



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 114/NCLT/AHM/2021

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

AKZO NOBEL INDIA LIMITED

**APPLICANT/
FINANCIAL CREDITOR**

Versus

JIVANJYOT MOTORS PRIVATE LTD.

**RESPONDENT/
CORPORATE DEBTOR**

Order Pronounced on: 20/10/2022

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

Akzo Nobel India Limited

Registered office at:
1st Floor, 8-B, Middleton Street
Kolkata 700 071 (W.B.)

Address other than Registered Office:

Magnum Tower, 9th & 10th Floor
Golf Course Extension Road
Sector 58,
Gurugram 122 011
Haryana

62P, 62A, 62B, 43E Hoskote Industrial Area,
Bangalore 562 114
Karnataka State

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Applicant/Financial Creditor

Versus

Jivanjyot Motors Private Limited

Dream Honda,
Jivanjyot Theater Compound
Udhna Main Road
Surat 394 210
Gujarat State

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Respondent/Corporate Debtor

Appearance:

For the Applicant : Mr. Dhruvajit Saikia, Advocate
For the Respondent : Mr. Kunal Dalal, PCS



ORDER

1. The Present Application is filed on 16.07.2021 under Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Akzo Nobel India Limited** through its authorised signatory Mr. A S Somashekar, duly authorised vide Board Resolution dated 27.05.2021 (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency process against **Jivanjyot Motors Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a limited company incorporated on 12.03.1954 duly registered with the Registrar of Companies, Kolkata, West Bengal with CIN: L2429WB1954PLC021516 having registered office at 1st Floor, 8-B, Middleton Street, Kolkata 700 071, West Bengal and other offices at Haryana and Bangalore. The applicant is engaged in distribution of automotive paints and other automotive refinishing products.



3. The corporate debtor is a private limited company, incorporated under the provisions of the Companies Act, 1956 on 28.11.2006, duly registered with Registrar of Companies, Ahmedabad with CIN: U51109GJ2006PTC049471 and having registered office at “Dream Honda”, Jivan Jyot Theater Compound, Udhna Main Road, Surat 394 210, Gujarat State. The Authorized share capital of the Respondent is Rs. 7,00,00,000/- and paid up share capital of the company is Rs. 5,09,50,000/-. The respondent company is engaged in the business of selling and repairing cars and has automotive body shop and paint booth.
4. It is submitted by the applicant that after discussions held between the representative of the applicant and corporate debtor, an agreement dated 07.12.2016 was executed between the applicant, corporate debtor and M/s. Shree Milap Auto Colours. As per the tripartite agreement, the applicant had to extend the trade advance of upto Rs. 35,00,000/- (Rupees thirty-five lacs only) which was to be used for purchasing and installing paint booth, baking oven and other workshop equipment at its workshop to enable it to carry on business with new and improved means. Thereafter, another agreement dated 04.05.2019 was also executed between the applicant, corporate debtor, M/s. Shree Milap Auto Colours, a partnership firm represented by its



partner Mr. Balkar Singh and M/s. Sree Milap Auto Colours, a partnership firm represented by its partner Mr. Vinod Sharma.

5. It is submitted by the applicant that, according to 1st agreement dated 07.12.2016, a total sum of Rs. 35,00,000/- (Rupees thirty-five lacs only) was paid to the corporate debtor as trade advance, out of which Rs. 8,75,000/- (Rupees eight lacs seventy-five thousand only) was contributed by M/s. Shree Milap Auto Colours and balance sum of Rs. 26,25,000/- (Rupees twenty-six lacs twenty-five thousand only) was contributed by the applicant. Similarly, as per agreement dated 04.05.2019, out of the total amount of Rs. 1,20,00,000/- (Rupees one crore twenty lacs only) to be paid to corporate debtor, Rs. 27,00,000/- (Rupees twenty-seven lacs only) was to be contributed by Shree Milap Auto Colours and Rs. 13,00,000/- (Rupees thirteen lacs only) was to be contributed by Sree Milap Auto Colours and the balance sum of Rs. 80,00,000/- (Rupees eighty lacs only) was to be raised by the applicant. Since Shree Milap Auto Colours and Sree Milap Auto Colours could manage Rs. 5,60,000/- (Rupees five lacs sixty thousand only) and Rs. 2,40,000/- (Rupees two lacs forty thousand only) respectively, the applicant had raised Rs. 1,12,00,000/- (Rupees one crore twelve lacs only) and the said amount was paid to the corporate debtor on 09.05.2019. Against aforesaid agreements, the corporate



debtor had issued two promissory notes dated 07.12.2016 and 04.05.2019 whereby the corporate debtor agreed to pay Rs. 35,00,000/- and Rs. 1,20,00,000/- to the applicant. Copies of both the promissory notes are annexed to the application. According to the terms and conditions of the above agreements, the corporate debtor was to place purchase orders for certain quantity of products of the applicant.

6. It is further submitted that the corporate debtor failed to comply with the terms and conditions of the agreements, more particularly Clauses 3, 7 and 9 (ii). In terms of Clauses 7 and 9 (ii) of the agreements dated 07.12.2016 and 04.05.2019 the corporate debtor was required to place purchase orders on the applicant as per Schedule 1 of the agreements. The corporate debtor failed to adhere to the terms and conditions of the agreements.

7. The applicant has further submitted that in terms of agreements and promissory notes dated 07.12.2016 and 04.05.2019, the corporate debtor is liable to pay total principal outstanding amount of Rs. 1,55,00,000/- (Rupees one crore and fifty-five lacs only). The applicant had issued letter dated 08.03.2021 asking the corporate debtor to repay the loan amount advanced, however, no reply was



given by the corporate debtor. Having failed to receive payment from the corporate debtor, the applicant has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

8. The corporate debtor filed affidavit in reply inter alia stating that the application filed by authorised representative is not valid. The amount paid as “trade advance” is not a financial debt as defined in Clause 8 of Section 5 of Insolvency and Bankruptcy Code, 2016.
9. The applicant filed rejoinder, along with affidavit to the reply filed by the corporate debtor, inter alia stating that:
 - No dispute is raised by the corporate debtor with regard to the agreements dated 07.12.2016 and 04.05.2019 and promissory notes of even date which were never honoured by the corporate debtor;
 - Mr. A.S. Somashekar has been duly authorised and appointed to represent on behalf of the applicant vide Board Resolution dated 27.05.2021;
 - The person who filed reply is not authorised by the corporate debtor.
10. The applicant has also filed copy of the following judgements relied upon by the applicant during the arguments:



1. Civil Appeal Nos. 8337-8338 of 2017 decided on 31.08.2017 in the Supreme Court of India in Innoventive Industries Limited vs. ICICI Bank and Ors.
 2. Civil Appeal No. 2014 of 2021 decided on 22.02.2011 in the Supreme Court of India in State Bank of Travancore vs. Kingston Computers (I) P. Ltd.
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11. In compliance of order dated 26.08.2022, the applicant filed affidavit enclosing therewith copy of email communication with the corporate debtor dated 09.03.202, copy of master data of the corporate debtor and proof of service. A copy of the e-mail dated 09.03.2021 whereby the applicant had sent copies of two letters both dated 08.03.2021 addressed to the Directors of the corporate debtor demanding the debt due and payable by the corporate debtor company was also filed.
 12. As per Form 1, part IV, the corporate debtor is in default of total Rs. 1,55,00,000/- (Rupees one crore fifty-five lacs only). The amount in default is related to two agreements and promissory notes dated 07.12.2016 and 04.05.2019 against money admitted on 07.01.2017 and 09.05.2019. Therefore, the application filed on 16.07.2021 is within limitation and not barred by law.



13. The registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

14. Heard the submissions and perused the documents on record. On perusal of the record it is seen that the applicant had entered into two agreements dated 07.12.2016 and 04.05.2019 with the corporate debtor. Copy of the promissory notes dated 07.12.2016 and 04.05.2019 are annexed. The corporate debtor has neither denied the debt nor raised any dispute of money received. On perusal of the reply filed it is seen that the corporate debtor has admitted the debt, though not as financial, but as operational debt. The contentions raised by the corporate debtor about maintainability of the application in its reply, are devoid of any merit. It is pertinent to mention here that as per clause 4 of the agreement dated 07.12.2016, the corporate debtor was bound to place average monthly purchase orders worth Rs. 2,16,667/- (excluding sales tax) for “Sikkens” brand product manufactured and traded by from the applicant during the tenure of the agreement, provided the yearly purchase of the products by corporate debtor from the applicant shall be of such description and value as mentioned under schedule 1 annexed to the agreement.



15. Further, as per clause No. 5 of the agreement dated 07.12.2016 the corporate debtor shall make payment within 30 days from the date of receipt of the invoice, in respect of the product purchased from the applicant's recommended dealer.

16. The agreement dated 07.12.2016 further stipulates that the trade advance remaining unadjusted shall be deemed to be a loan extended by the applicant to the corporate debtor in respect of which an interest of 1% per month (12% per annum) shall be paid by corporate debtor calculated from the date of release of the trade advance in terms of clause 1 of the agreement, till the date of actual repayment thereof.

17. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.



18. The applicant has proposed the name of Mr. Ajay Kumar Jain as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N-00415/2017-18/11188 having office at E-15/209, Sector – 8, Rohini, New Delhi 110 085, (email:ajayjain721@gmail.com) subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

19. We direct the applicant to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Ajay Kumar Jain to meet the expenses for performing functions assigned to him 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 one week from the date of receipt of this order by the Financial Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.



20. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (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(4) of the Code shall remain in force.
21. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Sd/-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

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