

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 750/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

LAXMI ORGANIC INDUSTRIES LIMITED

[CIN: L24200MH1989PLC051736]

...Operational Creditor/Applicant

V/s

PRITHVIRAJ PLASTICS PRIVATE LIMITED

[CIN: U25200PN2010PTC138033]

...Corporate Debtor/Respondent

Order Dated: 09.05.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Nausher Kohli, Ld. Counsel.

For the Respondent(s) : Mr. Avinash R. Khanolkar, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application being C.P. (IB) No. CP (IB) No. 750/MB-IV/2021 filed on 28/07/2021 by LAXMI ORGANIC INDUSTRIES LIMITED, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process

(CIRP) in the matter of PRITHVIRAJ PLASTICS PRIVATE LIMITED, Corporate Debtor.

2. The total amount claimed by the Operational Creditor as specified in the Part IV of the Company Petition is Rs. 4,42,61,918/- (being an amount of Rs.3,00,00,000/- along with interest amounting to Rs. 1,42,61,918/- at the rate of 18% p.a. accrued till July 25, 2021) and is claimed in default. The date of default is 10.02.2019 i.e. the date by which repayment of the advance payment ought to have been made, in case of default in supply of goods.

2.1. The applicant is a company which is engaged in manufacture of speciality chemicals which have applications in diverse industries such as pharmaceutical formulations, printing inks, adhesives, coatings, healthcare synthesis and manufacturing of agrochemicals, pigments. etc. For procuring the raw materials necessary for conducting its operations, the Applicant entered into a Supply Agreement (hereinafter referred to as the "Supply Agreement") with the Corporate Debtor and one M/s Shri Saikrupa Sugar & Allied Industries Limited.

2.2. Vide the said Supply Agreement, the Corporate Debtor agreed to sell/supply 10,00,000 (Ten Lakh) litres of Rectified Spirit ('RS') and/or Specially Denatured Spirit ('SDS') (hereinafter referred to as the "Total Quantity") to the Applicant at Rs. 31 per litre by January 2019 as per the Delivery Schedule specified in the said Supply Agreement. The said material was either to be supplied by the Corporate debtor or by M/s Shri Saikrupa Sugar & Allied Industries Limited for and on behalf of the Corporate Debtor.

2.3. At the time of execution of the said Supply Agreement, the Operational Creditor made an advance payment of Rs. 3,00,00,000 (Rupees Three Crores) (hereinafter referred to as the "Advance Payment"). The payment of

the Advance Payment is confirmed and recorded at clause 3.1 of the said Supply Agreement. It was also intimated and duly recorded that the said Total Quantity of RS & SDS was required by the Applicant as a raw material for the manufacture of certain chemical products at its chemical plant situated at Mahad.

- 2.4. In these circumstances, Corporate Debtor agreed to supply or cause M/s Shri Saikrupa Sugar & Allied Industries Limited to supply the Total Quantity of RS/SDS in a timely manner without undue delay under the agreement. Furthermore, if for any reason, supply of the Total Quantity (or any part thereof) was not made, the Corporate Debtor agreed to refund the Advance Payment of Rs. 3,00,00,000/- (Rupees Three Crores) along with interest @18% pa. from 4th December 2018. i.e. the date of the agreement till repayment realization as averred in clause 11.3 of the Supply Agreement.
- 2.5. The Corporate Debtor failed to deliver the total Quantity of RS/ SDS or any part of it to the Applicant, and also failed to repay the Advance Payment along with the interest 18% p.a.
- 2.6. On 7th August 2020, the Applicant through its advocates issued a Notice under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to Mr. Dinesh Bhagawat, Director of Corporate Debtor who stood as guarantor also in his personal capacity for the fulfilment of obligations on the part of the Corporate Debtor, calling upon him to pay the debt owed by him or else the Applicant would be constrained to initiate proceedings under the I&B Code. The said notice was replied vide communication dated 20th August 2020 by denying the contentions raised by the Operational Creditor. The Operational Creditor

addressed a response dated 2nd September 2020 calling upon the Corporate Debtor to pay the debt owed.

2.7. In spite of repetitive reminders the Operational Creditor issued a Demand Notice dated 02nd July, 2021 calling upon the Corporate Debtor to pay the outstanding debt.

3. The Learned Counsel for the Corporate Debtor submitted that the copy of the agreement dated 04.12.2018, annexed with the Petition, is not signed by the Operational Creditor; there is also nothing on record to establish that the Operational Creditor has actually transferred the claimed amount to the Corporate Debtor; the Operational Creditor has miserably failed to produce any Bank statement or any other payment receipt; the documents which have been sought to rely by the Operational as annexure of the Agreement are not in existence and never came in existence in the past; The Operational Creditor is relying on the purported Agreement which was allegedly entered between the Operational Creditor, the Corporate Debtor and another entity namely M/s. Saikrupa Sugar & Allied Industries Limited.

Findings

4. This bench heard the counsels and perused the material available on record.
 - 4.1. This bench finds that the debt claimed to be in default represents an advance payment made by the applicant to M/s. Shree Saikrupa Sugar and Allied Industries Limited ('Manufacturer') at the request of the Corporate Debtor, which is evidenced from the averments in Clause 3.1 of the agreement 04.12.2018. It is the case of the applicant that neither the Corporate Debtor nor the manufacturer on behalf of the Corporate Debtor supplied the goods

against the advance on or before 31.01.2019 as stated in clause 1.2 of the agreement. The applicant has annexed the Bank Statement which evidence payment of Rs.3,00,00,000/- to M/s. Shree Saikrupa Sugar and Allied Industries Limited. The Clause 11.3 and 11.4 requires the Corporate Debtor, to refund the balance unadjusted amount out of advance payment of Rs.3,00,00,000/- together with interest @ 18% per annum. The director of Corporate Debtor executed a personal guarantee for securing the advance payment under supply agreement. The Corporate Debtor has not replied to the demand notice however, the advocate for its director responded to the Demand Notice issued under deed of guarantee.

4.2. The applicant vide Additional Affidavit dated 07.02.2023 has filed copy of supply agreement duly signed by the Operational Creditor and has also enclosed the Financial statement of the Corporate Debtor to demonstrate that the signature on supply agreement is of Mr. Dinesh Bhagwat, the director of Corporate Debtor. Nonetheless, this bench finds that this agreement is duly signed by the Corporate Debtor as well as Shree Saikrupa Sugar and Allied Industries Limited.

4.3. Considering the facts placed before us, this bench is of the view that the transaction of advance is sufficiently proved from the supply agreement and Bank Statement annexed with the petition. The Corporate Debtor has not brought on record any cogent evidence to substantiate that the supply agreement signed by Mr. Dinesh Bhagwat on its behalf was not acted upon. There is no notice of dispute. Even the reply filed by the Corporate Debtor suggests existence of any dispute prior to the service of demand notice, and even thereafter also. Accordingly, this bench of the considered view, the present case deserves to be admitted under Section 9 of the Insolvency and

Bankruptcy Code, 2016, in view of fact that there exists a debt, a default on part of the corporate debtor in payment thereof, and such debt is undisputed.

ORDER

5. The petition bearing CP (IB) No.750/MB-IV/2021 filed by LAXMI ORGANIC INDUSTRIES LIMITED, (“the Operational Creditor”), under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against PRITHVIRAJ PLASTICS PRIVATE LIMITED., (“the Corporate Debtor”) is **Admitted**.

- I. That this Bench as a result of this prohibits:
- 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 Operational 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 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. The bench hereby appoints Ms. Manisha Sanjay Agrawal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-003/IP-N00241/2019-2020/12836 Email: m_taiyal@yahoo.com. she is appointed as IRP for conducting CIRP of the Corporate Debtor and 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. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
09.05.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)