

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

C.P. (IB) 2248/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Berger Paints India Limited

Berger House, 129, Park Street,  
Kolkata, West Bengal- 700017

.... Petitioner

v/s.

Tuljai Industrial Products Private  
Limited

Flat No. 402- F, Marvel Ritz, Tupe Patil  
Road, Opposite DSK Toyota, Hadapsar,  
Pune, Maharashtra- 411028

.... Corporate Debtor

Order Delivered on 11.11.2019

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

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

For the Petitioner: Adv. Japula Ku

For the Corporate Debtor: None Present

*Per: V. Nallasenapathy, Member (T)*

**ORDER**

1. This Company Petition is filed by Berger Paints India Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Tuljai Industrial Products Private Limited (hereinafter called "Corporate Debtor"), alleging that Corporate Debtor committed default in making payment of ₹16,78,747/-, including interest at the rate of 18% per annum on the delayed payment, as on 24.05.2019, 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 Corporate Debtor approached the Petitioner for purchase of industrial paints and powder coatings manufactured by the Petitioner. The Corporate Debtor used to place orders upon the Petitioner orally and the Petitioner upon good faith

made supply of the materials and raised invoices upon the Corporate Debtor. These invoices were duly received and acknowledged by the Corporate Debtor without any demur or protest. Also, in the minutes of the meeting dated 14.11.2018 between the representative of the Petitioner and Corporate Debtor, the Corporate Debtor acknowledged the total outstanding amount due to the Petitioner as ₹11,29,449 and the said minutes is enclosed to the Petition at page no. 40.

3. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues, the Petitioner issued Demand Notice dated 15.03.2019 in Form 3 & Form 4 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding principal of ₹18,61,374/- at the interest of ₹6,15,891/- calculated at the rate of 18% per annum on the delay in payment. The demand notice was returned with an endorsement 'Addressee left without intimation'. Then, the Petitioner forwarded the copy of the demand notice via email dated 10.04.2018, the said email was duly received by the Corporate Debtor. However, the Corporate Debtor failed to reply to the demand notice.
4. The Petitioner has annexed the copies of the delivery challans of the goods delivered to the Corporate Debtor and invoices raised pursuant to the delivery. The petitioner has also annexed ledger account of the Corporate Debtor in their books of accounts which shows a balance of ₹11,29,442/- as receivable from the Corporate Debtor.
5. The Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.
6. The Counsel for the Petitioner submitted that the petition was served on the Corporate Debtor but it was returned with an endorsement 'not claimed'. The Counsel for the Petitioner was permitted to take out substituted service by paper publication in two newspapers, for which the Petitioner filed proof of service. Subsequently, when the matter was listed on 19.09.2019, there was no representation from the Corporate Debtor's side.
7. On the perusal of the above facts, it is clear that the Corporate Debtor has defaulted in making payment of outstanding amounts under the invoices claimed by the Petitioner. Hence, there is clear debt and default.
8. Even though, there is some difference in the claim made by the Petitioner and the acknowledgement of the Corporate Debtor in the joint meeting, the debt being more than one lakh, there is no difficulty

in admitting this petition and it goes without saying that the interim resolution professional will decide the amount due based on the claim documents to be submitted by the Petitioner at the time of collation of claim.

9. Mr. Udaykumar Bhaskar Bhat, having office at B- 304, Goldville Apartments, Aundh Ravet Road, Thergaon, Pune- 411033, having email address [udaybhat2805@gmail.com](mailto:udaybhat2805@gmail.com), having Registration No. IBBI/IPA-001/IP-P01425/2018-19/12234 has given his consent in Form No. 2 to act as an Interim Resolution Professional.
10. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy 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 11.11.2019 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. Udaykumar Bhaskar Bhat, having office at B- 304, Goldville Apartments, Aundh Ravet Road, Thergaon, Pune- 411033, having email address [udaybhat2805@gmail.com](mailto:udaybhat2805@gmail.com),

having Registration No. IBBI/IPA-001/IP-P01425/2018-19/12234 as Interim Resolution Professional to carry the functions as mentioned under the Code.

11. 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)