

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P. (IB) No.26/BB/2021
Under Section 9 of the IBC, 2016
r/w Rule 6 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Hindustan Tin Works Ltd.
No.426, DLF Tower-A,
Jasola,
New Delhi - 110 025.

... Petitioner/Operational Creditor

VERSUS

M/s. Rich Fruits Pvt. Ltd.
Unit F1 & F2, No.41,
Mosque Complex,
MM Road, Frazer Town,
Bangalore - 560 005.

... Respondent/Corporate Debtor

Order delivered on 02.02.2022

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Mr. Pradyumna K.V.
For the Respondent : Ms. Thashmitha

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application has been filed by M/s. Hindustan Tin Works Ltd. (for brevity 'Petitioner/Operational Creditor') through its Authorised Signatory, namely, Mr. Rajat Pathak, under Section 9 of the IBC, 2016, r/w Rule 6 of the I&B (AAA) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process against M/s. Rich Fruits Pvt. Ltd. (hereinafter called as "Respondent /Corporate Debtor").
2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:
 - i. **M/s. Hindustan Tin Works Ltd.** is a Public Limited Company incorporated under the Companies Act, 1956, bearing CIN: L27109DL1958PLC003006. The Company is *inter alia* engaged in the business of manufacturing and selling of tin containers and providing metal packing solutions.
 - ii. **M/s. Rich Fruits Private Ltd.** is a Private Limited Company incorporated on 17.04.2021 under the Companies Act, 1956, bearing CIN: U51221KA2001PTC028911. The Nominal Share Capital of the Company is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) and Paid-up Share Capital is Rs.65,00,000/- (Rupees Sixty Five Lakh Only). The Company is *inter alia* engaged in the business of manufacturing, exporting and wholesale supply of fruit pulp and products.
 - iii. It is stated that the Corporate Debtor required tin cans for carrying out its business and hence, approached the Operational Creditor. The Corporate Debtor issued a purchase order bearing No.RF/PO/016/17-18 dated 23.05.2017 for supply of 1,80,000 OTS cans of A-10 size. Subsequently, another purchase order bearing No.RF/PO/017/17-18 dated 23.05.2017 was issued by the Corporate Debtor for supply of 1,20,000 OTS cans of A-10 size. Under the said

purchase orders, it was agreed that the Corporate Debtor would pay 25% of the amount in advance and that the balance amount would be paid to the Operational Creditor through post-dated cheques, 90 days from the time of delivery.

- iv. Accordingly, the Operational Creditor raised invoices on manufacture and supply of OTS cans under the said purchase orders. However, the Corporate Debtor failed to make payment towards invoice bearing No.593 dated 31.05.2017, No.605 dated 01.06.2017, No.669 dated 06.06.2017 and No.670 dated 06.06.2017 for an aggregate sum of Rs.44,72,825/-. Further, at 18% per annum amounting to a sum of Rs.15,32,509/- was payable by the Corporate Debtor. Therefore, a total sum of Rs.60,05,334/- was due and payable by the Corporate Debtor.
- v. It is also stated that the Corporate had issued eight cheques in favour of the Operational Debtor, all drawn on Bank of India, Bengaluru (Main) Branch, Bengaluru-560009, towards payment against the invoices raised. The cheques when presented for encashment, returned dishonored with an endorsement 'Funds Insufficient'. The Operational Creditor initiated proceedings against the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881 before the Hon'ble Metropolitan Magistrate, South East District, Saket Courts, New Delhi in Criminal Complaint No.3766/2018 and Criminal Complaint No.1211/2019.
- vi. The Operational Creditor issued a Demand Notice dated 24.06.2019 in Form 3 under the IBC, 2016. On receipt of the same, the Corporate Debtor issued an interim reply dated 04.07.2019 stating that a detailed reply would be issued in due course of time. However, the Corporate Debtor failed to issue a detailed reply to the Demand Notice. Therefore, the Operational Creditor was constrained to file a Petition bearing C.P.(IB)No.349/BB/2019 under Section 9

of the IBC, 2016 on 30.09.2019 before the NCLT, Bengaluru Bench seeking initiation of CIRP against the Corporate Debtor.

- vii. It is stated that during the pendency of the proceedings before the NCLT, Bengaluru Bench, the Corporate Debtor acknowledged the debt payable to the Operational Creditor and offered to pay the entire outstanding amount. Therefore, a Joint Memo for settlement dated 28.02.2020 was filed before the NCLT, Bengaluru Bench. The said Petition was disposed of by the NCLT, Bengaluru Bench, as per the terms of the Joint Memo for settlement vide order dated 28.02.2020, with liberty to the Operational Creditor to file a fresh Company Petition in case of any default by the Corporate Debtor. As per the terms of the Joint Memo for Settlement dated 28.02.2020, the Corporate Debtor was liable to pay the principal amount of Rs.44,72,825/- on or before 27.03.2020. The Corporate Debtor was liable to pay Rs.15,32,509/- towards interest at 18% per annum and also future interest at 18% per annum till the date of payment, in three instalments between April, 2020 and June, 2020.
- viii. However, the Corporate Debtor failed to abide by the terms of the Joint Memo for Settlement dated 28.02.2020 and failed to make payments to the Operational Creditor, despite repeated reminder. Therefore, the Operational Creditor issued another Demand Notice dated 22.09.2020 in Form 3 under the IBC, 2016. On receipt of the same, the Corporate Debtor failed to issue any reply to the said notice. The Corporate Debtor has not raised any dispute relating to the existence of amount of debt and the quality of cans supplied by the Operational Creditor.
3. Heard Mr. Pradyumna K.V., learned Counsel for the Petitioner/Operational Creditor and Ms. Thashmitha, learned Counsel for the Respondent/Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.
4. Though the Respondent/Corporate Debtor has filed a Statement of Objections opposing the C.P., in our considered view there is no need to delve upon the same,

as the instant C.P. is a continuation of the earlier C.P. filed by the Petitioner against the Respondent/Corporate Debtor bearing C.P.(IB) No.349 of 2019, wherein the Respondent/Corporate Debtor admitted its liability to pay the debt which is more than the required threshold limit, as on the relevant date and since the said C.P. was disposed of in terms of the Joint Settlement Agreement, with a liberty to the Petitioner to file a fresh C.P., if the Respondent/Corporate Debtor failed to comply with any of the terms of the said Joint Settlement Memo. In view of the admission of the liability by the Respondent/Corporate Debtor and since there was no proof that the Respondent/Corporate Debtor cleared the debt of the Petitioner, as on date and since the instant C.P. is complete, the same is liable to be admitted.

5. In the given facts and circumstances, the present petition being complete and having established the default in payment of the operational debt and for the default amount being above Rs.1,00,000/-, the petition is admitted in terms of Section 9 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- (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
 - (b) any court of law, tribunal, arbitration panel or other authority;
 - (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (d) 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;
 - (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

- (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
6. In Part III of Form No.5, Mr. Hari Babu Thota, Registration No. IBBI/IPA-002/IP-N00084/2017-2018/10225 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form No.2 dated 05.02.2021 has been filed along with the C.P at Page Nos.106-107 (Annexure L). However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.
7. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Hari Babu Thota and there is nothing adverse against him. In view of the above, we appoint Mr. Hari Babu Thota, bearing Registration No. IBBI/IPA-002/IP-N00084/2017-2018/10225, registered address at No.41/1, 11th Cross, 8th Main, 2nd Block, Jayanagar, Bengaluru - 560011, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under the IBC, under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
8. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or

before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

9. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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