

IBA/39/KOB/2019

## IN THE NATIONAL COMPANY LAW TRIBUNAL

## KOCHI BENCH

IBA/39/KOB/2019

(Under Section 9 of IBC, 2016 r/w Rule 6 of the IB(AAA) Rules, 2016)

In the matter of Chryso India Pvt. Ltd Vs. Joyross Technical Services Pvt. Ltd.

M/s Chryso (India) Private Limited

.... Operational Creditor

Vs.

Joyross Technical Services Pvt.Ltd

...Corporate Debtor

Order delivered on: 14.11.2019Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Veera Brahma Rao Arekapudi, (Member Technical)

For the Applicant: Vis Legis Law Practice, Advocates

For Respondents. Exparte

ORDER

1. This is a Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as **I&B Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on by the Operational Creditor M/s. **CHRYSO (INDIA) PRIVATE LIMITED** (hereinafter as '**Operational Creditor**') against **M/S JOYROSS TECHNICAL SERVICES PRIVATE LIMITED** (hereinafter as '**Corporate Debtor**').
2. The Operational Creditor is involved in the business of manufacturing chemical solutions & various allied products and provider of the services for the construction industry.

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3. The Corporate Debtor approached the operational Creditor and had purchased certain quantities of chemical products for industrial purposes in the period of September 2016.
4. The Corporate debtor issued purchase order bearing No.005 dated 28<sup>th</sup> September 2016. The Operational Creditor delivered the requested quality and quantity of goods, under Invoice No.C2PS16-067 dated 30<sup>th</sup> September 2016 amounting of ₹29,34,838/- (Rupees Twenty-Nine Lakhs Thirty-Four Thousand Eight Hundred and Thirty-eight Only) to the Corporate Debtor. However, the Corporate Debtor has failed to make any payments towards the outstanding due amount.
5. The Operational Creditor has reminded the outstanding due through several E-mail communications dated 20.12.2018, 24.01.2018, 11.06.2018, 16.08.2018, 21.01.109, 08.02.2019 and 03.06.2019. The Corporate debtor partly paid an amount of Rs.50,000/- on 13<sup>th</sup> June 2017 and issued a Cheque bearing No. 134100 on 13<sup>th</sup> October 2017 amounting to ₹50,000/-, on 25<sup>th</sup> October 2017 the said cheque was dishonoured and returned with a remark of "Funds Insufficient" over it.
6. The Operational Creditor further submitted that, they filed a complaint under Section 138 r/w 141 of the Negotiable Instruments Act,1881, against the Corporate Debtor on 11<sup>th</sup> December 2017, before the Hon'ble Belapur Court, Navi Mumbai, Maharashtra.
7. It was also submitted that the Operational Creditor had sent a demand notice on 25.06.2019 and requested to pay the unpaid operational debt of Rs. ₹29,34,838/- (Rupees Twenty-Nine Lakhs Thirty-Four Thousand Eight

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Hundred and Thirty-eight Only) along with interest on the outstanding principal amount. The Operational Creditor further stated that the Corporate Debtor having received the demand notice on 11.07.2019 has neither given a reply stating that there exists a dispute which is pre-existed and bonafide nor repaid the entire debt. Therefore, the operational creditor filed this Application to initiate Corporate Insolvency Resolution Process, declaration of Moratorium and appointment of Interim Insolvency Resolution Professional under Section 9 of the Code.

8. The Registry of this Tribunal has issued a notice intimating about the application filed under the Insolvency and Bankruptcy Code Under Section 9 and directed the Corporate Debtor to appear before the Tribunal on 14.10.2019. The notice to Corporate Debtor was duly served. The counsel for Corporate Debtor appeared on 25.10.2019 and sought time to file his vakalath and counter statement to the application. Accordingly, the matter was posted to 6.11.2019 and none appeared for the Corporate Debtor. Hence, the matter was decided exparte.

9. In the given facts and circumstances, the present application is complete and the Operational Creditor has succeeded in establishing default in payment by the Corporate Debtor of the Operational Debt beyond doubt. And therefore, the Operational Creditor is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor. In the light of above facts and records the present Application, **IBA/39/KOB/2019** is **Admitted** and moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended:

- 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 off 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

10 It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a Corporate Debtor.

- a) 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 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.

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- b) That the public pronouncement of the corporate Insolvency Resolution process shall be made immediately as specified under Section 13 of IBC.
- c) That this Bench at this moment appoints **Mr. MUKESH K P** having registration No. IBBI/IPA-001/IP-P0/2017-2018/11747 (Email – [aaajca.kochi@gmail.com](mailto:aaajca.kochi@gmail.com)) residing at as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- d) We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional namely **Mr. MUKESH K P** to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor.
- e) The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and inform the progress of the resolution plan and compliance of the directions of this order within 30 days to this Bench. The liberty is granted to intimate even at an early date, if need be. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 affairs of the Corporate Debtor. In case there is any violation by the ex-management or its ex-directors 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 its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

- f) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 14<sup>th</sup> day of November, 2019

**Sd/-**  
**(Veera Brahma Rao Arekapudi)**  
**Member (Technical)**

**Sd/-**  
**(Ashok Kumar Borah)**  
**Member (Judicial)**