

**NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P. (IB) No. 179/IBC/MB/2022

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

In the matter of

M/s. Attitude Lifescience Products Private Limited

Having registered office at:

Gat No. 200, Vill-Bhamboli, Tal- Rajgurunagar,
Pune-410501.

.....Operational Creditor/Petitioner

Vs

M/s. Atharva Polymers Private Limited

Registered office at:

WTC Tower 2, Unit No. 215, Near EON free Zone,
Kharadi, Pune-411014.

.....Corporate Debtor

Order Dated: 12.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner: Ms. Mily Ghoshal, Advocate.

For the Corporate Debtor: None.

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by **M/s. Attitude Lifescience Products Private Limited** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **M/s. Atharva Polymers Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default as on 30.09.2020 to the extent of **Rs. 1,21,82,850/-** inclusive of interest @24% p.a. with regards to the outstanding payments to the Petitioner. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Corporate Debtor is into the business of manufacturing of range of PVC Beam cover Injection molding parts, PVC Beam cover, injection molding parts etc. The Corporate Debtor had placed various purchase orders from time to time with the Petitioner to purchase the goods.

3. The Petitioner supplied and delivered to the Corporate Debtor plastic granules (Goods) which were required by the Corporate Debtor for running the process of the manufacturing of PVC Beam cover injection molding parts, PVC Beam cover, injection molding parts etc during the year 2018 -19. Further, the Petitioner states that the total goods supplied and delivered to the Corporate Debtor were worth Rs 75,20,277.97 /-. Further, an interest at the rate of 24% p.a. has been calculated on the due amount of Rs 75,20,277.97/- till the date of actual payment. The following table demonstrates the details of the same:

SR NO.	INVOICE NO.	AMOUNT IN INR
1.	229	5,203.01

2.	436	13,715.96
3.	777	18,508.00
4.	781	2,07,680.00
5.	783	2,07,680.00
6.	789	1,55,760.00
7.	793	4,15,360.00
8.	797	2,07,680.00
9.	800	4,08,637.00
10.	801	2,08,034.00
11.	808	4,16,127.00
12.	824	2,14,760.00
13.	831	2,18,300.00
14.	842	2,18,300.00
15.	848	2,22,754.00
16.	850	88,736.00
17.	853	2,10,984.00
18.	857	2,12,400.00
19.	863	4,27,160.00
20.	873	4,27,160.00
21.	875	4,26,422.00
22.	877	2,21,840.00
23.	881	4,25,980.00
24.	886	2,12,400.00
25.	887	2,12,400.00
26.	02	4,42,500.00
27.	15	4,36,600.00
28.	21	2,11,220.00
29.	34	4,25,980.00
TOTAL		75,20,277.97

4. Further, the Petitioner states that for the said dues and outstanding amount, the Petitioner sent constant reminders to the Corporate Debtor but to no avail.

5. As the payment were made by the Corporate Debtor, the Petitioner issued notice dated 11.11.2021 under section 8 of the Insolvency and Bankruptcy Code demanding the payment of the undisputed debt of Rs. 1,21,82,850/- alongwith a further interest at the rate of 24% p.a to be calculated till the date of actual payment. The said notice dated 11.11.2021 was sent vide registered post dated

12.11.2021 and the same was received by the Corporate Debtor on 16.11.2021. The Petitioner further states that the Corporate Debtor has not replied to the said notice u/s. 8 of the Code nor has paid the undisputed debt i.e. Rs. 1,21,82,850/- alongwith a further interest. Hence, this petition.

6. Notice of the Petition was given to the Respondent. However, none appeared on behalf of the Corporate Debtor despite valid service with the result that the Corporate Debtor was proceeded against ex-parte vide order dated 28.03.2023.

FINDING:

1. We have heard the Counsel for the Petitioner and have gone through the records.
2. From a perusal of the record, it is revealed that the Operational Creditor supplied goods to the Corporate Debtor between 01.06.2018 and 01.04.2019 as per the following invoices:-

<u>SR NO.</u>	<u>INVOICE NO.</u>	<u>AMOUNT IN INR</u>
1.	229	5,203.01
2.	436	13,715.96
3.	777	18,508.00
4.	781	2,07,680.00
5.	783	2,07,680.00
6.	789	1,55,760.00
7.	793	4,15,360.00
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25.	887	2,12,400.00
26.	02	4,42,500.00
27.	15	4,36,600.00
28.	21	2,11,220.00
29.	34	4,25,980.00
TOTAL		75,20,277.97

3. The total amount of invoices comes to Rs. 75,20,277.97/- which is the principal sum claimed by the Petitioner. A perusal of the aforesaid invoices annexed in Annexure-A further reveals that there was a stipulation to charge interest @ 24% in case the payment is not made within 45 days of the issuance of each invoice. Since no payment was made by the Corporate Debtor at any point of time, the Petitioner has rightly charged interest and has in aggregate claim a total sum of Rs. 1,21,82,850/- on account of Operational Debt against supply of goods.
4. The invoices were issued between 01.06.2018 and 01.04.2019 and the present Petition was filed on 17.01.2022. Considering the law laid down by the Hon'ble Supreme Court in Suo moto case, according to which the COVID period from 15.03.2020 till 28.02.2022 is to be excluded from reckoning while ascertaining the period of limitation, in our considered view, the present petition is well within the period of limitation.
5. The Petitioner has further proved that a demand notice dated 11.11.2021 was served upon the Corporate Debtor through speed post but the latter failed to respond to the said notice nor made any payment.

6. As a result of the foregoing discussion, we are of the considered view that the Petitioner has been able to establish that there is existence of “**operational debt**” and “**default**” committed by the Corporate Debtor in this case.
7. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- a. The above Company Petition No. 179/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Atharva Polymers Private Limited.**
- b. **Kalpna Kamlesh Gandhi** having registration No. IBBI/IPA-001/IP-P-02635/2022-2023/14164, having Email Id – kalpanagandhica@gmail.com and having mobile number 9920226348 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; 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.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP (IB) No. 179 of 2022 is **admitted**.

SD/-
Madhu Sinha
Member (Technical)

SD/-
Kuldip Kumar Kareer
Member (Judicial)