

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 57/MB-VI/2022

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

Synres B.V.

Registered Office: Slachthuisweg 30, P.O Box 3,
3150 AA Hoek Van Holland, The Netherlands.

...Operational Creditor (OC)

V/s

Emerald Performance Chemical Private Limited

[CIN: U24296MH2016PTC273687]

Registered Office: Room No-10, Londhe
Mahal, Gokhale Road, Mulund-East,
Mumbai – 400081, Maharashtra.

...Corporate Debtor (CD)

Order reserved on: 06.09.2023

Order Pronounced on: 27.09.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances (Physical):

OC /Applicant : Adv. Garima Mehrotra.

CD : None.

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. **Background**

- 1.1 This C.P. (IB) No. 57/MB/C-VI/2022 (Application) was filed on 06.09.2021 by Synres B.V., the OC, under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Emerald Performance Chemical Private Limited, the CD.
- 1.2 The CD is a Private Company limited by shares and registered with the Registrar of Companies, Vijayawada. The OC has offices at The Netherlands and Mumbai.
- 1.3 The total amount claimed by the OC in Part IV of the Application is Rs.1,12,73,566/- (One Crore Twelve Lakh Seventy-Three Thousand Five Hundred and Sixty-Six Rupees) with respect to the unpaid invoices that became payable on separate due dates for each invoice. The OC states that default occurred on several dates starting from 14.06.2018, i.e. the due date as per the first invoice.

2. **Contention of OC**

- 2.1 The OC has filed Board Resolution dated 06.11.2020 authorising Mr. Rudesh Kumar Sharma, for filing this Application on its behalf.
- 2.2 The OC is a company engaged in the development, manufacture, marketing, sale and distribution of 'solvent borne alkyd' and

'acrylic resins' for the coating industry. The debt and default thereof arise on the basis of 3 unpaid invoices raised by the OC between the period from 16.03.2018 and 21.09.2018 against the CD for the goods supplied to it by the OC.

2.3 The OC and the CD entered into an Agreement dated 01.03.2016, wherein the CD was appointed as a distributor for the products manufactured by the OC in India. As per the terms of the said Agreement (Clause 3.3), the CD was obligated to-

- a. buy and resell the products in their own name and for their own account;
- b. be in-charge of the sales promotion in India;
- c. be without any power to bind the OC.

2.4 Upon receipt of purchase order from the CD, the goods were supplied by the OC and subsequent to the delivery of the goods, invoices were raised by the OC. The invoices have been placed at Exhibit 'C' of the Application. The due date of the said invoices was 90 days from the issuance of each invoice.

2.5 The goods were received by the CD without any complaint, demur or protest. However, no payments have been made by the CD till date.

2.6 The OC, therefore, issued a Demand Notice in Form 3 dated 11.08.2020 under Section 8 of the IBC, which was sent on

13.08.2023 and delivered to the CD on 21.08.2020. No reply has been received from the CD to the aforesaid Demand Notice.

3. **Contention of CD**

3.1 Since the CD chose not to represent in spite of having been served several notices by the Operational Creditor, notice was issued through the Registry as well for hearing on 21.04.2023, which was duly served as per the registered post track report. In view of the above, the service of notice is held sufficient. The CD was thus set *ex parte vide* order dated 19.06.2023. However, contentions of the OC are analysed based on the available records.

4. **Analysis**

4.1 The CD failed to file reply to the said Demand Notice as well as this Application for initiating CIRP as averred by the OC. Even after the non-appearance of CD on 19.06.2023, 04.07.2023, 08.08.2023 and thereafter on 24.08.2023, this Bench had again granted time to the CD to appear on 06.09.2023 as a last chance, so that no prejudice is caused to the right of the CD to be heard. However, the CD failed to appear and file reply in the matter. Therefore, this matter was reserved for orders on 06.09.2023.

5. **Findings**

- 5.1 After perusal of the documents on record and the arguments advanced, this Bench is of the considered view that there is no dispute raised by the CD as regards the existence of the debt and default.
- 5.2 We have examined all the invoices raised by the OC. We find that the last invoice was issued by the OC on 21.09.2018 and the due date of the said invoice was 20.12.2018. Therefore, on perusal of the same, we find that the date of default for the purpose of determining limitation of this Application is 20.12.2018. Taking into consideration the said date, the limitation would have expired on 19.12.2021. The present Application is filed on 06.09.2021, which is well within the limitation period under Section 238A of the IBC r/w Article 137 of the Limitation Act, 1963, as applicable for filing a petition under the Code. Hence, we find that there exist debt and default by the CD.
- 5.3 We find that the debt, accrued on the basis of supply of goods against 3 invoices raised by the OC upon the CD, falls within the meaning of "operational debt" u/s. 5(21) of the IBC.
- 5.4 On perusal of the documents submitted by the OC, it is clear that the operational debt of more than Rs.1,00,00,000/- (One crore Rupees) is due and payable by the CD to the OC u/s. 4 of IBC, and thus, the Application u/s. 9 of the IBC is maintainable. The CD has not notified the existence of any dispute to the OC. The Application is complete and has been filed under the proper form

as per the law. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.

ORDER

This Application bearing C.P. (IB) No. 57/NCLT/MB/C-IV/2022 filed under Section 9 of IBC, by Synres B.V., the OC against Emerald Performance Chemical Private Limited, the CD for initiating CIRP is **admitted**.

We further declare moratorium u/s 14 of IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for the liquidation of the CD under section 33 of Code, as the case may be.
- V. That the public announcement of the CIRP shall be made in accordance with the IBC, the Rules and Regulations made thereunder.
- VI. That this Bench hereby appoints Ms. Neha Jain Nemani, a registered Insolvency Professional having Registration Number IBBI/IPA-001/IP-P-02465/2021-2022/13927 and Email ID-nehavkjain@gmail.com as the Interim Resolution Professional (IRP) to carry out the functions under the Code, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VII. During the CIRP Period, the management of the CD 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 CD 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.

VIII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.

X. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.

XI. Compliance report of the order by Designated Registrar is to be submitted today.

SD/-
SANJIV DUTT
MEMBER (TECHNICAL)
//LRA-Akshata Shah//

SD/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)