IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-741/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Newgen Speciality Plastics Limited
Through its liquidator
Mr. Anil Kumar

...Operational Creditor/Applicant

Versus

M/s. Prominent Polymers Private Limited

...Corporate Debtor/Respondent

CORAM:

MR. DHARMINDER SINGH, Hon'ble Member (Judicial)

MS. SUMITA PURKAYASTHA, Hon'ble Member (Technical)

Order Delivered on: 25.05.2022

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution

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Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant, Newgen Speciality Plastics Limited through its liquidators Mr. Anil Kumar, Insolvency Professional having IBBI Registration Number IBBI/IPA-001/IP-P00144/2017-2018/10308 has filed the present application on 04.03.2020, claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process against the respondent company under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:

   a. The Operational creditor used to supply LLDPE Compound to the Corporate Debtor.

   b. In pursuance of the said arrangement, the operational creditor had completed his obligations and had consequently raised various invoices to the corporate debtor aggregating Rs.92,45,001/-. The details of outstanding invoices are as follow :-

      i. NSPL/17-18/0664 dated 17.03.2018 amounting Rs.7,51,660/-;

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ii. NSPL/17-18/0666 dated 19.03.2018 amounting Rs.6,44,280/-;

iii. NSPL/17-18/0673 dated 20.03.2018 amounting Rs.5,36,900/-;

iv. NSPL/17-18/0680 dated 21.03.2018 amounting Rs.6,44,280/-;

v. NSPL/17-18/0688 dated 22.03.2018 amounting Rs.5,36,900/-;

vi. NSPL/17-18/0691 dated 24.03.2018 amounting Rs. 7,51,660/-;

NSPL/17-18/0702 dated 27.03.2018 amounting Rs.5,58,376/-;

vii. NSPL/17-18/0714 dated 29.03.2018 amounting Rs.5,36,900/-;

NSPL/17-18/0719 dated 30.03.2018 amounting Rs.5,36,900/-;

4. The applicant sent a Demand Notice dated 30.01.2020 demanding payment of an unpaid operational debt i.e., Rs. 92,45,001/- (Indian Rupees Ninety-Two Lakhs Forty-Five Thousand and One Only) which constitutes only the principal amount without any interest on the outstanding debt payable by the Corporate Debtor.

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5. The respondent has not appeared in the matter despite repeated calls and reminders and neither submitted reply. The applicant had made the service to the Corporate Debtor on various occasions and submitted the proof of services to this tribunal. Consequently, the respondent is proceeded ex-parte vide order dated 07.04.2022.

6. We have heard Ld. Counsel for the operational creditor and perused the averments made in the captioned petition. On behalf of the operational creditor, the unpaid invoices attached to the petition amounts to Rs. 54,97,856/-. However, the statement of accounts of the corporate debtor maintained in the books of operational creditor evidence the outstanding amount of Rs. 92,45,001/-, which is in consonance of the Demand Notice dated 30.01.2020 is outstanding. Therefore, the amount of default is above the minimum threshold limit of Rs. One Lakh as per the provision of Section 4 of the IBC, 2016 prior to the MCA notification dated 24.3.2020. Further, from the records, it is evident from the records that the default had occurred on various dates against each invoice raised from time to time.

7. Hence the operational creditor succeeded in proving the fact that the above said amount was due against the invoices raised to the corporate debtor and the said amount was not paid qua. It has been repeatedly held that the Scheme of the code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process

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begins. Resultantly, since there is no dispute raised by the corporate debtor, in fact from the records it is evident that a default has occurred.

8. In view of the foregoing documents and the averments made, this Tribunal is of the affirm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant, accordingly, the present application stands admitted in terms of Section 9(5) of the Code and ***Corporate Insolvency Resolution Process is hereby ordered to be initiated*** against the respondent Corporate Debtor, forthwith.

9. The applicant has proposed the name of an IRP, therefore, this bench appoints Mr. Rajesh Kumar Parakh, as the Interim Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-00272/2017-2018/10516 and email id. rajesh@gmail.com IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. Mr. Rajesh Kumar Parakh has given his written consent in required Form-2, which is attached as Annexure-A/2 of the petition. Therefore, this bench appoints Mr. Rajesh Kumar Parakh as the Interim Resolution Professional of the Corporate Debtor.

10. We direct the applicant to deposit a sum of Rs. 2,00,000 (Rupees Two Lakh only) with the Interim Resolution Professional, namely Mr. Rajesh Kumar Parakh to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India

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(Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

11. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

12. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT, New Delhi Bench.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(SUMITA PURKAYASTHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)