

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.766/KB/2019

In the matter of

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

And

In the matter of:

M/s Sanchar Poly tubes , having its registered office at 27, Brabourne Road, Kolkata- 700 001,West Bengal.

... Operational Creditor

Versus

In the matter of:

Evergreen Enviro Private Limited , (CIN: U29244WB1998PTC086473) a company incorporated under the provisions of the Companies Act, 1956, having its Registered office at 15, Chittaranjan Avenue, 5th Floor, Kolkata-700072, West Bengal.

...Corporate Debtor

Date of hearing :06/12/2021

Order Pronounced on : 07/01/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Sailendra Kumar Tiwari, Adv.] For Operational Creditor
1. Mr. Pratip Mukherjee, Adv.] For Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section 9 of the IBC has been filed by **M/s Sanchar Polytubes**, a sole proprietorship concern, having its registered office at 27, Brabourne Road, Kolkata- 700 001, West Bengal, through its proprietor Mr. Banwari Lal Tak, authorised vide authorised letter dated 10/01/2019 (hereinafter referred as the Operational Creditor) seeking initiation of corporate insolvency resolution process in respect of **Evergreen Enviro Private Limited, (CIN: U29244WB1998PTC086473)**, having its Registered office at 15, Chittaranjan Avenue, 5th Floor, Kolkata-700072, West Bengal (hereinafter referred as the Corporate Debtor).
3. It is submitted in the petition that the Operational Creditor has supplied Plastic Granules and other items to the Corporate Debtor and issued Tax Paid Invoices thereby claiming a sum of Rs.89,64,621/- which consists of Rs.68,32,430/- as principal amount along with interest of Rs.21,32,191/- @ 18% per annum from 27/01/2017 upto 31/12/2018. It is further submitted that the Operational Creditor had issued a Demand Notice under section 8 of the Code on 29/01/2019 which was duly delivered to the Corporate Debtor by Speed Post on 1st February, 2019. The Corporate Debtor has, however, not sent any reply to the

Demand Notice. The Operational Creditor claimed a sum of Rs.89,64,621/-inclusive of interest upto 31st December, 2018. The date of default has been mentioned in the notice as 27/01/2017, when the aforesaid debt fell due. The Operational Creditor enclosed copies of 10 taxes invoices with the Demand Notice. It is submitted that no dispute has been raised by the Corporate Debtor with respect to the Operational debt. It is submitted that the opening balance in the books of accounts of the Operational Creditor against the Corporate Debtor, in respect of supplies of plastic Granules and other items was Rs.60,33,950/-, followed by further supplies of Plastic Granules to the Corporate Debtor for a sum of Rs.1,36,67,430/-aggregating to a total outstanding of Rs.1,97,01,380/. Thereafter, the Corporate Debtor made payment of Rs.1,28,68,950/- to the Operational Creditor aggregating to a total outstanding of Rs.68,32,430/-as on 18/12/2017.The Operational Creditor issued letter upon the Corporate Debtor for payment of the outstanding sum of Rs.68,32,430/- as on 09/08/2018 followed by Form 3 & 4 under the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor which was duly delivered to the Corporate Debtor.

4. It is submitted that the date of default is 27.01.2017 when the Corporate Debtor defaulted on regular basis as per the issued invoices when the debt fell due. It is submitted that the Operational Creditor has placed on record various documents which are enumerated as under:-
- i. Demand Notice in Forum 3 along with Form 4 both dated 29.01.2019 issued by the Operational Creditor annexed as Annexure-I.
 - ii. Proof of dispatch of Form 3 along with Form 4 both dated 31.01.2019 (i.e., postal receipt) annexed as Annexure-II.
 - iii. Proof of delivery (acknowledgement due card) of Form 3 along with Form 4 annexed as Annexure-III.
 - iv. Certified True Copy of the Authority letter dated 10.01.2019 annexed as Annexure-IV.
 - v. Statement of workings for computation of amount; dates of

- default and interest in tabular form annexed as Annexure-V.
- vi. Copy of Bank Statement of the Operational Creditor from 01.01.2017 to 31.03.2019 annexed as Annexure-VI.
 - vii. Copy of ledger of the account of the corporate debtor maintained with the operational creditor annexed as Annexure-VII.
 - viii. Copy of the master data of the corporate debtor annexed as Annexure-VIII.
 - ix. Copy of Tax Invoices dated
27.01.2017, 28.01.2017,
30.01.2017, 31.01.2017,
08.02.2017, 09.02.2017,
10.02.2017, 04.05.2017,
05.05.2017, 08.02.2017, annexed as Annexure-IX.
 - x. Copy of the letter dated 18.12.2017 & 09.08.2018 annexed as Annexure-X.
 - xi. Copy of the 4 cheques being no. 000096,000097,000098 & 000099 in favour of the Operational Creditor and drawn on ICICI Bank annexed as Annexure-XI.
5. In reply to the petition, the Corporate Debtor filed reply affidavit through Mr. Rajeev Srivastava, who is one of the Directors of the Corporate Debtor and submitted that the application under section 9 filed by the Operational Creditor is not maintainable and as such the same should be dismissed in limine. It is stated that Form 3 & 4 are not maintainable in the eyes of law, since the same has been served without any annexures as mandated under the Code. The Corporate Debtor denied and disputed the allegations and the statements made in the petition.
6. It is submitted by the Operational Creditor that the Corporate Debtor had received the said goods and has never disputed the quality of goods. It is submitted that the Corporate Debtor had issued 4 cheques in favour of the Operational Creditor amounting to Rs.20,00,000/- towards the part payment of the corporate debt, which is a clear cut admission and
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acknowledgement of its liability towards the operational creditor. It is submitted that the Corporate Debtor has raised a vague defence.

7. The Ld. Counsel for the Operational Creditor submitted that the statement of the Corporate Debtor in Paragraph 9 of the reply tantamounts to an admission. It is submitted that the Corporate Debtor vide its letter dated 18.12.2017 admitted that due to financial problems they are unable to clear the dues at once and promised to clear outstanding and accordingly they made an on account payment of Rs.10,00,000/- by RTGS on 22nd December, 2017 and also issued 4 post dated cheques of Rs.5,00,000/- each in order to buy time.
8. The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, we appoint **Mr. Vasudeo Agarwal, IRP** having Reg. No. **IBBI/IPA-001/IP-P00186/2017-18/10365**, to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
9. The application is complete in all respects.
10. Having gone through and considered the pleadings and documents placed on record by both the parties, we consider it fit for admission and initiation of CIRP against the Corporate Debtor. We have thus no hesitation to admit this petition with the following orders:

ORDERS

- 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, 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 of 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. Vasudeo Agarwal, IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/IP-P00186/2017-18/10365**, email ID-vdainfo@gmail.com and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, 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. 2,00,000/- (Rupees Two lacs 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.

11. 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.

12. List the matter on 15/03/2022 for filing of **Progress Report**.

13. 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)

(Rohit Kapoor)
Member (Judicial)

Order signed on this ,the 7th day of January, 2022

PJ.