

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA

CP (IB) No.1306/KB/2018

An application under 9 of the Insolvency and Bankruptcy Code, 2016 readwith Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

K.B.Polychem (India) Ltd.,
having its Office at F-25,Site C
UPSIDC Industrial Area, Sikandra,
Agra-282007,U.P.

... Operational Creditor

Versus

In the matter of:

Kaygee Shotech Private Limited,
Regd. Office 41, Matheshwartala Road,
Kolkata, West Bengal-700045.
Also at,
33/A, Tarachand Dutta Street, 6th Floor,
Kolkata, West Bengal-700073.

.....Corporate Debtor

Date of hearing : 15/01/2021

Order Pronounced on 19/01/2021

Coram:

Mr.Rajasekhar V.K., Member (Judicial)
Mr.Harish Chander Suri, Member (Technical)

Counsel appeared through video conference.

1. Mr. Shailender Kumar , Advocate }For the Operational Creditor
2. None for the Corporate Debtor.

ORDER

Per: Harish Chander Suri, Member (T)

1. The Court convened by video conference on 15/01/2021.
2. In the present application being C.P.No.1306/KB/2018, this Tribunal had, vide order dated 27th August, 2019 passed an order of dismissal of the application under section 9 of the IBC.
3. The order was challenged by the Operational Creditor/Appellant before the Hon'ble NCLAT and the Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1010 of 2019, vide order dated 11th February, 2020 allowed the appeal and set aside the order dated 27th August, 2019 passed by this Tribunal.
4. On the question whether there was proper service of demand notice under section 8 of I & B Code, 2016 or not, the Hon'ble NCLAT has analyzed the application, reply affidavit filed by the Corporate Debtor and other documents filed by the appellant, and has observed as under:-

“Based on the above reply of the corporate debtor, it is apparent that the corporate debtor has not denied the service of demand notice in its reply to the petition. It is

apparent that initially, the corporate debtor took the plea that demand notice was not as per applicable Rules and Regulations. The corporate debtor in its reply further stated that it is incorrect to allege that the corporate debtor has not given a reply to demand notice and has not raised the dispute of unpaid operational debt.

The Appellant has given sufficient evidence to show the delivery of demand notice. There is no specific denial of service of demand notice. The corporate debtor has itself stated that in reply to the demand notice, he had raised the dispute of unpaid operational debt. But no document is placed before us to show the existence of dispute before issuance of demand notice. Copy of invoices, demand notice, bank statement all other documents are placed before us which clearly shows that the corporate debtor failed to pay off the operational debt of more than Rs.One Lac, despite service of demand notice.

It is apparent that the Application for initiation of Corporate Resolution Process was filed on 15th September, 2018, and impugned invoices were raised between 03rd March, 2017 to 27th March, 2017. The Corporate Debtor made the last payment of Rs.4,08,205/- partial liability on 20th June, 2017, therefore, it is apparent that petition is within statutory period of limitation i.e. 3 years. Thus, we are of the considered opinion that the Adjudicating Authority erred in rejecting the application filed under section 9 of the Code.

Therefore, the Appeal is allowed. Impugned order is set aside. The Adjudicating Authority is directed to pass the order of admission. Parties are directed to be present before the Adjudicating Authority on 24th February, 2020”.

5. In view of the observations and orders passed by the Hon’ble NCLAT directing this Adjudicating Authority to pass the order of admission, we have heard the learned counsel for the Operational Creditor, seen the pleadings and the documents on record and admit the application filed by the Operational Creditor, and pass the following orders:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **K. B. Polychem (India) Ltd.** is hereby **admitted.**
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 (54 of 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.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the

corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix) **Mr. Pankaj Kumar Kedia**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/IP-P01037/2017-2018/11710**, E-mail ID: **pkkedia2@rediffmail.com**, Mobile No. 9830058121 is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 50,000/- Rs. Fifty Thousand only** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the

jurisdictional Registrar of Companies by Speed Post as well as through email.

xiii) List the matter on 16/04/2021 for the filing of the progress report.

xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Order signed on 19.01.2021

Pj.