

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

C.P. No.1619/I&BP/2019

Under section 7 of the IBC, 2016

In the matter of:

Sai Projects and Engineers Pvt. Ltd.
Om Arcade, Plot No. 1, Sec – 20,
Opp. Turbhe Railway Station,
Turbhe, Vashi,
Navi Mumbai - 400405

... Petitioner

v/s.

Kalpyog Chemicals Private Ltd.
W-213/214, T.T.C Industrial Area,
Behind Reliance Silicon, Khairane, MIDC,
Navi Mumbai - 400709

.... Respondent

Order delivered on: 29.08.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner : Ms. Komal Jain, Professional

For the Respondent: None Present.

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by Sai Projects and Engineers Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Kalpyog Chemical Pvt. Ltd. (hereinafter called

“Corporate Debtor”) alleging that Corporate Debtor committed default in making payment to the extent of Rs. 59,84,795/- by invoking the provisions of Sections 7 of I & B Code (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Petitioner submits that the Petitioner Company is a Private Limited company offering Fabrication and Erection services. Company is also engaged in manufacturing and supplying premium quality IBR piping and Burner and Boiler spares.
3. It is further submitted by the Petitioner that the Corporate Debtor approached the Petitioner for installation of new briquette fired boiler and operation of the same for 30 months as a locking period. After this, the Corporate Debtor issued a work order no. Kalyog/BOOT/2014-15/986765 for the said work to be undertaken. Thereafter, it was informed to the Petitioner that the Corporate Debtor was in need of funds to sustain their business. Therefore, the petitioner after passing appropriate resolution granted them a Company guaranteed interest free loan of Rs. 50,00,000/- on 21.11.2014.
4. It is also submitted that the Bank Statement of the Petitioner makes it aptly clear an amount of Rs.50,00,000/- was transferred to the Corporate Debtor. Provisional balance from 01.04.2017 to 31.03.2018 of the Petitioner also reflects the said amount as a loan.
5. For clear clearance of the said amount, letters dated 07.04.2017 & 26.04.2017 informing about the presentation of post-dated cheques were issued by the Corporate Debtor to the Petitioner. However, all these cheques got dishonored from the

bank with the endorsement 'Insufficient Funds' on 31.03.2017, 19.04.2017 & 03.05.2018.

6. The Petitioner also submits that they tried to communicate with the Corporate Debtor on various occasions requesting them to pay the aforesaid amount however they failed to pay the remaining dues despite of several reminders and notices. Therefore, the Petitioner had no other option except to file a petition before this tribunal under Section 7 of the code. This case was registered as Company Petition No. 393/2018 on 14.03.2018.
7. Vide the earlier Petition, the Petitioner sought an amount of Rs. 57,34,795/- including 18% interest. This matter was listed before this Hon'ble Bench and at the stage of admission the Corporate Debtor proposed to settle the matter by issuing post dated cheques. Therefore, on 12.12.2018, both the parties entered into a Settlement Agreement wherein the Corporate Debtor agreed to pay Rs. 59,48,795/- which includes the cost of litigation and interest. Based on this the Corporate Debtor also issued a post-dated cheque bearing No. 33628 dated 30.01.2019 for an amount of Rs. 59,48,795/-. Therefore, the bench directed the Petitioner to withdraw the matter, and an order in pursuance of the same was passed on 20.12.2018.
8. The Petitioner thereafter submits that on 04.02.2019, they deposited the aforementioned cheque, however, the same was dishonored on 07.02.2019 due to insufficiency of funds. Therefore, from the above the Petitioner believes that it is clear that the Corporate Debtor has been a continuous defaulter even after entering into a settlement agreement. Therefore, the Petitioner has filed this Petitioner serving a copy of Petition in

Form – 1 with complete sets to the Corporate Debtor by speed post and via email.

9. The Petitioner enclosed various documents in the form of Bank Statement, Cheque Return Memo, Settlement Agreement which clearly demonstrates that the defaults committed by the Corporate Debtor on various occasions.
10. The Petitioner has issued notices to the Corporate Debtor through R.P.A.D on three different occasions, the tracking report shows the endorsement as “item delivery confirmed”. After having been recorded various opportunities to the Corporate Debtor miserably failed to appear before the Adjudicating Authority hence this Tribunal had also given a last opportunity to the Corporate Debtor vide its order dated 19.07.2018. Therefore, under prevailing circumstances the Bench has decided to proceed ex-parte against the Corporate Debtor and consider this Petition on merits.
11. This Bench has gone into the details provided in the Form 1 and connected materials and after hearing the Petitioner is of the considered view that there is debt and default.
12. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this

Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- 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 (SARFAESI Act);
- 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.
- e) 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.
- f) 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.
- g) That the order of moratorium shall have effect from 20.08.2019 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.

- h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i) That this Bench hereby appoints, Sreekumar Radhakrishnan Nair, having office at Flat No. 2404, Plot No. 24 to 29, Amey Chs ltd., Sec-4, Palm beach Road, Nerul, Navi Mumbai – 400 706; having Registration No. IBBI/IPA-001/IP-P01237/2018-19/11988 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to communicate this order to both the parties as well as IRP immediately.

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)
/Prakhar Tandon/

Sd/-
SHYAM BABU GAUTAM
Member (Technical)