

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, (COURT NO. IV)

Company Petition No. IB-1752/ND/2018

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

IN THE MATTER OF:

M/s. B. CHOKSHI CHEM

PRIVAVTE LIMITED

...Applicant/Operational Creditor

VERSUS

M/s. KEMAC CHEM

PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 25.02.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Manu Garg & Mr. Swaroop George, Advocates

For the Respondent :

MEMO OF PARTIES

M/s. B. CHOKSHI CHEM PRIVATE LIMITED

Having its registered office at:

No. 49 Shyamal Row House

Part III-B, NR Sanjay Tower Satellite

Ahmedabad 380015

...Applicant/Operational Creditor

VERSUS

M/s. KEMAC CHEM PRIVATE LIMITED

Having its registered office at:

B-3, Basement, Building No. 4

Bhanot Apartment, LSC

Pushp Vihar, Madangir,

Delhi 110062

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. B. Chokshi Chem Private Limited (for brevity

Page | 2

‘Applicant’), through its authorized signatory Mr. Bharat Rasiklal Chokshi, authorizing him to file present application vide Board resolution dated 25.10.2018, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Kemac Chem Pvt. Ltd. (for brevity ‘Respondent’).

2. The Applicant, the Operational Creditor, is a company incorporated on 06.01.2004, under the provisions of Companies Act, 1956 with CIN No. U51496GJ2004PTC0434333, having its registered office at 49 Shyamal Row House, Part III-B NR Sanjay Tower Satellite, Ahmedabad 380015.
3. The Respondent, the Corporate Debtor, is a company incorporated on 09.05.2013 under the provisions of Companies Act, 2013 with CIN No. U24100DL2013PTC251874, having its registered office at Ground Floor, F-24/131, Sector-7, Rohini, Delhi 110085. The Authorised Share Capital of the respondent company is Rs.10,00,000/- and Paid Up Share Capital of the company is Rs.10,00,000/- as per Master Data of the company.

4. It is the case of the applicant, that the Respondent is engaged in the business of chemical products, which includes, sale, supply and delivery of chemicals. It is stated that the Applicant herein, is engaged in the business of the products relating to chemicals which includes sale, supply and delivery of the products as ordered distribution. It is stated that in respect of the business dealings and pursuant to the purchase order dated 19.06.2015, duly signed and confirmed by Mr. Gulati authorized signatory of the Respondent, the Applicant herein, sold, supplied and delivered ordered goods, i.e., Phenol @ Rs.112/- per Kg, total quantity of 16 MTS. It is stated that vide purchase order dated 08.08.2014 the Respondent placed another order of Menthanol qty 20 MTS @ Rs. 22/ Kg + C.V.D. + CST. It is stated that the Respondent placed another purchase order for MTS @ Rs. 24/ Kg + C.V.D +CST. All orders amounting to Rs. 25,81,138/- (Rupees Twenty Five Lakhs Eighty One Thousand One Hundred Thirty Eight), to the Respondent company and the Respondent Company took delivery of the said goods vide LR No. 0007,

0025 and 0032 dated 09.07.2014, 13.08.2014 and 26.08.2014 of Transporter M/s. Shri Nav Durga Roadlines.

5. It is further stated that, against the purchase order dated 19.06.2015, 08.08.2014, 26.08.2014 which products were duly delivered to the Corporate Debtor and against the same Applicant herein, has issued invoices No. I/0007 dated 09.07.2014, I/0005 dated 13.08.2014 and I/0032 dated 26.08.2014 amounting to Rs. 25,81,138/-, Rs. 5,15,774/- and Rs. 5,84,098/- respectively. It is submitted that against the aforesaid outstanding dues the Corporate Debtor had issued several cheques amounting to Rs. 20,98,000/- and assured that the same will be cleared upon the deposition in bank.

6. It is further stated that, the Applicant herein, deposited aforesaid cheques in the bank for clearance, where the same were returned dishonored. Therefore, the petitioner herein issued statutory notice u/s 138 of the Negotiable Instrument Act, 1881. The Corporate Debtor in its reply to the statutory notice admitted the lawful liability of Rs. 16,81,010/- and again issued a cheque bearing No. 032385 dated 05.12.2015

amounting to Rs. 16,81,010/-. It is stated that the said cheque was deposited by the Applicant herein, in his account No. 23305108136 with Standard Chartered Bank, Mithakhali Six Road Branch, Ahmedabad-380009 and to the utter shock and surprise the said cheque was dishonored and returned with the endorsement "Insufficient Fund". The Applicant states that, it has preferred complaint u/s 138 and 141 of the Negotiable Instrument Act, bearing CC No. 119/2016 before the court of Ld. Metropolitan Magistrate Court, Ahmedabad, Gujarat and the same is pending for adjudication.

7. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 13.11.2017, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent, asking them to make the entire payment of Rs. 16,81,010/- (Rupees Sixteen Lakhs Eighty One Thousand Ten), within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

8. The applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.
9. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has not filed its reply to the said notice, nor raised any dispute by way of notice any other. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
10. The applicant has stated that total debt due and payable is Rs. 16,81,010/- (Rupees Sixteen Lakhs Eighty One Thousand Ten). Further, the Operational Creditor has filed an affidavit dated 03.01.2020, wherein, it states that it has received a payment of Rs. 50,000/- from the Corporate Debtor and now the principal amount due is Rs. 16,31,010/-. The date of default as claimed by the Operational Creditor is 10.12.2015.
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that the respondent has been served dasti on 28.12.2018. The receiving of the

Corporate Debtor in this regard has also been annexed along with the affidavit.

12. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply. However, as per the order dated 23.08.2019 the said reply cannot be taken on record as the Corporate Debtor had failed to comply with the order dated 08.05.2019. Hence, his right to file reply was closed.
13. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. The respondent has time and again acknowledged its liability to pay the debt. However, no such payment has been made by the Respondent.
14. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.

15. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
16. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Vishnu Dutt, having registration no. IBBI/IPA-001/IP-P00102/2017-2018/10202, email address is vishnudutt2050@yahoo.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

18. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Vishnu Dutt to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will 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.
19. 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 Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

20. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (Judicial)