following up with the Corporate Debtor on their Outstanding Debt, but no payment with regard to the outstanding debt has been made.

2. The Operational Creditor submitted that a Statutory Demand Notice in Form-3 under section 8 of IBC, 2016 dated 13.11.2019 was issued vide Post through the Operational Creditor's Counsel. The Operational Creditor further submitted that the said postage returned undelivered with remarks as '*Item returned no such person in the address*'. That on 19.11.2019 the counsel for the Operational Creditor



emailed the Demand Notice on the registered email id of the Corporate Debtor. However, the Corporate Debtor has not responded to any of the Notice.

3. The Ld. Counsel for the operational Creditor prayed for service of notice by all modes including the paper publication. This Tribunal vide its order dated 23.02.2021 allowed the aforesaid prayers. Subsequently, the Ld. Counsel for the Operational Creditor filed an affidavit dated 09.09.2021 submitting that pursuant to the Tribunal's order dated 23.02.2021, the notice was published on 31.07.2021 in English newspaper namely 'The Hindu' and a Hindi newspaper namely 'veer Arjun' both in circulation in Delhi.
4. The Operational Creditor submitted that the last payment received from the Corporate Debtor was on 16.08.2019. therefore, the present Petition is within the period of limitation. That the copy of the Demand Notice dated 13.11.2019 along with all its exhibits and postal proofs along with a print out of the email dated 19.11.2019 is annexed and marked as Annexure-1 of the application. it was further submitted that till date there is no reply from the Corporate

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Debtor nor have they denied the claim nor raised dispute of whatsoever nature. The operational Creditor also filed an affidavit date 13.01.2020 under section 9(3)(b) of IBC, 2016.

5. The Operational Creditor has also annexed a Record of financial Information in Form-C from National E-Governance Services Limited verifying the Corporate Debtor's relationship of a Debtor of Operational Creditor.
6. Since the application filed by the Operational Creditor fulfilled all the conditions required under Section 9 of the Code, this Tribunal ordered issue of notice to the Corporate Debtor by all modes. However, despite service of notice by all modes, none appeared on behalf of the Corporate Debtor and as a result the Corporate Debtor was proceeded ex-parte on 17.09.2021.
7. We have heard the arguments advanced by the counsel for the Operational Creditor and perused the documents filed by him. The Operational Creditor annexed the invoices raised and being unpaid by the Corporate Debtor. Along with that the Independent Auditor's Certificate has also been annexed wherein, it has been stated that *'Based on our examination as above, and the information and explanations given to us, we*



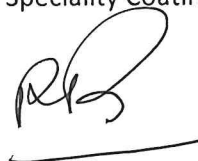
report that the total amount receivable Rs. 58,08,129/- from M/s Harsh Speciality Coating Private Limited as on 17.12.2019 is in agreement with the books of account and other records of the company as produced to us for our examination'. In regard to compliance of section 9(3)(c) the operational creditor submitted that as the bank asked the operational creditor to furnish all the original deposit slips for all the transactions and since the bank statement of the relevant period runs into hundreds of pages and does not reflect the name of the depositor, hence the operational creditor was unable to annex the bank statement.

8. The Operational Creditor has clearly established the existence of debt and default on the part of the Corporate Debtor. The Corporate Debtor, on the other hand, chose neither to appear nor to contest the instant application filed under section 9 of the IB Code, 2016. In light of the above said facts after giving careful consideration to the entire matter, hearing the arguments of the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates CIRP** on the Corporate Debtor with immediate effect.



9. The Operational Creditor has proposed the name of IRP in Part-III of the Form. This Adjudicating Authority, hereby appoints the proposed IRP Mr. Dhanshyam Kantilal Patel, (Email – dpatel@ckpatel.com, (Mobile No.- 9819718099) Reg. No: IBBI/IPA-001/IP/IP-01373/2018-19/12155 to act as Insolvency Resolution professional. The Proposed IRP has given his written communication in Form-2 dated 18.12.2019 to act as the Interim Resolution Professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
10. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
11. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b),

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(c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.

It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current

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dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

12. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

13. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate



Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

14. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than

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seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.




(SH. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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

RDS