

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH (Court-5)

C.P. No. 1351/I&B/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Mr. Thakorbhai Keshav Prajapati and 2
Ors.

B/6, Silver Arch CHS Limited, J. B.
Nagar, Andheri (East), Mumbai-400059

.... Petitioners

V/s.

HeatShrink Technologies Limited
Plot No. 112, 13th Rd, MIDC Marol,
Andheri(E), Mumbai-400093.

.... Corporate Debtor

Order delivered on: 02.01.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Anup khaitan Adv., Mr. Rohit R. Kammurde Adv
i/b Anup Khaitan & Co.

For the Corporate Debtor: Ms. Priyanka Shah Adv. Mr. Ausman Gangoly Adv.
i/b Apex Law Partners

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This joint company Petition is filed by Thakorbhai Keshav Prajapati, and Ors. (hereinafter called "Petitioners") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against HeatShrink Technologies Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of Rs.24,39,130/- to them, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the following is the details of due to the Petitioners on account of service benefits from the corporate Debtor as their employer.

b) Reply sent to the 2nd Petitioner by the Corporate Debtor.

Date :- 21/12/2017

To,
Mr. Kiran Vasu Shetty,
C-2, 501 Valley Towers,
Agarwal Estate, Near Tikujiniwadi,
Thane - 400 607.



Sub :- Reply to Your Letter Dated 11/12/2017

Dear Sir,

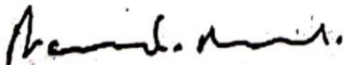
In response to your letter dated 11/12/2017 we would like to state as under :-

We are still trying to revive the operations of our company. Our various attempts to restart the business have failed till now. We are still positive that the company will start its business operations in short time.

We request you to grant us some more time so that we can clear all the dues as soon as possible. Your co.operation in this matter is expected.

Thanking You,

Yours Faithfully,


Director

c) Reply sent to the 3rd Petitioner by the Corporate Debtor

Date :- 21/05/2018

To,
Mr. Dilip Mhatre,
Room No.3, Nasim Chawl,
Nasim Nagar Pipeline, J. B. Nagar,
Andheri (East), Mumbai – 400 059.



Sub :- Reply to your Letter Dated 19/04/2018

Dear Sir,

We are in receipt of your letter dated 19/04/2018 regarding your dues of Leave Encashment & Gratuity.

All our sincere attempts to restart the company operations till now have failed. Our steps to generate liquidity have also failed.

As you are aware that despite making losses for the past 20 Years & despite all our financial crunch we have always paid your salary & other allowances within time. Looking the scenario we express our inability to pay the dues of Leave Encashment & Gratuity. So we request you to accept the last salary received by you for the month of April – 2017 as Full & Final Settlement of your dues.

We hope you understand our position. We sincerely expect your co-operation in this regard. We deeply regret the inability of the company to pay your dues. We assure you the moment the company is able to restart its operations & generate financial liquidity we will release your dues.

Thanking You,

Yours Faithfully,

A handwritten signature in black ink, appearing to be 'Anand. N. Mhatre'.

Director

6. The above letters clearly shows that the Corporate Debtor has admitted the liability of payment of dues of leave encashment and gratuity and defaulted in making payment to them. The laws of employment thus provide that the employee is entitled to claim the dues under the heads namely 1) Leave encashment and 2) Gratuity, after rendering service during the course of employment.

7. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Code, admits this petition declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the

Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 02.01.2020 till the completion of the CIRP 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.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

- (f) that this Bench hereby appoints Mr. Arihant Nenawati, residing at 513, Mastermind-1, Royal Palm Estate, Aarey Colony, Goregaon, Mumbai, Maharashtra, 400065; having Registration No. IBBI/IPA-001/IP-P00456/2017-18/10799 as Interim Resolution Professional to carry the functions as mentioned under the Code.

8. Accordingly, this Petition is admitted.

9. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)