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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP (IB)/11/CHE/2021

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. Abhiraami Chemicals Limited***

Jyothy Labs Limited

Represented by its Director Mr. Shreyas Trivedi,
Ujalas House, Ram Krishna Mandir Road,
Kondivita, Andheri (East)
Mumbai – 400 059

... Financial Creditor

-Vs-

M/s. Abhiraami Chemicals Limited

Peralam Main Road,
Thirunalar, Karaikal – 609 607

... Corporate Debtor

Order pronounced on 4th October 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : K. Balaganesh, Advocate
For Corporate Debtor : None present*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This is an Application filed by **M/s. Jyothy Labs Limited**
(hereinafter referred to as "**the Financial Creditor**") against
M/s. Abhiraami Chemicals Limited (hereinafter referred to as
"**the Corporate Debtor**") under Section 7 of the Insolvency &

Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Financial Creditor is a Limited Company incorporated under the provisions of the Companies Act, 1956. From Part-II of the Application, it is seen that the Corporate Debtor is a Limited Company incorporated on 23.12.1992 bearing CIN: U24117PY1992PLC000855. The registered office address of the Corporate Debtor as per the Application is stated to be situated at Peralam Main Road, Thirunallar, Karaikal – 609 607. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. M. Alagar, Reg. No. IBBI/IPA/-002/IP-N00705/2018-19/12320; to act as the IRP.

3. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.2,55,92,043/- which is due and payable by the Corporate Debtor. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:



- i. Outstanding Balance confirmation letter issued by the Corporate Debtor;
- ii. Outstanding Balance confirmation letter acknowledged by the Corporate Debtor;
- iii. Reminder Letter dated 16.03.2020;
- iv. Reminder Letter dated 30.06.2020;

4. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor in the year 2011 had acquired the stakes of one M/s. Henkel India Limited vide Share Purchase Agreement executed with Henkel AG & Co. KgaA and in the year 2012, the name of Henkel India Limited was changed to M/s. Jyothy Consumer Product Limited (JCPL) and further JCPL was amalgamated with M/s. Jyothy Laboratories Limited, the Financial Creditor herein pursuant to the Order of the Hon'ble High Court of Bombay dated 12.04.2013. It was submitted that pursuant to the amalgamation, all the assets and liability of JCPL vested on the Financial Creditor including the amount receivables from the Corporate Debtor.

5. The Learned Counsel for the Financial Creditor submitted that since the Corporate Debtor was having very limited operations for several years and for meeting out regular expenses, the Corporate Debtor approached the Financial Creditor to grant unsecured loan



for its funding requirements and accordingly, the Financial Creditor had granted unsecured loan to the Corporate Debtor vide an Agreement dated 05.07.2013 upto a maximum of Rs.2,75,00,000/- at regular intervals whenever there is a request from the Corporate Debtor, which shall be repayable on demand within 14 days from the date of such demand.

6. It was submitted by the Learned Counsel for the Financial Creditor that at the beginning of July 2013, the Corporate Debtor had outstanding dues payable amounting to Rs.1,63,80,162/- to the Financial Creditor on account of the same having transferred from the books of M/s. Henkel India Limited consequent upon a scheme of Amalgamation and the same was also acknowledged by the Corporate Debtor. Further, it was submitted that the Financial Creditor has disbursed money based on the request of the Corporate Debtor at different intervals and the outstanding debt was also acknowledged by the Corporate Debtor at the end of each financial year. It was submitted that as on 08.02.2020, the Corporate Debtor is liable to pay the outstanding debt amounting to Rs.2,55,92,043/- to the Financial Creditor.

7. The Learned Counsel for the Financial Creditor submitted that since the Corporate Debtor did not show any sign of progress in



the business activity, the Financial Creditor issued a Demand letter dated 08.02.2020 to the Corporate Debtor calling upon them to repay the outstanding amount of Rs.2,55,92,043/- and the Corporate Debtor has received the said Demand letter, however has not replied to the same. Under these circumstances, the Financial Creditor has filed the present Application under Section 7 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

8. In relation to the Respondent / Corporate Debtor it is seen from the record of proceedings that a fresh notice was ordered on the Respondent and a perusal of the Affidavit of Service would show that the notice was issued to the Respondent / Corporate Debtor on 15.04.2021 which was received by them on 19.04.2021 and in spite of the same, there was no representation on behalf of the Corporate Debtor and hence the Corporate Debtor was set *ex parte* by the order of this Tribunal on 22.07.2021 and the matter was posted for final arguments on 05.08.2021.

9. Heard the submissions made by the Learned Counsel for the Financial Creditor. It is seen that the Financial Creditor has executed a Loan Agreement on 05.07.2013 and as per the said Loan Agreement, the unsecured loan, which was due and payable



to M/s. Henkel Limited was acknowledged by the Corporate Debtor and the Corporate Debtor has admitted that the said amount, pursuant to the amalgamation is payable to the Financial Creditor herein. Also, the Loan Agreement further sanctioned an amount of Rs.2,75,00,000/- including the existing debt of Rs.1,63,80,162/- to the Corporate Debtor and in pursuance of the same, the amount was disbursed to the Corporate Debtor for the period from August 2013 till July 2019.


10. At this juncture, it is required to be noted here that the amount of Rs.1,63,80,162/- which was found outstanding as per the books of M/s. Henkel India Limited was disbursed towards the operational expenses and hence the said amount cannot be treated as a 'financial debt'. However, the remaining amount which was disbursed to the Corporate Debtor aggregating to the total of Rs.2,75,00,000/- after deducting Rs.1,63,80,162/- alone would amount to a 'financial debt'.

11. Further, from the typed set of documents filed along with the Application, it is seen that the Corporate Debtor has issued a Balance confirmation to the Corporate Debtor for the Financial Years 2013 – 2014 till 2018 – 2019 which is placed at pages 73 to 84 of the typed set filed along with the Application. Further, based

upon the Loan Agreement dated 05.07.2013, the Financial Creditor has disbursed money to the Corporate Debtor at different intervals and the outstanding debt was also acknowledged by the Corporate Debtor at the end of each financial year. It is also seen from the said acknowledgment, the Corporate Debtor has expressly stated that they have outstanding balance in respect of 'unsecured loan amount'. All these documents go on to show that there is a 'financial debt' and the Corporate Debtor has committed 'default' in repayment of the said 'financial debt' to the Financial Creditor.

12. Further, it is also seen that the 'default' which is arising in the present Application has happened much before the advent of Covid - 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under these circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

13. The Financial Creditor has proposed the name of **MR. M. ALAGAR**, Reg. No. IBBI/IPA/-002/IP-N00705/2018-19/12320 (*email id:- alagarcs@gmail.com*) as the Interim Resolution Professional (IRP) who has also filed his consent in Form - 2 and also upon verification from the IBBI website, it is seen that



the Authorization for Assignment is granted to the said IRP till 21.01.2022. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

14. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

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 licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

15. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) 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.



(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

16. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:



Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

17. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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