

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10.10.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

CP (IB) No. 301/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:
CYMK Inks LLP

... Operational Creditor

Vs

Lotus Poly-Packs Pvt Ltd

... Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in Company Petition CP (IB) No. 301/9/HDB/2020 pronounced and recorded vide separate sheets. In the result, the Company Petition is admitted and the Corporate Debtor is put under CIRP.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I**

CP(IB) No. 301/9/HDB/2020

[U/s. 9 of I&B Code, 2016 r/w Rule 6 of I & B (AAA) Rules, 2016]

In the matter of:

M/s. CYMK Inks LLP

113/114, 1st Floor, Angel Business
Centre Waliv Phata, Vasai (East) Dist.
Palghar, Maharashtra – 401 208, India

.... Operational Creditor

Vs.

M/s. Lotus Poly-Packs (India) Private Limited

H.No.9-271, Plot No.5, Rajiv Gandhi Nagar
Near S.S.Rubbers Pvt. Ltd., IDA
Kukatpally, Hyderabad – 500 037
Telangana, India.

... Corporate Debtor

Date of Order: 10.10.2022

Coram:

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Mr.Kairav Anil Trivedi, PCA

For the Respondent : Mr. N. Vinesh Raj, Mr. V. Ramesh Babu
Mr. Viswanath Yadav

[PER : BENCH]

ORDER

- I. This is a Petition filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt of an amount of Rs.5,60,088/- (Rupees Five Lakhs Sixty Thousand Eighty Eight only) which includes Principal of Rs.3,58,143/- and MSME interest of Rs.2,01,945/- as on 10.01.2020 i.e. the date of Demand Notice. The principal and interest calculation sheet is filed at page no. 32 of the application; and also praying to pass order for cost of Rs.2,00,000/- since the Corporate Debtor accepted a settlement in 2019 but has not released a single payment leading to this present application and hardship to MSME Operational Creditor from Mumbai who also attended the physical hearings in 2019 at NCLT, Hyderabad.

- II. CYMK Inks LLP, for short ‘Petitioner/Operational Creditor’. Lotus Poly-Packs (India) Private Limited, for short ‘Respondent/Corporate Debtor’. The Operational Creditor supplied printing ink material ordered by Corporate Debtor and raised two invoice nos.129, dated

12.06.2017 for Rs.2,74,857/-, and Invoice No.243, dated 26.05.2017, for Rs.1,83,286/-.

- III. As per the terms of the Invoice, the Invoice amount is payable within 45 days from the date of Invoice. On 23.10.2018, an amount of Rs.1,00,000/- was paid by the Corporate Debtor against Invoice No.129, dated 12.06.2017, leaving a balance of Rs.1,74,857/-. Thereafter, no payments have been received. Despite receipt of the material, the Corporate Debtor failed and neglected to pay the outstanding amount.
- IV. When the said amount was not paid, the Operational Creditor issued a demand notice to pay the operational debt of Rs.4,83,025/- including interest. However, even on service of demand notice, the Respondent failed to send any reply within the statutory time period of 10 days to indicate either payment of debt or existence of dispute.
- V. The Operational Creditor filed a Company Petition C.P.No.328/9/HDB/2019 against the Corporate Debtor before the Hon'ble NCLT, Bench-II, Hyderabad.
- VI. The Corporate Debtor, vide its Minutes of Meeting held on 30.07.2019 admitted the liability towards its debt of Rs.4,83,025/-, which includes principal amount of Rs.3,58,143/- and interest of Rs.1,24,882/-. The Corporate Debtor issued two post dated cheques, vide Cheque No.000889, dated 31.10.2019, for Rs.3,58,143/- towards

principal amount and Cheque No.000891 dated 31.12.2019 for Rs.50,000/- towards lumpsum interest as agreed by both the parties.

A copy of the Minutes of the Meeting dated 30.07.2019 enclosing the copies of the above post-dated cheques were filed at page nos. 45 to 47 of the application.

VII. Settlement agreement was not submitted by the Corporate Debtor even when agreed. Due to no one being present, C.P.No.328/9/HDB/2019 was dismissed by the Hon'ble NCLT vide docket order dated 27.08.2019, wherein it was mentioned that –

“No representation on behalf of the Petitioner. On the last date of hearing also there is no representation on behalf of the petitioner. It appears that Petitioner is not interested to proceed with the matter. Accordingly, CP(IB) No.328/9/HDB/2019 is dismissed for default”.

VIII. Subsequently, the Corporate Debtor has failed to honor its commitment as per the agreement, the Operational Creditor once again got issued a Demand Notice dated 10.01.2020 in Form-3, demanding the Corporate Debtor to pay the total outstanding debt amount of Rs.5,60,088/-. Since the demand notice, did not evoke any response from the Respondent, the Operational Creditor has filed the present Company Petition for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

IX. In the above back drop, the Operational Creditor was once again constrained to file CP(IB) No.301/9/HDB/2020, as the Corporate

Debtor breached the agreed terms vide in the minutes of the meeting held on 30.07.2019, as not a single rupee has been paid by the Corporate Debtor till date.

- X. While it was so, on 12.11.2020, 02.12.2020, 16.12.2020, 23.12.2020 the matter came up for hearing, Learned Counsel for Corporate Debtor stated that “they are willing to settle the matter and discussions are in progress”. However, no payment has been made by the Corporate Debtor and the Corporate Debtor has been set ex-parte on 08.02.2021 and the above Company Petition CP(IB) No.301/9/HDB/2020 has been reserved for orders.
- XI. In the above undeniable factual backdrop, where Form-3 demand notice dated 10.01.2020 issued by the Operational Creditor demanding the Corporate Debtor to pay the total outstanding debt amount of Rs.5,60,088/- has not been responded despite receipt, coupled with the undisputed fact of glaring breach of the agreed terms in the minutes of the meeting held on 30.07.2019 where under the Corporate Debtor has unconditionally accepted to discharge the operational debt of the Operational Creditor herein in parts, unlike in other matters filed under section 9 of I&B Code, enquiry as to the existence of an operational debt and its default by the Corporate Debtor in the case on hand since admitted, is unwarranted and unnecessary.

XII. Nevertheless, we have heard the Learned Counsel for Operational Creditor and Learned Counsel for Corporate Debtor. The Operational Creditor has filed various documents in proof of claim and default. The demand notice is shown at page nos. 33 to 35 of the application. The demand notice was served on Corporate Debtor and received by them. The case of the Operational Creditor is that it had supplied printing ink material to the Corporate Debtor. The Tax Invoices are shown at page nos. 26 and 33 of the additional documents filed by the operational creditor. According to the Operational Creditor, an amount of Rs.1,00,000/- was paid by the Corporate Debtor on 23.10.2018.

XIII. It is pertinent to note that the Corporate Debtor has never raised any dispute in regard to defective material. Thus, this is not a matter where existence of a pre-existing dispute is pleaded.

XIV. *Hon'ble Supreme Court of India in re, Mobilox Innovations Private Limited*, held that;

“Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”

“If any one of the aforesaid conditions is lacking, the application would have to be rejected.” (Emphasis is ours).

- XV. In so far as the prayer for costs claimed by the Operational Creditor on the plea that the operational creditor was put to hardship and inconvenience by the Corporate Debtor besides the travelling cost incurred by the Operational Creditor for traveling from Mumbai to Hyderabad for attending the physical hearings before the NCLT, Hyderabad is concerned, liberty is given to the Operational Creditor to make a claim before the IRP and IRP to consider the same as per the rules.
- XVI. It may be stated herein that on 31.03.2022 when the matter came up for pronouncement of Orders, just before we could pronounce the order, the Corporate Debtor submitted that it had filed an IA 304/2022 seeking to set aside the Order dated 08.02.2021 where under the Corporate Debtor was set ex-parte. The said was considered with certain conditions and as the said condition was not complied, IA 304/2022 has been dismissed.
- XVII. Therefore, in view of our discussion as afore stated, and upon considering the submissions made by the Ld. Counsels for the Petitioner and the Respondent, we are of the firm view that this petition deserves to be admitted. Accordingly, the petition is admitted.
- XVIII. The Operational Creditor has proposed the name of Mr.Karuchola Koteswara Rao as Interim Resolution Professional (IRP). However,

the Adjudicating Authority is deemed to be appointed from the empanelled list circulated by the IBBI. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from July 1, 2022 to December 31, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Dendukuri Zitendra Rao, having Registration No. IBBI/IPA-003/IP-N00219/2019-2020 /13014, e-mail: dzr.irp@gmail.com, Mobile No: 9347719544 as Interim Resolution Professional. The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

XIX. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions: -

- i. Corporate Debtor, M/s.Lotus Poly Packs (India) Private Limited. is admitted in Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency & Bankruptcy Code, 2016.
- ii. The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- iii. 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, concessions, clearances or a similar grant or right during the moratorium period.
- iv. 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.

- v. 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.
- vi. That 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 Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- vii. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.
- viii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- ix. The Operational Creditor is directed to communicate this order to the IRP appointed in this case.
- x. Accordingly, this Petition is admitted.

- xi. Registry to send a copy of this order to the Operational Creditor and IRP in this case.
- xii. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

Sd/-

**VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Syamala

Sd/-

**Dr.N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)**