



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

CP (IB) No. 1328/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

Raj Petro Specialities Private Limited

[CIN: U23201MH1997PTC107800]

...Financial Creditor/Applicant

V/s

Fiza Polymers Private Limited

[CIN: U74110MH2015PTC267378]

...Corporate Debtor/Respondent

Order Dated: 12.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Sharad Bansal, Advocate.

For the Respondent(s) : None.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 1328/MB-IV/2022 filed by Raj Petro Specialities Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Fiza Polymers Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Mansing Patil, Authorised Signatory of the Operational Creditor, duly Authorised vide Board Resolution dated 21.11.2022, passed by Board of Directors of Operational Creditor, claiming total outstanding amount of Rs.2,63,04,980/- (Rupees two crore sixty-three lakh four thousand nine hundred eighty only) which includes principal amount of Rs.2,49,72,016/- and Interest amount of Rs.13,32,964/- calculated at 10% p.a.
3. The Date of Default is mentioned in Part-IV of the Petition with reference to each invoice raised by the applicant and such due dates are from 23.02.2022 to 25.05.2022. However, as per NeSL Report dated 06.12.2022 filed by the Operational Creditor, the date of default mentioned therein is 23.02.2022, which is due date of first invoice. The Petition is filed on 06.12.2022.
4. The case of the Operational Creditor is that:
 - 4.1 The Corporate Debtor approached the Operational Creditor for purchase base oils used in the manufacture of lubricant grease, motor oil, etc. The Operational Creditor supplied goods to the Corporate Debtor for several months. Thereafter, the Corporate Debtor issued the purchase orders dated 17.02.2022, 22.02.2022, 03.03.2022 and 13.05.2022, towards the purchase of goods from the Operational Creditor.
 - 4.2 Accordingly, the Operational Creditor had supplied products to the Corporate Debtor between 23.02.2022 and 25.05.2022 and raised 13 invoices on the Corporate Debtor during that period.
 - 4.3 Both invoices and Purchase Orders provides for advance payment by the Corporate Debtor towards the supply of goods. The

Corporate Debtor assured the Operational Creditor that it would make payments immediately upon delivery of the goods, and requested the Operational Creditor to complete the supply of the goods.

- 4.4 In view of assurances made by the Corporate Debtor, the Operational Creditor agreed to accept payments in arrears instead of advance payments. Accordingly, the Operational Creditor completed the supply under each of these purchase orders and as against each of the invoices set out above. However, no payments were released by the Corporate Debtor.
- 4.5 There is no dispute raised by the Corporate Debtor about any defect in the goods supplied. In respect of the Invoices number 1610624279, the total amount due was Rs.14,60,824, only a sum of Rs.11,02,164 has been claimed by the Operational Creditor since the differential amount was adjusted by the Operational Creditor towards this invoice, pursuant to a payment previously received by the Operational Creditor from the Corporate Debtor.
- 4.6 The Corporate Debtor had issued a Cheque dated 30.03.2022 bearing No. 000329 drawn on ICICI Bank, MIDC Branch, Mumbai, in favour of the Operational Creditor, for an amount of Rs.19,12,485/-. However, the said Cheque was dishonoured and returned with the endorsement "*Fund Insufficient*".
- 4.7 The Operational Creditor issued a legal notice dated 24.08.2022 to the Corporate Debtor calling upon to pay amount of Rs.2,59,15,006.60. The Operational Creditor issued Demand Notice dated 17.10.2022 upon the Corporate Debtor claiming total outstanding of Rs. 2,63,04,980/- (Rupees twelve crore

eighty-six lakh twenty-eight thousand seventy-eight only). The Operational Creditor has filed certificate in Form 5A issued by HSBC Bank. The Operational Creditor has also filed NeSL Report dated 06.12.2022 wherein the amount of Rs.2,63,04,980/- as outstanding amount.

5. The Corporate Debtor has neither replied to the Demand Notice nor to the present application. Also, the Corporate Debtor didn't appear on both the occasions when this matter was listed for hearing.

Findings:

6. We have heard the arguments of the Learned Counsel for Operational Creditor.
7. After perusal of the material on record, this Bench observes that the Operational Creditor from time to time sold, supplied and delivered the base oils to the Corporate Debtor and raised various Invoices for the same upon the Corporate Debtor. Pursuant to the said supply, the Operational Creditor raised Invoices upon the Corporate Debtor which carried 10% p.a. interest charge after due date. The debt fell due on various dates with reference to each invoice. Since, the debt pertains to supply of goods of same nature and all date of default falls within 3 years of date of filing of present application, we feel that the present application is not barred by limitation.
8. We notice that the Corporate debtor had acknowledged the debt vide letter dated 02.11.2022 after receipt of the demand notice and submitted a proposal to clear all outstanding by making additional payment of Rs. 1,00,000/- against each vehicle loaded and asked to supply 4 vehicle load each day. Further, the fact that the applicant had issued a cheque

towards part payment in November, 2022 and the same was not honoured upon presentation. We feel that there is no dispute that the Corporate Debtor owes the amount claimed in the application and the delayed payment attracts interest, as the same is notified in the invoice as Terms. Accordingly, the interest on the delayed payment also constitutes debt. Thus, there is an outstanding debt of more than Rs. 1,00,00,000/- (Rupees One Crore Only), even if principal debt is taken into account, and the said debt is in default. The letter dated 02.11.2022 clearly suggests that there is no dispute also from the Corporate debtor in relation to the amount claimed to be due.

9. The Corporate Debtor has not responded at all, though it had four occasions i.e. (a) upon receipt of demand notice; (b) upon service of present application; (c) on first listing of the present application; and (d) final hearing. No dispute was raised even on receipt of demand notice, but only an offer to clear outstanding in instalment was made by the Corporate debtor after its receipt requesting for further supply of goods. The facts of the case are clear and the bench feels that no further explanation is required to decide on the application in view of clear admission emerging from letter dated 02.11.2022 sent by the corporate debtor to the applicant. Accordingly, the Bench feels that the Corporate Debtor had reasonable opportunity to present its case, if it had wished to do so.
10. In view of foregoing, we feel that the present application deserves to be allowed in terms of provisions of section 9 of the Code.
11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt

amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.

12. The Application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.
13. On perusal of the material on record, this Bench is of considered view that the this is fit case for admission under section 9 of the Code to initiate the CIRP against the Corporate Debtor.
14. The Operational Creditor has not proposed the Insolvency Resolution Professional in the matter.

ORDER

15. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) 1294/MB-IV/2022 filed by Gujarat Copper Alloys Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against Creaaive Powertech Private Limited, Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mrs. Kiran Martin Gola, Registration No. [IBBI/IPA-002/IP-N00787/2019-2020/12483], Contact: 9820756698, E-mail: ip.kirangolla9@gmail.com; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Prabhat Kumar
Member (Technical)

12.04.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)