

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH  
KOLKATA**

**C.P (IB) No. 56/KB/2020**

**In the matter of**

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

**In the matter of:**

**Gates India Private Limited**, having its registered office at C-434, Defence Colony, New Delhi-110024. *... Operational Creditor*

Versus

**In the matter of:**

**Lindsay International Private Limited**, CIN: U17232WB1996PTC080887, having its registered office at N-13, Nellie Sengupta Sarani, Lindsay Tower, Kolkata-700087, West Bengal. *...Corporate Debtor*

Date of hearing :15/06/2022

Order Pronounced on : 29/06/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared**

1. Mr. Sarvapriya Mukherjee, Adv. ] For Operational Creditor

2. Mr.Arnab Sardar ]

1. Mr. Shaunak Mitra, Adv. ] For Corporate Debtor

2. Mr. Patita Paban Bishwal, Adv. ]

## **ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Gates India Private Limited**, having its registered office at C-434, Defence Colony, New Delhi-110024. (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Lindsay International Private Limited**, having its registered office at N-13, Nellie Sengupta Sarani, Lindsay Tower, Kolkata-700087, West Bengal, (hereinafter referred as the Corporate Debtor).
2. It is submitted in the petition that the Corporate Debtor placed Purchase Order No. 151640182 dated 22.04.2016 (**Page-24-32**) whereby the Operational Creditor was required to supply hose assemblies including rubber hoses, rubber compounds etc. to the Corporate Debtor. Pursuant to the Work Order, the Operational Creditor supplied the same to the Corporate Debtor as mentioned in the Work Order against which the Operational Creditor raised 4 (Four) invoices dated 07.07.2016 (**Page-17-23**) totalling to an amount of Rs. 35,74,679/-. The total amount of Rs. 35,74,679/- remains due and payable since 06/09/2016. It is further submitted that the Corporate Debtor acknowledged that the goods are delivered to them and are exported (**Page-33-34 and 41**)
3. The parties have exchanged correspondence since and the Corporate Debtor vide electronic mails dated 2<sup>nd</sup> November, 2016 (**Page-38**) and 24<sup>th</sup> November, 2016 (**Page-37**) has admitted/acknowledged its liability.
4. The Operational Creditor has referred to the minute of the meeting dated 16<sup>th</sup> November, 2016 held between the Operational Creditor and Corporate Debtor

whereby the Corporate Debtor has acknowledged its liability. A copy of the minute of meeting is annexed as Annexure-II(8), **(Page-40)**.

5. It is further submitted that there is no dispute with regard to the operational debt. The Corporate Debtor has on multiple occasions made clear and unequivocal admissions of liability towards the Operational Creditor.
6. It is submitted that the Operational Creditor issued a Demand Notice under section 8 of the Code on 09/07/2019 demanding the total sum of Rs. 35,74,679/- along with interest @ 18% p.a. totalling up to Rs. 53,85,131/- with effect from 06/09/2016 and the notice was delivered to the Corporate Debtor on 15/07/2019 **(Page-16)**.
7. The Corporate Debtor replied to the Demand Notice vide its letter dated 15<sup>th</sup> July, 2019. In the reply to the Demand Notice, the Corporate Debtor has admitted the liability and stated that “the Corporate Debtor shall make the payment to the Operational Creditor upon receipt of its payment from ArcelorMittal Temirtau”.
8. The Operational Creditor has enclosed with the petition, the following documents: -
  - i. Purchase Order dated 22.04.2016
  - ii. 4 (Four) Invoices raised by the Operational Creditor
  - iii. Proof of delivery of Goods
  - iv. CT-1 Forms for export of goods
  - v. Minutes of meeting dated 16/11/2019
  - vi. Copy of the emails correspondences between the Operational Creditor and Corporate Debtor.
  - vii. Demand Notice dated 09/07/2016 along with the postal receipt and track report

9. In **reply** to the above, the Corporate Debtor denied and disputed that a total amount of Rs. 35,74,679/- raised in the 4 (Four) invoices was due and payable under the Work Orders. It is stated that the claim is barred by limitation. There is no record of any default with the Information Utility, hence section 9 filed not maintainable under IBC.
10. It is further submitted that there is no liability on the part of the corporate debtor to make payment to the Applicant until payment has been received by the corporate debtor from the ultimate consignee (ArcelorMittal) on account of agreement between the parties. It is stated that a suit, C.S. No. 2 of 2017 has been filed by the corporate debtor against ArcelorMittal before the Hon'ble High Court at Calcutta claiming the pending amount, part of which includes the amount payable to the Applicant. Therefore, till such time corporate debtor receives payment from Arcelor Mittal for which the suit is filed, there is no question of making payment to the Applicant
11. In the **Rejoinder** to the reply filed by the Corporate Debtor, the Operational Creditor has denied the contentions of the Corporate Debtor that there was any defect in the petition or that there is no default. It is denied that the Operational Creditor has failed to show existence of debt or occurrence of default on the part of the Corporate Debtor. It is denied that there is no operational debt due to the Operational Creditor or there has been any suppression of material facts.
12. It is submitted that the invoices raised by the Operational Creditor on the Corporate Debtor fell due on 06.09.2016. The present petition was filed by the Operational Creditor on 03.09.2019 which was within the period of limitation of three years from when the amount first fell due as per Article 137 of the Limitation Act, 1963 (**Page 4, Para 9 of the Rejoinder**). It is further submitted that an affidavit in compliance with Section 9(3) (b) of IBC, has been filed with the application as Annexure IV (2). Further, from **Macquarie Bank Vs. Shilpi**

**Cable Technologies [(2018) 2 SCC 674]**, a certificate from a financial institution is not mandatory **(Page 5,6, Para 11,12 of the Rejoinder)**.

13. It is further submitted that the Corporate Debtor's reply to the demand notice dated 15.07.2019 does not disclose any ongoing proceedings relating to the existence of the amount of debt etc. as provided in the definition of dispute. It is therefore clear that the plea of dispute raised by the Corporate Debtor does not fall within the definition of dispute as reproduced above, and the plea of dispute is without any merit.
  
14. It is further submitted that there was never any privity of contract between Arcelor Mittal Temirtau and the Operational Creditor. The payment terms as contained in the Purchase Order dated 22.04.2016 was solely between the Applicant and the corporate debtor and only specified that 100% of the payment would be made against the Letter of Credit within 60 days from the date on which the bill of lading was issued or the airway bill date. There is no condition which stated that the payment would only be made by the Corporate Debtor on receipt of payment by them from Arcelor Mittal Temirtau. There has been a clear acceptance on the part of the corporate debtor that the goods have been supplied to it. There has been no denial of the amount owed by the Corporate Debtor, and instead they have responded to the Operational Creditor's emails and notices by stating that the repayment is contingent upon receiving the amount from ArcelorMittal Temirtau (their customer). The purchase order placed on the Operational Creditor did not have any such clause making the repayment contingent. In fact, even at the meeting dated 16.11.2016 wherein it was agreed by the Operational Creditor that the repayment will be made on receipt of payment from ArcelorMittal by the Corporate Debtor, there was no denial of the debt or any dispute raised in respect of the same.

15. It is further submitted that the Corporate Debtor has admittedly received the goods and has not raised any issue with regards to their quality. Therefore, there is no dispute which has been raised and no denial of the amount outstanding and payable by the Corporate Debtor to the Operational Creditor. Further, there is an implied acknowledgement of the debt due by the Corporate Debtor by way of the email correspondence and the minutes of the meeting dated 16.11.2016.
16. The Hon'ble Supreme Court has clarified in ***Mobilox Innovations Private Ltd. v. Kirusa Software Private Ltd. [(2018) 1 SCC 353]***, that the notice of dispute must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. It is submitted that the Corporate Debtor has never denied the amount owed by it to the Operational Creditor and has not raised any dispute with regards to the quality of the goods supplied by the Operational Creditor. The amounts sought as due from the Corporate Debtor have also not been disputed.
17. Learned Counsel for the parties were heard and both of them have taken us through the pleading and documents refer. During the course of arguments, Ld. Counsel for the Operational Creditor handed over a copy of the Order dated 5<sup>th</sup> May, 2022 passed by the Hon'ble Calcutta High Court in C.S. No. 2 of 2017. On perusal of Order of the Hon'ble High Court it is clear that the Corporate Debtor had filed an application for an order of unconditional and voluntary withdrawal of the suit and all interlocutory applications in the suit being CS/2/2017. On such application the Hon'ble Judge was pleased to pass an order allowing withdrawal of the suit being CS/2/2017 along with all the interlocutory applications in the suit.
18. On perusal of the documents of the Operational Creditor, it is clear from the electronic mails dated 2<sup>nd</sup> November, 2016 and 24<sup>th</sup> November, 2016 and from

the minute of the meeting dated 16<sup>th</sup> November, 2016 held between the Operational Creditor and Corporate Debtor that the Corporate Debtor has admitted/acknowledged its liability and it is clear that there are unequivocal admissions of amounts due and payable by it to the Operational Creditor.

19. It is submitted that in reference to the Affidavit in Reply filed by the Corporate Debtor and the Rejoinder by Affidavit filed by the Operational Creditor, it is clearly mentioned that the Operational Creditor has neither been involved in any way with M/s. Arcelormittal Temirtau nor was a party in the suit being CS/2/2017. All the transactions have been directly between the Corporate Debtor M/s Lindsay International Private Limited and the Operational Creditor.
  
20. Thus, by virtue of the unconditional withdrawal of the suit by the Corporate Debtor, there cannot be any justification to refuse to pay the admitted amount to the operational creditor. The Corporate Debtor has failed to make payment of the confirmed and undisputed outstanding dues/debt of Rs.35,74,679/- only to the Operational Creditor and as evident from the facts and circumstances, the Corporate Debtor is not in a position to clear its legal debt and committed default. The claim is not in any way barred by limitation as will appear, inter alia, from the invoices and repeated acknowledgements of liability by the Corporate Debtor, which is undisputed. After going through all the pleadings and other records submitted by the parties and after hearing both Ld. Counsel, we are convinced that the Operational Creditor has a valid claim against the Corporate Debtor, which the Corporate Debtor has failed to discharge, by committing default which is proved on record. The Corporate Debtor has failed to prove any pre-existing dispute or any payment having been made to the Operational Creditor, within 10 days of receipt of the Statutory Notice under Section 8 of the Code. In the facts stated above, the defences sought to be raised by the Corporate Debtor are untenable and without merit and are not bona fide. In these circumstances, we pass the following orders: -

## **ORDERS**

- i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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 (54 of 2002);

- 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.
- v. The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii. Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix. The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Milan Sachindra Nath Chatterjee, IRP** having Reg. No. **IBBI/IPA- IBBI/IPA-001/IP-P01027/2017-18/11720**, Mobile No. 9836770693, email [milanchatterjee1965@gmail.com](mailto:milanchatterjee1965@gmail.com) act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x. **Mr. Milan Sachindra Nath Chatterjee, IRP**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

- xi. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii. The Operational Creditor/Applicant is directed to deposit **Rs.1,00,000/- (Rupees One Lakh only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
21. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
22. List the matter on **12/08/2022** for filing of **Progress Report**.
21. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on the 29<sup>th</sup> day of June, 2022

PJ