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IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

C.P. (IB) No. 227/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B(AAA) Rules, 2016

In the matter of:

M/s.Peddington Chemical Industries (India)
206, Sumer Kendra, Behind Mahindra Towers,
Pandurang Budhkar Marg, Worli,
Mumbai -400 018.

- Petitioner /Operational Creditor

Versus

M/s.Aradhya Steel Private Limited
#308, Embassy Centre, 11,
Crescent Road, Kumarapark East
Seshadripuram, Karnataka
Bangalore - 560 001.

-Respondent/Corporate Debtor

Date of Order: 29thAugust, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsel Present:

For the Petitioner : Shri Padmabhushan.N
For the Respondent : Shri Prasanna Kumar.H
For the Respondent No.2/
Financial Creditor : Shri R.N.S.P Achanta

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P. (IB) No.227/BB/2019 is filed by M/s.Peddington Chemical Industry India (Petitioner/Operational Creditor) under Section 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Aradhya Steel Pvt. Ltd



(Signature)

('Respondent/Corporate Debtor'), on the ground that the Corporate Debtor committed default for an amount of Rs.24,29,998.60/-.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s.Peddington Chemical Industry India (Petitioner), Registered office at : 206, Sumer Kendra, behind Mahindra Towers, Pandurang Budhkar Marg, Worli Mumbai - 400 018. The Operational Creditor is into the business of lubricants under name and style of Peddington Chemicals (India).
- (2) M/s.Aradhaya Steel Pvt. Ltd (Respondent) was incorporated on 09.01.1989 and its Authorized share capital is INR 25 Crores and Paid up Share capital is Rs.242,916,63=24/- . The Respondent is engaged in the business of manufacturing steel wires.
- (3) It is stated that the Corporate Debtor has placed an order for supply of lubricants for steel plant at Sy No. 154, Halavarthy Village, Angodu, Davangere - 577558. Based on the discussions and relying on the representations, Operational Creditor has agreed to supply lubricants as per the Purchase Orders as mentioned herein below bearing No. 1265 dated 21.09.2018, 1282 dated 01.10.2018, 1319 dated 31.10.2018, 1337 dated 16.11.2018, 1332 dated 12.11.2018, 1380 dated 20.12.2018 at Sy No. 154, Halavarthy Village, Angodu Davangere - 577558 subject credit period of 60 days from the date of delivery.

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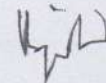
Accordingly goods were supplied, delivered, accepted and consumed by the Corporate Debtor.

- (4) As per agreed terms, the Corporate Debtor was liable to clear the payment towards goods supplied within 60 days. However despite of delivery and consumption of supplied goods and having been received statutory benefits, the Corporate Debtor has procrastinated the payment of amount on one or the other pretexts. The Operational Creditor has made all possible efforts to appraise the situation to all concerned officials through various communications and personal visits to the office of the Corporate Debtor at different point of time. That even after repeated requests, the payment remained unpaid till date.
- (5) Aggrieved by the non-payment of trade dues, the Operational Creditor has issued notice on 19.03.2019. However, the Corporate Debtor has requested not to initiate any legal proceedings and they undertook to repay the dues within reasonable period of time. However, despite of the promises being made, the Corporate Debtor failed to clear the dues. The Corporate Debtor has indebted the Operational Creditor even after repeated communications and requests, which is not appreciable in any commercial prudence as well as under the prevailing law. The Respondent even after receipt of the demand notice, has failed to make payment of the outstanding amount and it has become abundantly clear that the Corporate Debtor is unable to discharge its debt and is not in a position to clear its liabilities.

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- (6) It is stated that the Respondent has indebted the Petitioner in repayment of the balance consideration towards the purchase of lubricants on various occasions and without prejudice the Respondent has claimed VAT input credit on the entire transaction along with other commercial benefits unlawfully. The conduct of making unlawful gain either by claiming the input credit or commercial utilization of the goods supplied or enjoying various commercial benefits without there being a rational cause are contrary to the objectives of incorporation and applicable provision of law.
- (7) It is stated that the Corporate Debtor cannot utilize the privileges available to legal person, especially the formation of the Company under the Companies Act for the purpose of indebtedness or defrauding others or exploit the public at general for its benefits contrary to provisions of law and any act or omission contrary to the applicable statutes or provisions are subject penal actions.
- (8) The failure of the Respondent to make payments as requested, clearly establishes that the Respondent is in strained financial circumstances. The Respondent is commercially insolvent and its continued existence will only prejudice the public at large. The conduct of the Respondent in delaying the payment, clearly demonstrates its dismal financial position. The continued existence of the Respondent will cause erosion of the available assets from which the debts of unsecured creditors like the Petitioner could be discharged. Thus, the Company can be deemed unfit to



clear its debts and requires CIRP to be initiated as per the provisions of the Code.

3. The Respondent has filed Statement of Objection dated 25.07.2019, by inter alia contending as follows:

- 1) It is stated that the Petitioner is into the business of lubricants/Industrial chemicals and has supplied to goods to Respondent against the purchase orders and subsequently raised invoices demanding payment to the tune of INR 24,29,998.60/-.
- 2) It is stated that the Respondent has placed an order for supply of lubricants/industrial chemicals for its steel plant situated at SY No. 154, Halavarthy village, Angodu, Davangere - 577558. Based on the discussion and relying on the representations, Operational Creditor has agreed to supply lubricants as per the Purchase Orders as mentioned herein below:

SL No.	Date	P.O.No.
1.	21.09.2018	1265
2.	01.10.2018	1282
3.	31.10.2018	1319
4.	12.11.2018	1332
5.	16.11.2018	1337
6.	20.12.2018	1380

- 3) It is stated that the Respondent has not made any payment towards the invoices raised and the amount of INR 24,29,998.60/- is outstanding and there has been a default with respect to its payment. The Respondent categorically admits that the aforesaid amount is a debt which is outstanding in its books of account, which is due and payable and the same has not yet been paid and there is no dispute (pendency of suit or arbitration proceedings) between the parties regarding the same.

[Handwritten Signature]



- 4) The Managing Director of the Respondent Company, through an email communication had requested the Petitioner to grant sufficient time to make payment as all the current accounts held with the Consortium Member Banks of the Respondent have been rendered inoperative after the account has been classified as Non-performing Account as 31.03.2019. The Respondent Company undertakes to effect the payment of the aforesaid debt of the Petitioner subject to Respondent's current accounts held with the Consortium Member Banks becoming operational. The Respondent has not wantonly or intentionally or deliberately withheld the payment of the aforesaid debt of the Applicant but also of other creditors due to genuine reasons beyond its control. The Audited financial statements for the year end 31.03.2019 reflect a liability of INR 363.15 Crores towards other creditors and incurred loss of INR 209.83 Crores..
- 5) It is stated that the instant Petition is not the case of the Petitioner solely about non-payment but there are other Operational Creditors of the Respondent Company, whose dues are outstanding, and have submitted Form-3 notice as per IBC 2016. The table mentioned below reflects the Form-3 notices sent by various Operational Creditors.

SL No.	Name of Operational Creditor	Amount outstanding
1.	Korea Trade Insurance Corporation	INR 14.79 Crores
2.	Tattvam Weldtech Pvt. Ltd	INR 13,13,260/-
3.	Super Sulphates	INR 6,65,520/-
4.	BT Solders Pvt. Ltd	INR 77,98,265/-

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- 6) It is stated that the various stakeholders (Founder/Promoters, Bankers, Suppliers/Vendors and Customers) of the Respondent are in the process of undertaking various measures for resolving the issues faced by the Respondent. In the light of the above, every effort and endeavour is being made to resolve the issues faced by the Respondent in right earnest to maximize the value of assets and balance the interests of all the stakeholders which is fair, just and non-discriminatory.
- 7) It is stated that on the basis of the above factual position as stated above in the statement of Objections, the Petitioner have acted hastily and arbitrarily in filing this Petition despite assurances about payment being made subject to restricting exercise being completed in concurrence with bankers and have acted in a manner prejudicial to the interests of the Respondent and its stakeholders. If the Petition is admitted, Respondent including its stakeholders will suffer irreparable loss, harm and hardship; whereas the Petitioner will suffer no prejudice.
4. The Union Bank of India (Respondent No.2/Financial Creditor) has also field a Reply dated 27.08.2019, by inter alia contending as follows:
- 1) It is stated that, in pursuance to the directions issued by the Tribunal 13.08.2019, this Reply statement is filed by Union Bank of India, for itself as the Financial Creditor and in its representative capacity also as the Lead bank of the Consortium (duly authorised on behalf of the said consortium), in the case of Aradhya Steel Private Limited, the Corporate Debtor/Respondent No.1.



2) It is stated that, this Respondent/Financial Creditor is the lead bank of the Consortium consisting of other Banks/institutions and list of the consortium members with their respective share in the matter of Aradhya Steel Private Limited, is furnished herein below:

Sl No	Name of the Bank	Limit(CC H)	Share (%)	Present O/s as on 31.07.2019 (Rs. In Cr)
1.	Union Bank of India	36.00	28.49	76.46
2.	Bank of Baroda	32.40	25.64	43.99
3.	Indian Bank	16.35	12.94	28.53
4.	Hero Fin.corp	21.60	17.10	24.66
5.	HDFC	20.00	15.83	23.09
	Total Limits	126.35	100.00	196.73

3) It is stated that the aforesaid account(s) of the Corporate Debtor has been classified as non-performing asset as of 31.03.2019 by statutory auditors of Lead Bank due to default in making repayment of dues/interest. The subject to priority of debts as per the applicable law, there is no objection whatsoever from the Financial Creditors in allowing the present Petition filed by the Operational Creditor against the Corporate Debtor, and to pass an order thereby directing the said Respondent to undergo CIRP. The steps/measures undertaken by the Financial Creditors are as under:

a) Permitted Contract Manufacturing agreement to ensure the Company is preserved as a going concern



- in right earnest to maximize the value of assets to enable recovery;
- b) Prevented the Company and its promoters from disposing off/alienating or dealing with the secured assets prejudicial to the interest of the Financial Creditors;
 - c) Reviewing the Debt resolution plan dated 29.05.2019 submitted by Promoters;
 - d) Issued notice dated 07.06.2019 to enforce the security under SARFESI Act, 2002;
 - e) Invited sealed bids from interested bidders for acquisition of Respondent's Assets dated 12.07.2019;
 - f) Symbolic possession of the Assets are yet to be undertaken.
- 4) From the aforesaid facts, it follows that existence of an undisputed debt which is *sine qua non* for initiating CIRP against the Corporate Debtor/Respondent No.1, as it would also satisfy the condition that there is a debt payable and it is a financial debt and the said Corporate Debtor has not repaid the same.
- 5) It is stated that further delay in admitting the Petition may also erode the value of assets and public money will be put at risk. A consortium meeting held on 14.08.2019 where it was unanimously decided to consent to admission and commencement of CIRP against the Respondent.
- 6) It is stated that based on the preliminary discussions with some of the interested prospective bidders of Corporate debtor/Respondent No.1, the said secured Financial Creditors are optimistic and confident of 100% recovery of unpaid debt. However, it is brought to the



attention of this Tribunal that prospective bidders after due diligence have evinced interest to acquire the assets by duly submitting a resolution plan under IBC 2016 which may likely to balance the interests of all the stakeholders which is fair, just and non-discriminatory. It is stated that either there is no laxity or delay in approaching this Tribunal by the Secured Financial Creditors, and no adverse inference to such delay should be drawn against them.

7) It is stated that the pro-activeness of this Respondent in promptly informing Financial Creditors about the present Petition filed by the Operational Creditor prompted the Financial Creditors, who have a direct and subsisting interest in the subject matter of the present proceedings and to effectually and completely adjudicate upon and settle all questions involved in the instant proceedings.

5. Heard Shri Padmabhushan.N, learned Counsel for the Petitioner and Shri Prasanna Kumar.H.V, learned Counsel for Respondent and Shri R.N.S.P. Achanta, and learned Counsel for Respondent No.2/Financial Creditor. We have carefully perused the pleadings of both the parties and extant provisions of the Code and law on the issue.

6. Shri Padmabhushan.N, learned Counsel for Petitioner, while reiterating the various averments made in the Company Petition, has further submitted that the instant Company Petition is filed in accordance with law. The debt and default in question is not in dispute and he has also suggested a qualified Resolution Professional namely Mr.V.S.Varun, with Registration No.IBBI/IPA-002/IP-N00290/2017-2018/10848, who has also filed written Consent in Form-2 dated



25.08.2019, by inter declaring that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending against him with the Board or ICSI.

7. Shri Prasanna Kumar.V.H, learned Counsel for Respondent has not opposed the debt of the Petitioner and also submitted, apart from the debts of Petitioner herein, the Corporate Debtor fell due to various Creditors, and thus he has no objection to admit the case initiating CIRP in respect of Corporate Debtor.
8. Shri R.N.S.P Achanta, learned Counsel for Union Bank of India, has also urged the Adjudicating Authority to admit the case as Corporate Debtor fell due several dues to them too apart from others.
9. The above facts and circumstances clearly established that the Corporate Debtor became insolvent, and thus there is no other alternative for Adjudicating Authority except to admit the case by initiating CIRP, appointing IRP, Moratorium etc.
10. In the result, by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, the Company Petition bearing C.P(IB) No.227/BB/2019 is hereby admitted with the following consequential directions:

- (1) We hereby appointed **Mr.V.S.Varun, with Registration No.IBBI/IPA-002/IP-N00290/2017-2018/10848**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s.Aradhaya Steel Pvt. Ltd., to carry out the functions as mentioned

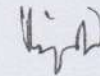




under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

- 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 the possession of the corporate debtor.
- e. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the





Central Government in consultation with any financial regulator.

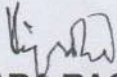
g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.

- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Adjudicating Authority from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP well before completion of stipulated statutory period.
- (6) Post the case for report of the IRP on 14.10.2019

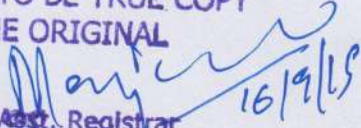

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

Raushan




(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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National Company Law Tribunal
Bengaluru Bench