

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.190/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s.Fuso Glass India Pvt. Ltd.

'FUSO HOUSE' No.91
Poonamallee High Road,
4th Floor,
Chennai – 600 084.

- Petitioner/Operational Creditor

Versus

M/s.Chitra Glaze Pvt. Ltd.

Sy. No.61, Plot No.40 & 41,
Nadakerappa Industrial Estate,
Hegganahalli, Vishwaneedam,
Near Peenya 2nd Stage,
Bangalore- 560 091.

- Respondent/Corporate Debtor

Date of Order: 27th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri K. Narasimhan

For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.190/BB/2019 is filed by M/s.Fuso Glass India Pvt. Ltd. (hereinafter referred to as 'Petitioner/Operational Creditor') U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Chaitra Glaze



Pvt. Ltd., on the ground that it has committed default for total amount of Rs.23,99,599/- (Rupees Twenty Three Lakhs Ninety Nine Thousand Five Hundred and Ninety Nine Only).

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

- (1) M/s.Fuso Glass India Pvt. Ltd. ('Petitioner/Operational Creditor') is a Company bearing CIN: U26109TN1999PTC043549. The Company is engaged in the business of dealing in manufacture of glasses and the sale of the same according to the needs of the purchasers.
- (2) M/s.Chaitra Glaze Private Limited ('Respondent/Corporate Debtor') having CIN: U27203KA2005PTC035536 was incorporated on 04.02.2005. Its nominal Share Capital is Rs.9,00,000/- and Paid up Share Capital is Rs.9,00,000/-. The Registered office of the Company is at Sy.No.61, Plot No.40 & 41, Nadakerappa Industrial Estate, Hegganahalli, Vishwaneedam Post, Near Peenya 2nd Stage, and Bangalore-560091. The Company is engaged in the business of selling of the glass to the purchasers.
- (3) It is stated that as per the order of the Respondent, the Petitioner dispatched the glasses, according to the needs from 20.05.2011 to 27.08.2011. The Respondent received the goods together with the invoices therefore. The invoice contains stipulation as to payment interest and disputes. The Respondent, after receipt of the goods dispatched by the Petitioner, has made some payment but failed to pay after 2018 and thus committed default. A question of law of limitation does not arise in this case as it comes into effect from 06.06.2018 only, under the Code. The claim has been initiated before the date. Further, there is an acknowledgement of liability in the balance sheet maintained by the debtor every



year, he has submitted the statement of profit and loss account to the concerned till 2017.

(4) The Petitioner has issued Demand Notice dated 05.04.2018 under Rule 5 of the I&B (AAA) Rules, 2016 by demanding the Respondent to pay Rs.23,99,599/- (Rupees Twenty Three Lakhs Ninety Nine Thousand Five Hundred and Ninety Nine Only). The Respondent had failed to pay the amount and also did not raise any dispute by way of reply. Therefore the instant Company Petition is filed in accordance with law.

3. Heard Shri K. Narasimhan, learned Counsel for the Petitioner. None appeared for the Respondent. We have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
4. The learned Counsel for the Petitioner submits that since Respondent was avoiding service of notice as ordered by the Adjudicating Authority, has caused paper publication in 'The Hindu' dated 30.09.2019 and 'Udayavani' dated 01.10.2019 by informing the party that next date of hearing was on 10.10.2019. He submit that the instant petition is filed in accordance with law and debt and default is not in question and a suggested a qualified Resolution Professional namely Shri Ramanahalli Shivanna Doddabyregowda, with Registration No. IBBI/IPA-002/IP-N00583/2017-18/11775, who also filed written Consent in Form-2 dated 23.11.2019. Therefore, he urged the Tribunal to admit the case as prayed for.
5. The case is listed for admission on various dates viz. 30.07.2019, 09.08.2019, 19.08.2019, 28.08.2019, 10.10.2019, 05.11.2019, 13.11.2019, 25.11.2019 & 27.11.2019. The case is adjourned on all these dates due to various reasons, at the request of the Petitioner for compliance of office objections, serving the notice etc. Accordingly the Petitioner has filed memo dated 09.10.2019 enclosing proof of service of notice on the Corporate Debtor by paper publication. The

Respondent failed to avail the opportunity given by the Adjudicating Authority and also did not file any Statement of Objection to oppose alleged outstanding amount raised in the Company Petition. Even, the Respondent did not respond to statutory demand issued as stated supra. Hence, it is deemed that the Corporate Debtor has accepted the debt and default in question.

6. Therefore, we are of the considered opinion that the instant application is filed strictly in accordance with the extant provisions of the Code, and debt and default is established by the Operational Creditor by submitting substantial evidence in support of the claim and also suggested a qualified Resolution Professional namely Shri Ramanahalli Shivanna Doddabyregowda, with Registration No. IBBI/IPA-002/IP-N00583/2017-18/11775, who also filed written Consent in Form-2 dated 23.11.2019 and necessary declaration. Hence, it is a fit case to admit by initiating CIRP appointing by IRP, and declaring moratorium etc. in respect of the Corporate Debtor. It is also mentioned here that that the Respondent has statutory remedy to settle the case, even after admission of the case, before constitution of CoC, by invoking section 12 A of Code.
7. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 9 (5)(i) and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.190/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:

- 1) **Ramanahalli Shivanna Doddabyregowda**, bearing **Registration No. IBBI/IPA-002/IP-N00583/2017-18/11775**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely



M/s.Chaitra Glaze Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

- 2) The following moratorium is declared prohibiting all of the following, namely:
- a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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;
 - e) 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;
 - f) 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;
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;



- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on **02.01.2020**.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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