BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAIBENCH

CP (IB) NO. 3913 OF 2019

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

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

In the matter of

Jyoti Polycontainers Private Limited
Plot No. R-554/555, TTC MIDC,
Rabale, Navi Mumbai-400701
....Operational Creditor

versus

Suvishrhu Speciality Chemicals Private Limited
Having its registered office address at:
W-220, Phase-II, M.I.D.C., Dombivali (East), Thane Maharashtra, 421204
....Corporate Debtor

Order dated: 30.04.2021

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

Appearance:

For the Operational Creditor: Mr. Vishal Jain, Chartered Accountant

Per: Shri. Shyam Babu Gautam, Member

ORDER

1. The above company petition is filed by Jyoti Polycontainers Private Limited (hereinafter called as 'Operational Creditor') against Suvishrhu Speciality Chemicals Private Limited (hereinafter called as 'Corporate Debtor') for initiation of Corporate Insolvency Resolution Process (CIRP) for non-payment of the due amount in respect of the invoices raised amounting to Rs.3,79,873/- along with interest. There has been no representation on behalf of the Corporate Debtor even after due service on it by the Operational Creditor on several occasions. Therefore, the Corporate Debtor was set ex-parte on 16.03.2021 and the matter was posted for final

hearing on 15.04.2021. Even on 15.04.2021, no one appeared for the Corporate Debtor.

2. The professional appearing for the Operational Creditor Mr. Vishal Jain submitted that the Operational Creditor sold, delivered and issued Sale Invoices amounting to Rs.3,79,873/- in response to the telephonic Purchase Orders and to the satisfaction of the Corporate Debtor from 16.08.2019 to 02.12.2017. He further submitted that the Operational Creditor stopped receiving payments from the Corporate Debtor leaving an Outstanding amount of Rs.3,79,873/- and the Operational Creditor kept on following up with the Corporate Debtor but there were no payments made.

3. The professional for the Operational Creditor stated that therefore, the Operational Creditor was left with no option but to serve a Demand Notice on the Corporate Debtor for an amount of Rs.3,79,873/-along with Rs.1,45,098/- towards interest and Rs.26,118/- towards the GST to be charged and the total amount payable amounts to Rs.5,51,089/-. A Demand Notice dated 07.08.2019 was sent on the registered address of the Corporate Debtor via speed post which was delivered on 10.08.2019. To this Demand Notice, the Corporate Debtor replied on 11.08.2019 wherein it accepted its liability towards an outstanding payment of Rs.3,79,873/-. This letter read the following:

> *"Had received your notice for recovery. I have accepted the outstanding of Rs.3,79,873/- which to be pay to M/s Jyoti Polycontainers Pvt. Ltd.*
> *Here I commit to you within 15 days, I will clear this outstanding. I know lots of my commitments failed due to recovery. My business affected lots. Now its on track. I assure you that this commitment surely gets executed."*

However, there was no credit from the Corporate Debtor despite promising to pay the outstanding and therefore, this petition was preferred by the Operational Creditor against the Corporate Debtor.

4. The Operational Creditor has annexed eight Invoices the total of which comes to an amount of Rs.3,79,873/- which is due and

payable. The said invoices also contain the interest clause and therefore, the interest claimed is to be deemed correct. Moreover, the Corporate Debtor vide its letter dated 11.08.2019 has admitted its liability.

5. In view of the facts and circumstances, this bench is of the considered opinion that nothing has to be adjudicated in the above company petition and is liable to be admitted.

6. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

(a) The above Company Petition No. (IB) -3913(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Suvishru Speciality Chemicals Private Limited.

(b) The applicant has annexed Form-2 along with the consent from the proposed Interim Resolution Professional (IRP) in the petition. Therefore, this Bench is appointing **Mr. Anurag Jain** (jainkpooja@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01049/2017-2018/11732 as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favor 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.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H V SUBBA RAO
Member (Judicial)