



IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No301
CP(IB)/106(AHM)2022

Proceedings under Section 9 IBC

IN THE MATTER OF:

Simon India Ltd

.....Applicant

V/s

Ecophos GNFC India Pvt Ltd

.....Respondent

Order delivered on 06/07/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

SD/-

**SHAMMI KHAN
MEMBER (JUDICIAL)**



CP (IB)/106(AHM)2022

M/s. Simon India Ltd. Vs M/s. Ecophos GNFC India Pvt. Ltd.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT NO. II)**

CP (IB)/106(AHM)2022

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

In the matter of:

M/S. SIMON INDIA LIMITED

...Applicant/Operational Creditor

VERSUS

M/S. ECOPHOS GNFC INDIA PRIVATE LIMITED

...Respondent/Corporate Debtor

Order Pronounced on: 06.07.2023

CORAM:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

M/S. SIMON INDIA LIMITED

CIN: U74899DL1995PLC071074

Registered office at:

Birla Mill Complex, P.O. Birla Lines,
G T Road, near Cloack Tower Delhi,
North Delhi-110007, Delhi India

...Applicant/Operational Creditor

VERSUS

M/S. ECOPHOS GNFC INDIA PRIVATE LIMITED

CIN: U24123GJ2016PTC086441

Registered Office at:

P.O. Narmadangar Bharuch-392015,
Gujarat, India.

...Respondent/Corporate Debtor

APPEARANCE:

For the Operational Creditor: Mr. Abhishek Mehta and

Ms. Heerika Shukla, Advocates

For the Corporate Debtor : **Ex-parte**

ORDER

1. The instant application is filed on 28.03.2022 by M/s. Simon India Limited (“SIL”) – the Operational Creditor, through its authorized representative Mr. Atul Kumar Jain who is duly authorized vide Board Resolution dated 02.08.2021 to file this application, against M/s. Ecophos GNFC India Private Limited (“EGIPL”) – the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC,



2016”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor on the ground that the Corporate Debtor committed default in paying an outstanding amount of Rs.6,80,69,011/- along with 18% interest from the due date till realization amounting to Rs.2,85,84,985/-. The date of default is stated to be 31.12.2019.

2. The Operational Creditor (SIL) was incorporated with CIN U74899DL1995PLC071074 under the provisions of the Companies Act, 1956. The registered address of the SIL is at Birla Mill Complex, P.O. Birla Lines, GT Road, near Cloack Tower Delhi North, Delhi-110007.
3. The Corporate Debtor (EGIPL) was incorporated on 14.03.2016 with CIN U24123GJ2016PTC086441 under the provisions of the Companies Act, 2013. The registered office of EGIPL is situated at P.O. Narmadanagar Bharuch, Gujarat-392015.
4. Learned Counsel for the Operational Creditor appeared and made submissions which are summarized as under:-
 - I. The Operational Creditor and the Corporate Debtor entered into two contracts viz. (i) engineering agreement dated 29.11.2018 and (ii) equipment supply agreement dated 29.11.2018 for the construction



of di-calcium phosphate plant. Copies of the agreement are annexed with the application.

- II. In accordance with the terms of the Engineering Agreement and the Equipment Supply Agreement, more specifically clause 4.5 of the first agreement, EGIPL was required to make the payments within 30 days from the receipt of invoices.
- III. After the commencement of the operations, in June 2019, EGIPL vide letter dated 14.06.2019 informed SIL that the project was going to be put on standby, and all the payments due were going to be settled between the months of July and October 2019. Both agreements were suspended due to lack of resources and were put on standby by EGIPL.
- IV. Between the months of June and September 2019, several letters and e-mails were exchanged between the parties wherein EGIPL and SIL discussed the terms of work, and SIL continued to provide services under the terms of the contract to EGIPL. Moreover, EGIPL gave repeated assurances to SIL that the payments would be made, and hence, SIL continued to provide its services to EGIPL. Thereafter, the part payments were made by the Corporate Debtor but a significant portion remained unpaid.



- V. On 27.09.2019, EGIPL wrote to SIL and exercised its option to suspend the services of SIL, under the terms of the first and second agreements.
- VI. Subsequently, on 16th and 17th October 2019, a meeting took place between the authorized representatives of SIL and EGIPL to discuss the payments due to SIL and the said MoM is annexed with the application.
- VII. In the months of October and December 2019, several e-mails and letters were exchanged between EGIPL and SIL wherein SIL demanded payment and EGIPL kept delaying the same.
- VIII. On 07.01.2020, SIL sent a balance confirmation to EGIPL that as on 31.12.2019 a sum of Rs. 6,80,69,011/- is due and payable by EGIPL to SIL and the same balance was confirmed by EGIPL vide its e-mail dated 23.01.2020. The said balance confirmation was sent back to SIL, duly signed by Mr. Henri Derom, Finance Director of EGIPL through e-mail on 04.03.2020 confirming that an amount of Rs. 6,80,69,011/- is due and payable to SIL.
- IX. Thereafter, in the month of February 2020, SIL sent several e-mails and reminders to EGIPL requesting it to make the payments as admitted by them to be due to SIL, but no payment was made to SIL. Hence, on 03.03.2020 SIL issued a legal notice to EGIPL



demanding the payment of Rs. 6,80,69,011/-, along with 18% interest compounded quarterly but it did not receive any reply to this legal notice. Thereafter, on 28.08.2020 SIL issued a demand notice in Form 3 (under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) to EGIPL demanding a sum of Rs. 6,80,69,011/- as on 31.12.2019. The said demand notice was duly served to EGIPL and its Directors through e-mail on 27.08.2020 by SIL.

X. As the confirmation of the payment due to SIL has been given by the EGIPL in the month of March 2020, this application is within the limitation

5. It is also submitted by the Operational Creditor through an additional affidavit filed on 14.07.2022 that notice was served upon the Corporate Debtor and all its Directors through e-mail dated 27.08.2020 and at the relevant time, the e-mail ID of the Corporate Debtor as per the MCA Master Data was '**sect@gfnc.in**'. The Corporate Debtor in Form No. PCA-3 filed before the RoC also mentioned the same e-mail ID. It was submitted that as per the procedure, if any Company files any form before the RoC with a changed e-mail ID, the MCA data automatically updates its records, and thereafter, reflects the new e-mail ID. Accordingly, in or around March 2021 the Corporate Debtor updated the



e-mail ID and mentioned ‘sect@egipl.in’ as its new registered e-mail ID which is evident from From No. ADT-3 dated 17.03.2021 filed by the Corporate Debtor. The notice of hearing of this application was served by the Operational Creditor upon the Corporate Debtor through e-mail on both e-mail IDs i.e., sect@gfnc.in’ and sect@egipl.in on 17.05.2022 and through Speed Post on 19.05.2022 at the registered address of the Corporate Debtor and its Directors.

6. On 13/02/2023, since none had appeared for the applicant, the application was dismissed for non prosecution. However, on 06/03/2023, the restoration application 04 of 2023 was allowed and the application was restored at its original stage.
7. Despite several notices, the respondent corporate debtor neither filed reply, nor attended any of the hearings. Vide order dated 25.04.2023, the Corporate debtor was decided to be proceeded **ex-parte**.
8. The name of the Interim Resolution Professional (‘IRP’) Mr. Manish Santosh Buchasia, having registration No. IBBI/IPA-002/IP-N00487/2017-2018/11449 is proposed by the applicant and the consent of the IRP as per Form-2 is placed on record.
9. We have heard the Learned Counsel for the Operational Creditor and perused the material available on record. It is noted that both parties entered into two agreements viz. engineering agreement, and equipment



supply agreement dated 29.11.2018 for construction of di-calcium phosphate plant. The Operational Creditor supplied the goods and services to the Corporate Debtor and raised various invoices. In the year 2019, the Corporate Debtor started facing financial issues which led to the suspension of the project by the Corporate Debtor. On 07.01.2022, the Operational Creditor sent a balance confirmation to the Corporate Debtor reflecting sum of Rs. 6,80,69,011/- is due as on 31.12.2019. The said balance confirmation was duly signed by Mr. Henri Derom, Finance Director of the Corporate Debtor on 04.03.2020 and was returned to the Operational Creditor confirming that an amount of Rs. 6,80,69,011/- is due and payable to the Operational Creditor. In spite of several reminders, the Corporate Debtor failed to make the payment. Demand notice dated 28.08.2020 was served upon the Corporate Debtor and its various Directors on 27.08.2020 but the Corporate Debtor failed to reply to the said notice. The date of default is stated to be 31.12.2019. The Operational Creditor has filed this application under Section 9 of IBC, 2016 on 28.03.2022, hence the application is within limitation. The notice of hearing was duly served upon the Corporate Debtor by the Operational Creditor on both e-mail IDs as well as by Speed post, but neither reply was received nor any representation was made.



10. Further, in compliance of the order dated 21.04.2022 and 15.07.2022, the Operational Creditor filed an affidavit of service of notice on 14.07.2022 and an affidavit of paper publication on 30.08.2022, but no one appeared for the Corporate Debtor nor any reply was filed. This Adjudicating Authority vide its order dated 25.04.2023 passed ex-parte order against the Corporate Debtor. Again none appeared for Corporate Debtor in the final hearing on 11.05.2023. This application is complete, the existing financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application.
11. The claim of the Operational Creditor stands established and *prima facie* there is default in payment of the amount due to the Operational Creditor without any pre-existing dispute. The claim of the Operational Creditor is not contested by the Corporate Debtor in spite of various opportunities given. The Corporate debtor has also confirmed the dues on 04.03.2020.
12. An affidavit under Section 9(3)(b) of the IBC, 2016 has been filed by the Operational Creditor stating that no notice was given by the Corporate Debtor in relation to any dispute in respect of the said outstanding operational debt.
13. In the given facts and circumstances, the present application is complete under Section 9(5)(i)(a) and Operational Creditor is entitled to claim its



dues, a fact which remained uncontroverted, establishing the default in payment of the operational debt. The present application deserves to be admitted against the Corporate Debtor in terms of Section 9(5)(i) of the IBC, 2016.

14. In view of the above, we admit this application and pass the order as under:-

(i) The Application bearing **CP(IB)106/(AHM)/2022** filed by **M/s. Simon India Limited** (the Applicant/ Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Ecophos Gnfc India Private Limited** (the Corporate Debtor) is hereby admitted and the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:-

- 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;

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) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- (iii) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-Sections (2) and (2A) of Section 14 of IBC, 2016.
- (iv) The Operational Creditor has proposed the name of **Mr. Manish Santosh Buchasia** as Insolvency Resolution Professional (“IRP”), who is hereby appointed as IRP of Corporate Debtor having registration number No. IBBI/IPA-002/IP-N00487/2017-2018/11449 having office at 306, 3rd floor, Gala Mart, Nr. Sobo Centre, before safal parisar above SBI/Union Bank/Hindmart,



South Bopal, Ahmedabad-380058, 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.

- (v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnels connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate with the IRP the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vi) This Adjudicating Authority directs the IRP to make a public announcement of initiation of CIRP and call for submission of claims under Section 15 as required by Section 13(1)(b) of the IBC, 2016.



- (vii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (viii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- (ix) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.

- (x) The Operational Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the



Rules.

(xi) In terms of Section 7(7) of the Code, the Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

15. Accordingly, **CP (IB) No. 106 of 2022** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Rajeev Kr Sen/PSAbhishek Singh/LRA

SD/-

SHAMMI KHAN
MEMBER (JUDICIAL)