

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

C.P. No. 2838/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of:

Jay Jay International
405, Valubhdas Cursondas,
Natha Trust Building,
328/330, Samuel Street,
Mumbai – 400 003

.... Petitioner

Vs.

Parth Chem Impex
Private Limited,
B/1602, Kailash Tower,
Near Kamla Nagar, M. G.
Road, Kandivali (west),
Mumbai – 400 067

.... Corporate Debtor

Order delivered on: 20.08.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Mandar Soman, Advocate

For the Respondent: Dharmesh J Shah, Advocate

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Jay Jay International, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Parth Chem Impex Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment to the extent of Rs. 2,16,20,700/- which is inclusive of interest @21% p.a. by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petitioner submits that they are engaged in the business of trade of chemicals and the Corporate Debtor is carrying on the business of import and distribution of chemicals and raw materials.
3. The Petitioner claims that they entered into a High Seas Agreement with the Corporate Debtor according to which they supplied Monosodium Glutamate 30 Mesh (hereinafter referred to as 'product') for which various invoices were raised by them from time to time from 27.02.2015 to 21.04.2015. It is also stated by the Petitioner that additionally Melamine was also supplied to the Corporate Debtor on 04.07.2015. However, inspite of various requests and reminders of the Petitioner, the Corporate Debtor failed or neglected to pay the outstanding dues. Demand Notice was therefore issued by the Petitioner on 15.05.2018 calling upon the Corporate Debtor to pay a total sum of Rs. 2,16,20,700/-. The Corporate Debtor

replied to the said demand notice vide his letter dated 15.05.2018 denying any liability to the Petitioner. Therefore this petition was filed.

4. The Corporate Debtor has filed his Reply and Written Submissions, wherein he has woven a rather vivid story according to which it is him the Corporate Debtor who is the victim here and it is the Petitioner who owes him and the foreign supplier a substantial amount. Since according to the Corporate Debtor the product was being transported by Corporate Debtor on behalf of the Petitioner from the Foreign Supplier. It is argued over and over by the Corporate Debtor that he is merely an intermediary between the Petitioner herein and the foreign Supplier.

5. We have gone through the pleadings and arguments raised by the counsels at length. We have observed that the defenses raised by the Corporate Debtor seem to be a rather flimsy story without any supporting evidence to it. The Corporate Debtor's best case is the email sent by the foreign supplier, and the invoices raised by the foreign supplier annexed by them in their pleading. The email annexed by the Corporate Debtor, which from the foreign supplier to him reiterates his story. Based on the email the Corporate Debtor has argued taking *cum hoc ergo propter hoc* (with this, therefore because of this) as their defense. This means, if the documents annexed by the Corporate Debtor are said to be correct, therefore the defense/story put forth by the Corporate Debtor is also correct.

6. However, this argument of the Corporate Debtor fails because correlation does not simply imply causation. Herein, the Corporate Debtor have on the basis of their arguments and evidence failed to legitimately deduce a cause-and-effect relationship between the stories that they have knitted in their pleadings. The Corporate Debtor has time and again failed to counter the arguments advanced by the Counsel for the Petitioner by any evidence. For instance the Corporate Debtor fails to explain the part-payment of Rs. 6,00,000/- made by them to the Petitioner.
7. Based on the above it is clear that there is an existence of debt and that there is default committed by the Corporate Debtor in repayment of such debt to the Petitioner.
8. Therefore, this Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring moratorium with the directions as mentioned below:
 - (a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 06.03.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Vimal Kumar Agarwal, Office at Shop No. 11 and 12, Krishna Kunj Building, above HDFC Bank, 150 Feet Road, Bhayander (West), Mumbai - 401101 having Registration No. IBBI/IPA-001/IP-P00741/2017-

2018/11247 as an interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

9. The Registry is hereby directed to communicate this order to both the parties and the IRP immediately.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)

(Prakhar Tandon)