IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI

IBA/81/2020 filed under section 9 r/w Rule 6 of the Insolvency Bankruptcy Code, 2016.

In the matter of M/s. Kiran Global Chem Limited

M/s. AFCO Energy Pte Limited
Co. Reg. No. 201321050K,
Six Battery Road, #29-02,
Singapore-049909

---Operational Creditor

V/s

M/s. Kiran Global Chem Limited
R.S No. 37, Nagore Road,
T.R Pattinam, Karaikal
Pondicherry-611002

---Corporate Debtor

Coram:

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

For the Operational Creditor: *Shri. Vinod Kumar, Advocate*
Shri. Srinivasan, Advocate
For J. Sagar Associates
For the Corporate Debtor : *Shri. R.Swarnavel, Advocate*
Shri. R. Ramkumar, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order pronounced on: 05.03.2021

It is an Insolvency and Bankruptcy Application filed by M/s. AFCO Energy Pte Limited (in short, **"Operational Creditor"**) against M/s.

Kiran Global Chem Limited (in short, **"Corporate Debtor")** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**) r/w Rule 6 of the Insolvency and Bankruptcy (Application of Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules 2016)** to initiate Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Corporate Debtor failed to pay USD 3,33,509.33 as on 25.12.2019 (inclusive of interest @12% per annum of the principal amount of the Operational Debt). The Operational Creditor further stated that since this Corporate Debtor has paid USD 15,075 on 29.10.2020 soon after filing of this Application and also made certain proposals to settle the dues, which were not acceptable by the Operational Creditor.

2. On perusal of this company petition, the Operational Creditor is a Singapore based trading company, which, inter alia is engaged in the business of trading natural sodium carbonate.

3. The Corporate Debtor viz M/s. Kiran Global Chem Limited is an Unlisted Public Company, which was incorporated on 04.09.2002 vide CIN: U24299PY2002PLC000618 under provisions of the Companies

Act, 1956, having registered office of the Corporate Debtor situated at R.S No. 37 Nagore Road, T.R Pattinam, Karaikal, Pondicherry-611002. The Corporate Debtor is engaged in the business of manufacturing sodium silicate to be supplied to detergent manufactures etc.

4. The learned counsel for the Operational Creditor stated that the Operational Creditor and the Corporate Debtor had entered into two sales Contract with Nos. AFCI-1709-004 dated 20.09.2017 and AFCI-1711-005 dated 18.11.2017 for supply of chemicals by the Operational Creditor to the Corporate Debtor. Pursuant to the aforesaid sale contract, the Operational Creditor had supplied Chemicals between the periods 25.09.2017 and 31.01.2018 to the Corporate Debtor and raised periodical invoices for USD 475,270.31 in total. The sale contracts states that the payment of the amount due under the invoices is to be made within 110 days of the bill of lading, failing which interest at 12% p.a shall be paid in addition to the invoice amount. However, the Corporate Debtor failed to make payment towards the invoices raised by the Operational Creditor.

5. Considering the default committed by the Corporate Debtor, the Operational Creditor has issued a demand notice on 31.05.2018 in terms of the Insolvency and Bankruptcy Code, 2016 to the registered office of the Corporate debtor demanding the outstanding dues as on 28.05.2018 being USD 486,182.09/-. Since the Corporate Debtor failed to pay the debt, the Operational Creditor has filed application bearing CP/996/IB/2018 to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor before this Tribunal under the Insolvency and Bankruptcy Code, 2016. After filing said application, the Corporate Debtor made certain part payments to the Corporate Debtor.

6. It is further submitted by the Operational Creditor, during the pendency of said proceedings, the Corporate Debtor and the Operational Creditor arrived at settlement agreement executed on 26.04.2019. The terms of settlement are as follows:-

a) The outstanding dues was capped at USD 299,821.26 to be repaid in eight equal monthly instalments of USD 37,477.67/- commencing from 21.05.2019 and payable on or before 21st of

English calendar of respective month, the last instalment due and payable is on 21.12.2019.

b) The interest amount payable to the applicant was reduced from 12% p.a to 6% p.a and claim towards costs was waived.

c) In the event the Corporate Debtor defaults, the Applicant will be entitled to the original amount due under the sale contracts and invoices and any part payments made till then will be appropriated towards legal costs, interest @ 12% p.a and finally towards principal amount due.

7. In terms of the aforesaid settlement agreement dated 26.04.2019 and in terms of the Settlement Agreement, the Operational Creditor withdrew the IBC proceedings in CP/996/IB/2018 against the Corporate Debtor. Accordingly, this Tribunal **dismissed** the application as withdrawn vide its order dated 29.04.2019.

8. It is further submitted that the Operational Creditor agreed to the aforesaid settlement terms and based on the assurance from the Corporate Debtor that each instalment payment will be made on the agreed due date without any default. As per settlement Agreement,

the first instalment of USD 37,477.67/- was to be paid on or before 21.05.2019. However, the Corporate Debtor paid only a sum of USD 17,468/- on 22.05.2019 and thereby committed breach of settlement Agreement. Considering the default by the Corporate Debtor in paying first instalment, the Operational Creditor issued a notice dated 24.05.2019 to the Corporate Debtor recalling entire amount due under the settlement Agreement. Therefore, the Corporate Debtor made another part payment of USD 10,030/- on 07.06.2019.

9. In view of the default committed by the Corporate Debtor, the Operational Creditor issued a fresh demand notice under the IBC, 2016 on 12.06.2019 demanding the payment of USD 316,124/- due as on 12.06.2019. The Corporate Debtor received the said demand notice on 15.06.2019, thereafter, no payments were made. The Operational Creditor filed this application on 09.07.2019 and numbered as IBA/904/2019 under the IBC, 2016 before this Tribunal to initiate CIRP against the Corporate Debtor.

10. In the meanwhile, another creditor of the Corporate Debtor viz., TVG Limited had filed an application (IBA/130/2019) under the IBC,

2016 to initiate CIRP against the Corporate Debtor before this Tribunal. This Tribunal vide its Order dated 04.09.2019 admitted the application and appointed an Interim Resolution Professional to take over the management of the Corporate Debtor in the terms of Section 14 of the Code, moratorium was also imposed on the Corporate Debtor.

11. In view of the aforesaid Order, this Tribunal vide its order dated 24.09.2019 dismissed this application with liberty to the Operational Creditor to file claim before the IRP. Thereafter, an appeal was preferred by the ex-directors of the Corporate Debtor against the CIRP order dated 04.09.2019 passed in IBA/130/2019 before the Hon'ble NCLAT. The Hon'ble NCLAT had, vide its order dated 11.12.2019 set aside the order in IBA/130/2019.

12. It is further submitted by the Operational Creditor, between the date of last payment made on 07.06.2019 and till date, the Corporate Debtor has not made any payment and there is no dispute on the debt amount as the same is admitted by the Corporate Debtor under the Settlement Agreement. As on 25.12.2019, the total outstanding due in terms of Settlement Agreement is USD 3,33,509.33/-

13. In this context, on 16.10.2020, memo filed by the Corporate Debtor submitted that the Corporate Debtor came out of CIRP by an Order in Company Appeal (AT) (Insolvency) No. 952 of 2019 rendered by the Hon'ble NCLAT, New Delhi.

14. The Corporate Debtor transferred a sum of US$ 15,070/- on 15.10.2020 through RTGS and further confirmed to make balance payment within 5 to 6 months. And seeks time to make payment.

15. The learned counsel for the Corporate Debtor relied on the Judgment of the Hon'ble Supreme Court in the matter of **Swiss Ribbons Private Limited vs Union of India [W.P (C) No. 99 of the 2018]** wherein held that "*... therefore maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the code. This, in turn, will promote entrepreneurship as the persons in management of the Corporate Debtor are removed and replaced by entrepreneurs...*". as well as another Judgment of the Hon'ble Supreme Court in the matter of **Invoventive Industries -vs- ICICI Bank [Civial Appeal No. 8337-8338 of 2017]** wherein held that "*the objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and*

amend the laws relating reorganization and insolvency resolution of the Corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders...."

16. In this connection, the learned counsel for the applicant has filed reply to the memo filed by the Respondent on 28.10.2020 submitted as follows:

a) That contents of para 3 and 4 of the memo are vehemently denied. The admission order passed in CP/130/IB/2019 by this Tribunal and subsequent order passed by Hon'ble NCLAT are matters of record. However, the said proceedings or COVID-19 pandemic have nothing to do with defaulted committed by the Corporate Debtor. It is submitted that the corporate debtor defaulted in paying instalment as per the settlement agreement.

b) The contents of para 5 of the memo, it is denied that the corporate debtor transferred a sum of USD 15,070/- to applicant account, with respect to that no payment have been received by the applicant till date. After the hearing on 16.10.2020, the corporate debtor sent mails dated 19.10.2020 and 21.10.2020 to the applicant stating that its bankers are resisting the payment for some unknown reasons. This clearly established that the corporate debtor intentionally making false statements before this Tribunal. The proposal of the Corporate Debtor that it will settle the balance due with 5 or 6 instalment is rejected.

c) In the light of the aforesaid, it is submitted that the memo filed by the Corporate Debtor seeking to keep the present application in abeyance is without any substance and without any legal basis.

16. In view of the above observations, this Bench is inclined to admit this Application as the Applicant has made out a case and also satisfied this Adjudicating Authority for admitting this Application. It is also proved that there is a debt due and payable by the Corporate Debtor and they have defaulted in making a payment as per the agreement dated 26.04.2019. The Corporate Debtor prayed to this Tribunal to

keep this application in abeyance for a period 6 months, this is not valid ground for keeping in abeyance this Application for long period.

16. Since the Operational Creditor has not proposed the name of Insolvency Resolution Professional in Part-III of the application, this Bench is hereby appoints Mr. Thauvai Ramachandran Ravichandran, **Reg. No. IBBI/IPA-002/IP-N00241/2017-2018/10692 Email: trravichandran@yahoo.com, Mobile No. 9884070424** as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

(I) That Moratorium is hereby declared prohibiting all of the following actions, 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.

(II) 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.

(III) 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.

(IV) That the order of moratorium shall have effect from 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, as the case may be.

(V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.

17. Accordingly this petition is **hereby admitted.**

18. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

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

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(R. SUCHARITHA)
MEMBER (JUDICIAL)

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