



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

RCP (IB) 1 (KB)2023

**Under section 9 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 6 of the insolvency and bankruptcy (application to
Adjudicating Authority) rules, 2016**

In the matter of:

Hindustan Adhesive & Chemicals

...Operational Creditor

Versus

Alishan Veneer & Plywood Private Limited

...Corporate Debtor

Order pronounced on: 5/6/2024

Coram:

Bidisha Banerjee: Member (Judicial)

D. Arvind: Member (Technical)

Appearances (via Hybrid)

Mr. Avik Chaudhuri, Adv

} for the Operational Creditor

Ms. S. Majumder, Adv

Mr. Ramesh Kumar Varma, PCS

} for the Corporate Debtor



ORDER

Per: Bidisha Banerjee, Member (Judicial)

Brief Facts:

1. The company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Hindustan Adhesive & Chemicals (Herein after referred to as Operational Creditor/ Applicant) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Alishan Veneer & Plywood Private Limited (Herein after referred to as the Corporate Debtor/ Respondent).
2. The Applicant is a partnership firm, PAN Card No AABFH8680E, having Registered Office at 48 Dum Dum Road Kolkata-700074. The Applicant is being represented by Mr Samiran Mukherjee
3. The Respondent is a Company incorporated on 31/03/1995 under the Companies act, 1956. Its CIN is U2021WB1995PTC070715. The Registered Office of the company is at 46 B B Ganguly Street Kolkata-700012. Therefore, this bench has jurisdiction to entertain and decide the applicant.
4. The principal amount claimed to be in default is Rs 1,52,07,454/- (Rs One Crore fifty two lakh seven thousand four hundred fifty four only). The total Outstanding Debt is Rs 2,74,13,356 (Rs Two crore seventy four lakh thirteen thousand three hundred fifty six) which include an interest at 18% per annum.

Submission of the applicant


5. The Operational Creditor is engaged in the business of the trading in chemicals and adhesive products. During the period of 21 august 2007 and 2nd September 2020 the Operational Creditor received purchased orders for chemical and resins from Corporate Debtor. The Corporate Debtor accepted the goods supplied by Operational Creditor without any complainant and dispute.



6. The Operational Creditor has filed CP (IB) No.1520/KB/2020 before the National Company Law Tribunal, Kolkata Bench for initiation of Corporate Insolvency Resolution Process against Corporate Debtor. The Operational Creditor and Corporate Debtor entered into settlement agreement termed ("MOU") and the CP (IB) No. 1520/KB/2021 is dismissed as withdrawn by the Adjudicating Authority vide order dated 3rd August 2021. After the breach of settlement agreement the Operational Creditor filed a restoration Application No RST. A (IBC) 2/KB/2023 before this Adjudicating Authority to restore the present Petition which was allowed vide order dated 12th October 2023. Hence the present Petition is restored and is numbered as RCP (IB) 1/KB/2023. Copy of Settlement agreement is annexed as **annexure A of the Rejoinder**.
7. As per the settlement agreement entered between Operational Creditor and Corporate Debtor dated 18th January 2021, the Corporate Debtor has admitted the liability of Rs 1,52,07,454/- (Rs One Crore fifty two lakh seven thousand four hundred fifty four).
8. Out of Principal Debt of Rs 1,52,08,531/- the Corporate Debtor has made payment of Rs 18,00,649 to the Operational Creditor. Hence the Corporate Debtor has breached the settlement agreement dated 18th January 2021 by not paying the operational debt. Even after the partial payment of Rs 18,00,649 /- to the Operational Creditor the claimed amount is still above 1 crore as required under section 4 of the IBC, 2016.
9. On numerous occasions the Operational Creditor though email has requested Corporate Debtor to pay the claimed amount but till date Rs 18,00,649 has been paid only. All the cheques issued by the Corporate Debtor is dishonored.

Submission by Respondent

10. The Respondent submitted the following:

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- a. That there is no provision available Insolvency and Bankruptcy Code, 2016 to restore the finally disposed of Petition as settled out of court or as withdrawn.
 - b. The Applicant is not authorized to file the application as it is evident from the written authorization at Page 11 of the application. The relevant extract is given below:


“Mr. Samiran Mukherjee son of Mr. Tarak Nath Mukherjee aged about 36 years. Being the marketing executive of the firm be and is hereby authorized to file a complaint case/ application under Insolvency and Bankruptcy Code, 2016 or under any another law on behalf of the company against M/s Shri Krupalu Steels Private limited.

- c. The Application is incomplete as it does not have an affidavit as required in section 9(3)(b) of the IBC, 2016. Section 9(3)(b) of the IBC, 2016 incorporated herein below:

“(b) an affidavit to the effect that there is no Notice given by the Corporate Debtor relating to a dispute of the unpaid Operational debt.”

Submission by applicant through rejoinder

11. The applicant has made following submission in rejoinder against the reply affidavit of Respondent:
 - a. The Hon'ble NCLAT in the judgment of the VIVEK Bansal v Burda Druck India Private Limited (SCC Online NCLAT 552) held that if the Operational Creditor and Corporate Debtor comes to settlement of the debt and there after Corporate Debtor violate the settlement agreement then Operational Creditor shall be at the liberty to seek revival/ restoration of the application under section 9 of the IBC, 2016.

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- b. Since the Operational Creditor was filing the simultaneously another application against the Shri Krupalu Steels Private Limited. In the process of filing another application authorization of Operational Creditor get exchanged by mistake. The applicant in rejoinder has annexed authorization of Operational Creditor.
 - c. The applicant submits that the correct affidavit as per section 9(3)(b) is annexed at page 505-506 of the Petition.

Analysis and Finding

12. Heard the learned counsel appearing on behalf of Operational Creditor and Financial Creditor and pursued the records.
13. Upon perusal of settlement agreement entered between Operational Creditor and Corporate Debtor dated 18th January 2021, the Respondent has acknowledgement the debt claimed by the applicant. Hence the debt is clearly established. Whereas clause of the settlement agreement is produced verbatim hereunder:

*“ **Whereas** from time to time and on various occasion the party of first part have delivered various goods to the second party which has been received by the party of the second part to their satisfaction and owing to such delivery of goods a sum of money of Rs 1,52,08,832/- (Rupees one crore fifty two lakh eight thousand eight hundred thirty two) is due and payable by the second party to the first party.”*

14. We have pursued the affidavit filed by the Operational Creditor under section 9(3)(b). The affidavit filed under section 9(3)(b) by the Operational Creditor does not disclose the factum of furnishing reply by the Corporate Debtor to the Demand Notice issued by the Operational Creditor.



However we rely on the judgment of the Hon'ble NCLAT in **IDBI Capital Markets and Securities Ltd v JBF Petrochemical Ltd, Company Appeal (AT) (insolvency) No. 524 of 2020**, where it was held that:

“48... An affidavit filed as per section 9(3)(b) of the code by the ‘Operational Creditor’ if it is an incorrect one, not disclosing the factum of furnishing of ‘reply’ by the ‘Corporate Debtor to the ‘Demand Notice’ issued by the ‘Operational Creditor’ then the Adjudicating Authority can decide the fate of the application based on the existing realities.

The Corporate Debtor in the reply affidavit no where mentioned about existence of dispute on unpaid Operational debt. Therefore, the requirement under section 9(3)(b) is fulfilled.

15. We rely on the judgment of Hon'ble NCLAT in **Keshav Kantamneni versus Kishan Chand Suresh Kumar, Company Appeal (AT) (CH)(INS.) No 260/2021** where in that was held that a settlement inter se parties, is merely an effort to recover monies due under a Transaction which may be Financial Transaction or an Operational Transaction. Merely because a party has taken the steps to recover the same and in such process has entered into some agreement, should not deter such party from filing application under tenets of the IBC.
16. In this matter, we had allowed withdrawal of Petition vide order dated 03.08.2021 with a liberty to file appropriate application for revival of the company Petition at the stage at which it was left off, in case there is default. If we reject this Petition on any other ground, the order passed by us granting liberty would become meaningless and hence In view of the above facts and findings, we are of considered view that an Operational debt of more than 1 crore is due and in default and



there is no dispute in relation to debt in default. The application is complete in all respect. Hence, we find the same is liable to be admitted.


17. In the light of the enumerations supra, the application bearing **RCP (IB) 1/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **Hindustan Adhesive & Chemicals (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Alishan Vener & Plywood Private Limited. (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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. [Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has not proposed any name as the "IRP". Hence, we appoint **Mr. Goutam Mukherjee, Registration No IBBI/IPA - 001/IP-P-02696/2022-2023/14170,** **Email: gm.resolution@yahoo.com, Phone No. 8910041395** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy




Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.



- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means 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.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the



progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

18. Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

19. Post the matter on **22/7/2024** for filing the Periodical Progress Report by the IRP/RP.

D. Arvind

Member (Technical)

Bidisha Banerjee

Member (Judicial)

Signed this, on the 5th day of June , 2024

NKS(LRA)/Tiwari. V(LRA)