

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 128
CP(IB) 685 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Padam Electronics
V/s
Superchem Coatings Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..07/12/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The matter is listed today for pronouncement of the order.

The order is pronounced in the open court, vide separate sheet.



(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP(IB) No. 685/AHM/2019

In the matter of:

**Padam Electronics
(Proprietorship Firm)**

Having office at:

Plot No. E-49, Sector A-5/6,
Tronica City, Loni-201102,
Ghaziabad, Uttar Pradesh

.... Operational Creditor

Versus

Superchem Coatings Pvt. Ltd.

Having Registered Office at:

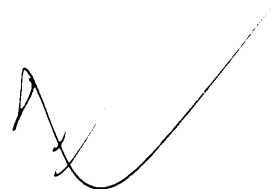
D-34, Sardar Industrial Estate,
Ajwa Road, Vadodara,
Gujarat-390019

.... Corporate Debtor

**Order Reserved on : 30.11.2021
Order Pronounced on : 07.12.2021**

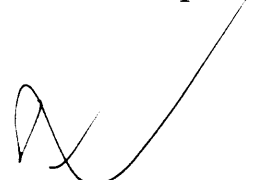
**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Ajai Das Mehrotra, Member (Technical)**

Appearance: Mr. Sunil Bhavsar, Advocate for the Applicant and Mr. Niraj Trivedi, PCS
for Corporate Debtor.



ORDER
[Per: Madan B Gosavi Member (Judicial)]

1. This application is under Section 9 of IBC filed by Padam Electronics (Proprietorship Firm)/Operational Creditor against M/s Superchem Coatings Pvt. Ltd/Corporate Debtor for initiating Corporate Insolvency Resolution Process of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the operational debt of Rs. 10,54,179(Rupees Ten Lakh Fifty-Four Thousand One Hundred Seventy-Nine).
2. The brief facts of the case are that as per the purchase order dated 20.03.2018, the Operational Creditor has sold and supplied Gas Fired Trolley Oven to the Corporate Debtor (the copy of purchase order at Annexure-IV) along with invoice dated 10.08.2018. The Corporate Debtor made payment of next consignment of goods but as far as the goods sold under invoice at Annexure-V are concerned, the part amount is paid and part amount was not paid on the ground that goods were defective.
3. According to the Operational Creditor, vide legal notice dated 06.05.2019, the Operational Creditor called upon



the Corporate Debtor to pay the balance outstanding together with interest thereon. The Corporate Debtor replied to notice vide letter dated 22.05.2019 (at Exhibit-X). The Corporate Debtor admitted the part debt disputing actual amount claimed by the Operational Creditor on the ground that the furnace supplied by the Operational Creditor was of a poor workmanship and sub-standard.

4. Since the Corporate Debtor did not pay the amount on 26.07.2019, the Operational Creditor served on the Corporate Debtor demand notice (at Annexure XI) under Section 8 of IBC. The Corporate Debtor did not reply to the notice within ten days nor made payment as claimed. Hence, Operational Creditor filed this application to initiate Corporate Insolvency Resolution Process of the Corporate Debtor. The Corporate Debtor has been served with the notice of this application. It appears through one of its directors Mr. Ashish Goyal who has filed affidavit in reply and contested the claim.

5. We heard learned counsel, Mr. Sunil Bhavsar for Operational Creditor and Learned PCS Mr. Niraj Trivedi



for the Corporate Debtor at length. We have gone through the evidences and materials on record.

6. Learned counsel for the Operational Creditor submitted that in notice reply dated 22.05.2019, the Corporate Debtor admitted the debt. He further pointed out that e-mail dated 25.11.2018 sent by the Corporate Debtor, wherein, the Corporate Debtor made statement that balance payment will be made within next ten and twelve days. According to him, Corporate Debtor did not reply to demand notice under Section 8 of IBC nor pointed out any pre-existing dispute.
7. As against the above, learned PCS for the Corporate Debtor submitted that the debt is actually not admitted. By notice reply dated 22.05.2019, the Corporate Debtor had informed the Operational Creditor that the furnace supplied was of sub-standard quality. According to him, there is a pre-existing dispute regarding goods sold. Corporate Debtor is always ready to pay the balance outstanding amount of Rs. 3,28,800/- provided the Operational Creditor settles the accounts. According to



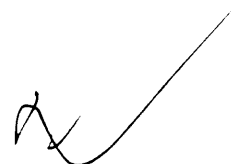
him, this petition is not maintainable as there is a pre-existing dispute relating to the goods supplied.

8. We have noted that in affidavit in reply, the Corporate Debtor categorically stated that “the actual amount payable by the Respondent will be Rs. 3,28,800/-”. According to the Corporate Debtor, the Oven supplied by the Operational Creditor was defective. It had burst in April, 2019. The fact that the goods were of sub-standard quality was already informed to the Operational Creditor. However, it is difficult for us to accept this defence. It is not in dispute that as per invoice dated 10.08.2018 (page no.40-45), the goods were supplied. According to the Corporate Debtor, it got burst in April, 2019 i.e almost seven months after its installation at the premises of the Corporate Debtor. There is every possibility that the Oven got burst due to want of proper maintenance by the Corporate Debtor.
9. It is not in dispute that the Corporate Debtor did not reply demand notice under Section 8 of IBC. In earlier notice reply dated 22.05.2019, the Corporate Debtor admitted the debt. Not only that, as per the Corporate Debtor’s own



statement in reply (in para 9), it has made payment of Rs. 9,91,200/- and it is ready to pay balance sum of Rs. 3,28,800/-. In such situation the Corporate Debtor's defence that goods received by it was sub-standard cannot be accepted.

10. It is not in dispute that Corporate Debtor did not return so called defective goods back to the Operational Creditor. It has been admitted in uncertain terms that sum of Rs. 3,28,800/- is yet to be paid by it to the Operational Creditor. It had raised dispute about quality of the goods nine months after goods were issued by Operational Creditor. According to us, such defence about pre-existing dispute relating to quality of goods is feeble and ineffectual.
11. The Corporate Debtor had admitted that operational debt of Rs.3,28,800/- is yet to be paid by it to the Operational Creditor. It had received demand notice but did not make the payment. This application is defect free. The Operational Creditor has suggested the name of Mr. Shri. Arun Chadha for appointment of IRP against whom no disciplinary proceeding is pending. Hence, we allow this



application and admit the Corporate Debtor in CIRP by following order:

ORDER

- 1) The Corporate Debtor, viz., M/s. Superchem Coatings Private Limited is admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
- 2) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - 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 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.

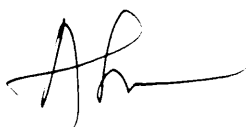


- 3) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- 4) We hereby appoint Mr. Arun Chadha, having Insolvency Professional Registration. No. IBBI/IPA-001/IP-P00165/2017-18/10334, (E-mail ID:chadharun@yahoo.com, Mobile No.9810286133 to act as an IRP under Section 13(1) (c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:
- 5) The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person



required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- 6) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- 7) It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress



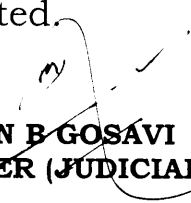
Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

- 8) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

12. Accordingly, CP(IB) No.685/9/NCLT/AHM/2019 is allowed. However, Insolvency Resolution Professional / Resolution Professional to file progress report through IA so that which can be taken on record by this Adjudicating Authority.

13. In view of the above, the CP (IB) No.685/9/NCLT/AHM/2019 stands admitted.


AJAI DAS MEHROTRA
MEMBER (TECHNICAL)


MADAN B GOSAVI
MEMBER (JUDICIAL)