

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 2642/I&BP/2019

Under section 8 &9 of the IBC, 2016

In the matter of

Sanjay Chemicals (India) Private Limited

G-1, 5th Floor, Kanmoor House,
Condominium, 281/287, Narshi Natha
Street, Masjid, Mumbai – 400 009.

.... Petitioner

v/s

Tytan Organics Private Limited

3rd Floor, Sunama House, August Kranti
Marg, Mumbai – 400 026.

.... Corporate Debtor

Order delivered on: 10.12.2019

Coram:

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

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

For the Petitioner : Mr. Vinod Kothari a/w Ms. Priyanka Shah, Advocates

For the Corporate Debtor : None present.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This company Petition is filed by Sanjay Chemicals (India) Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Tytan Organics Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default on 22.04.2016 in making payment to the extent of Rs. 4,06,783/- including interest of Rs. 1,77,787/- calculated @21% p.a., 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 Petitioner is engaged in the business of making various types of chemicals as per the industry requirements and the Corporate Debtor is a manufacturer of chemicals.

3. On 05.02.2016 the Corporate Debtor placed order for various chemicals with the Petitioner and the Petitioner delivered the goods to the Corporate Debtor and raised 7 invoices from 20.02.2016 to 11.05.2019 on the Corporate Debtor.

4. On 23.05.2019 the Petitioner issued Demand Notice demanding a sum of Rs. 4,06,783/- including interest @21% p.a. under Section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and 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. The Petitioner has also obtained a certificate dated 23.05.2019 from DCB Bank confirming that there is no payment of an unpaid dues is made by the Corporate Debtor.

5. The purchase order confirms the order placed by the Corporate Debtor for purchase of certain chemicals, the tax invoices confirms the sale of said chemicals to the Corporate Debtor.

6. On 05.10.2016 the Corporate Debtor sent an email to the Petitioner and the same is extracted below:

*"Dear Sir,
We have received a notice u/s 138 sent by your advocate Mr. Sandip M. Salvi for our Five cheques total amounting to Rs. 4,69,099/- being dishonored. We deeply regret and apologize for the situation and also delay in making payment of your overdue bills.*

We are currently facing an acute funds flow deficit due to the sharp collapse in the oil prices. We are putting our best efforts to regularize the things.

We will make your payment of Rs. 75,000/- per month. We will start with the first installment of Rs. 75,000/- in week starting 10th October, 2016

We have honest intentions in clearing all your dues as early as possible. We solicit your cooperation in these turbulent situation.

*Thanking you again.
Bhagyesh Bonavate
Sr. Manager Accounts/Finance
Tytan Organics Pvt. Ltd."*

7. The counsel for the Petitioner submitted that the petition was served on the Corporate Debtor and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the Corporate Debtor and the matter was listed on 12.09.2019 and the matter was further adjourned to 17.09.2019, despite service of notice there was no representation from the Corporate Debtor's side.

8. The confirmation of unpaid amounts vide email dated 05.10.2016 further acknowledges the outstanding debt and liability of the Corporate Debtor to pay the said amounts. Hence this petition deserves to be admitted.

9. One Mr. Rajendra Kumar Khandelwal, office at 302, Tara Mahal, Plot No. 756, 5th Road, Khar (west), Mumbai – 400 052; having email address: rkkshashi@yahoo.co.in, having Registration No. IBBI/IPA-001/IP-P01140/2018-19/11867 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

10. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application 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 10.12.2019 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. Rajendra Kumar Khandelwal, office at 302, Tara Mahal, Plot No. 756, 5th Road, Khar (west), Mumbai – 400 052; having email address: rkkshashi@yahoo.co.in, having Registration No.

IBBI/IPA-001/IP-P01140/2018-19/11867 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)