

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

C.P. (IB) No. 449/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

Sonkamal Enterprises Private Limited

...Operational Creditor / Applicant

V/s

Ratnagiri Chemicals Private Limited

...Corporate Debtor / Respondent

Order Dated: 20th February 2020

Coram: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Advocate Punita Arora a/w. Advocate Avadhi Jain &
Advocate Puneet Arora i/b. Arora & Co.

For the Respondent: Advocate Sunil Karoth

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 449/NCLT/MB/2019 filed by **Sonkamal Enterprises Private Limited**, the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Ratnagiri Chemicals Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The application is filed claiming a total default of ₹3,49,04,949/- (Rupees Three Crore Forty Nine Lakh Four Thousand Nine Hundred Forty Nine Only) inclusive of interest at 21% per annum as on 30.11.2018. The application is filed by Mr Janak P. Ladhani, Managing Director of the Operational Creditor duly authorised to file this application vide Board Resolution dated 01.12.2018.

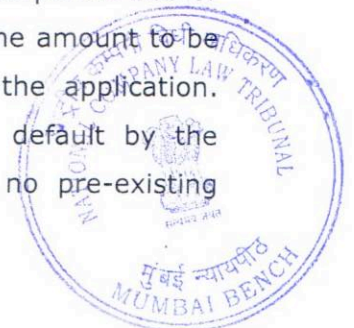


3. The Applicant submitted that it had supplied Phenol and other chemicals to the Corporate Debtor, as per the purchase orders placed by the Corporate Debtor and had raised various invoices from the period 18.12.2013 to 15.12.2016. The total amount of the said invoices aggregated to ₹2,43,47,036/- (Rupees Two Crore Forty Three Lakh Forty Seven Thousand Thirty Six Only). Copy of the said Invoices and Purchase Orders along with Transport Receipts are annexed to the application and Affidavit in Rejoinder.
4. The Applicant submitted that the Corporate Debtor made part payment of ₹6,00,000/- (Rupees Six Lakh Only) on 14.12.2016 against the total outstanding invoices amount. However, the Corporate Debtor did not make any further payment after 14.12.2016; thus, resulting in outstanding balance amount of ₹2,37,47,036/- (Rupees Two Crore Thirty Seven Lakh Forty Seven Thousand Thirty Six Only). The Applicant has annexed Bank Statement for the period 09.12.2016 to 19.12.2016 reflecting the payment of ₹6,00,000/- from the Corporate Debtor to the Applicant.
5. The Applicant further submitted that the Applicant maintained a running account of the Corporate Debtor. The Applicant submitted that the liability of the Corporate Debtor is reflected from the said ledger account which shows an outstanding debit balance of ₹1,86,89,487 (Rupees One Crore Eighty Six Lakh Eighty Nine Thousand Four Hundred Eighty Seven Only) as on 31.03.2017. Copy of Ledger Account of Corporate Debtor as maintained by the Applicant for the period 01.04.2016 to 31.03.2017 is annexed to the Affidavit in Rejoinder.
6. The Applicant submitted that despite receiving the material in good condition without any dispute or demur the Corporate Debtor failed to pay the due amount under the invoices.
7. The Applicant further submitted that, as the Corporate Debtor failed to make the payment of invoices, the Applicant issued Demand Notice dated 06.12.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding debt of ₹3,49,04,949/- However, the Corporate Debtor did not reply to the Demand Notice within statutory



period of 10 days. Copy of demand notice dated 06.12.2018 is annexed to the application.

8. The Applicant filed present application on 30.01.2019. The Corporate Debtor filed its Affidavit in Reply dated 01.10.2019 and contended that the debt amount claimed by the Applicant is incorrect and no amount is due to the Applicant from the Corporate Debtor. The Corporate Debtor also contended that the amount claimed in the application by the Applicant do not tally with the books of account of the Corporate Debtor. The Corporate Debtor contended that there is pre-existing dispute with regards to the discrepancies in the amount claimed by the Applicant and therefore the application should be dismissed.
9. We have heard the parties and perused the records.
10. On perusal of the documents submitted by the parties, it is evident that the Applicant had supplied goods which the Corporate Debtor had duly received. Further, the Corporate Debtor has acknowledged in its Reply the receipt of said goods from the Applicant. It is also observed that the contentions raised by the Corporate Debtor with respect to discrepancy and incorrect debt amount are not supported by any documentary evidence. The Corporate Debtor vide its reply has also admitted that it was greatly affected by the global economic slowdown and had faced serious financial constraints and therefore is in process of overcoming past financial difficulties and is making efforts to clear the outstanding liabilities. Further, the Corporate Debtor also failed to reply to the Demand Notice within statutory period and therefore has not raised any disputes before the filing of Reply to the present application. Hence, the contentions raised by the Corporate Debtor are baseless and therefore rejected.
11. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payment, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant until before filing its Reply to the application. Therefore, debt of more than Rupees One Lakh and default by the Corporate Debtor has been established and there is no pre-existing dispute.



12. The application is complete and has been filed under the proper form. Copy of the Demand Notice dated 06.12.2018 along with the postal track report reflecting the due receipt of the Notice by the Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 21.01.2019 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed by the operational creditor in support of its claim.
13. The Applicant has not proposed the name of an insolvency resolution professional to act as Interim Resolution Professional and to carry out the functions as mentioned under I&B Code, 2016.
14. The application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 9 of I&B Code, 2016, presented by **Sonkamal Enterprises Private Limited**, Operational Creditor / Applicant against **Ratnagiri Chemicals Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to -
- (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) a surety in a contract of guarantee to a corporate debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints **Mr Durgesh Kumar Kabra**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00333/2017-2018/10603]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA
Member (Technical)

20th February 2020



Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

5/5

Certified True Copy
Copy Issued "free of cost"
On 26/2/2020


Assistant Registrar
National Company Law Tribunal Mumbai Bench