

NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KERALA

IBA/35/KOB/2019
(Under Section 9 of IBC 2016)

Order delivered on: 22.04.2020

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Veera Brahma Rao Arekapudi (Technical)

In the matter of:

Applicant/Operational Creditor

Amarjeet Singh,
Prop. Of M/s. Vineet Enterprises,
526, Alattuchira Road, Kadanad,
Alattuchira, Ernakulam,
Kerala 683 544.

Vs.

Corporate Debtor/Respondent

M/s. Goodwin Packpet Private Limited
Door No.1/94, Vadakkumnalath House Mulang,
Thottippal P.O., Thrissur,
Kerala 680 310

Appearance:

For applicant/Operational Creditor	... Shri. K. Shaj, Advocate	
For Corporate Debtor	... Nil	...

1. This application has been filed by Shri Amarjeet Singh, Proprietor of M/s Vineet Enterprises, 526, Alattuchira Road, Kadanad, Alattuchira, Ernakulam, Kerala 683 544 (hereinafter referred to as 'Operational Creditor') under Section 9 of the

Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating insolvency resolution process against M/s. Goodwin Packpet Private Limited, which was incorporated on 23.07.2013 having CIN No: U25209KL2013PTCO34592 (hereinafter referred to as 'Corporate Debtor'/'Company'). The Registered Office of the Corporate Debtor is at Door No.1/94, Vadakkumnalath House, Mulang, Thottippal P. O., Thrissur, Kerala – 680 310, and the matter falls within the territorial jurisdiction of this Tribunal.

2. The total amount of debt due is ₹66,75,002/-(Rupees Sixty Six Lakhs Seventy Five Thousand and Two Only), the principal amount being ₹48,45,743/-(Rupees Forty Eight Lakhs Forty Five Thousand Seven Hundred and Forty Three Only) and interest of ₹18,29,259/-(Rupees Eighteen Lakhs Twenty Nine Thousand Two Hundred and Fifty Nine Only) calculated at 18% per annum, along with interest till the date of realization of the due.

Submissions by the Operational Creditor:

3. The learned counsel for the Operational Creditor submitted that the Operational Creditor is a private limited company under the provisions of the Companies Act, 1956 and engaged in the business of trading Pet Resin.
4. The learned counsel for the Operational Creditor further submitted that, the Corporates Debtor approached the Operational Creditor for the purchase of the Pet

Resin. The Operational Creditor delivered and sold the goods to the Corporate Debtor, and several invoices dated 13.07.2016, 27.07.2016, 28.07.2016, 01.09.2016, 03.09.2016, 21.09.2016, 30.09.2016, 03.10.2016 and 17.05.2017 were raised from time to time. The account maintained by the Corporate Debtor is a running and continuous one. The Corporate Debtor, defaulted in making payments as and when the invoices were raised.

5. The Operational Creditor further stated that owing to the cordial business relationship between the Operational Creditor and the Corporate Debtor, the Operational Creditor had continued to deliver and sell the goods to the Corporate Debtor but continued to remind them to make payments towards the outstanding dues. Upon verification of the Customer Ledger Accounts a sum of ₹48,45,743/- (Rupees Forty-Eight Lakhs Forty-Five Thousand Seven Hundred and Forty-Three Only) stands outstanding towards principal and liable to be paid to the Operational Creditor, after giving due credit to the part payments made by the Corporate Debtor.
6. The Operational Creditor further submitted that the Corporate Debtor has also duly acknowledged the debt, vide a letter of acknowledgement. The Corporate Debtor has failed to make any payments and the default committed by the Corporate Debtor has severely affected the financial credentials of the Operational Creditor.
7. The counsel for the Operational Creditor stated that a demand notice dated 20.04.2019 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 was issued by the Operational Creditor to the registered office calling for the

unconditional repayment of the unpaid operational debt within ten days. The demand notice was served on 25.04.2019 and proof of service along with proof of delivery are annexed with this application. Even after the expiry of the statutory period of 10 days, no reply was issued by the Corporate Debtor. Since, no payments were forthcoming, the Operational Creditor is constrained to prefer the present application.

8. . Therefore, the present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 9 of Insolvency and Bankruptcy Code, 2016.

Findings:

9. We have heard learned counsel for the applicant and perused the whole case records including documents and photocopies appended with the case records.
10. We have gone through the evidences on record. The Operational Creditor has established that he had delivered and sold goods to the Corporate Debtor for which an amount of ₹48,45,743/- (Rupees Forty-Eight Lakhs Forty-Five Thousand Seven Hundred and Forty-Three Only) was overdue and not paid by the Corporate Debtor. The Corporate Debtor has also issued account balance confirmation, confirms the amount payable as on 31.03.2017 to the Operational Creditor.

11. We observe that the Operational Creditor through demand notice dated 20.04.2019 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 claimed payment of an outstanding sum of ₹66,75,002/- (Rupees Sixty Six Lakhs Seventy Five Thousand and Two Only), the principal amount being ₹48,45,743/- (Rupees Forty Eight Lakhs Forty Five Thousand Seven Hundred and Forty Three Only) and interest of ₹18,29,259/- (Rupees Eighteen Lakhs Twenty Nine Thousand Two Hundred and Fifty Nine Only) calculated at 18% per annum with in a period of 10 days from the date of receipt of the notice. The said notice was received by the Corporate debtor on 25.04.2019.

12. In response to the same the Corporate Debtor has not issued any reply. Despite the receipt of notice the Corporate Debtor had failed and neglected to pay the said amount to the Operational Creditor. Therefore, it appears that the operational creditor had no intention to pay the said amount to the Operational Creditor.

13. Therefore, the Operational creditor filed this application to initiate Corporate Insolvency Resolution Process, declaration of Moratorium and appointment of Interim Resolution Professional under Section 9 of the Code, 2016 on 11.06.2019 before the NCLT, Chennai BENCH and was not numbered. Later the application was transferred to this Bench and included in Diary No.42 and numbered as **IBA/35/KOB/2019**.

14. On the perusal of the records we found that the Corporate Debtor become *ex parte* on 06.11.2019 and the matter posted for final hearing on 13.11.2019 due to the absence of the Operational Creditor the case was adjourned to 18.11.2019

for final hearing. On 18.11.2019 also the Operational Creditor was absent. Hence this application was dismissed for default. Thereafter, the Operational Creditor filed **IA/75/KOB/2019** for restoration of this application and none appeared for the Operational Creditor and **IA/75/KOB/2019** was also dismissed on 16.12.2019. On 14.01.2020 the Operational Creditor filed another **IA/20/KOB/2020** for restoration of this application and notice for the same was issued to the Corporate Debtor which was duly served on him on 23.01.2020 as per the acknowledgement card of the speed post. In spite of that, even after calling several times, none appeared for the Corporate Debtor. Therefore, **IA/20/KOB/2020** is allowed by this Bench on 30.01.2020.

15. On the perusal of the record we found that after restoring the matter the Registry of this Bench and the Operational Creditor have issued notice to the Corporate Debtor intimating about the application filed under the Insolvency and Bankruptcy Code Under Section 9 and to appear before this Bench. However, the notice to Corporate Debtor was duly served, but none appeared. Therefore, the application was decided *ex-parte*.

16. Considering these facts and circumstances, in our opinion the nature of the Debt is an 'Operational Debt' as defined under Section 5 (21) of the definition under the Code. There is a 'Default' as defined under Section 3(12) of the Code on the part of the Corporate Debtor. We, therefore are of the view that the present application is complete and the Applicant is entitled to claim its dues, which remain unpaid by the Corporate Debtor. In the light of above facts and records the present application is admitted.

ORDER

17. In the given facts and circumstances, we are of the view that the present application is complete and the Operational Creditor is entitled to claim its dues, which remain unpaid by the Corporate Debtor. In the light of above facts and records the present application is to be admitted for initiation of CIRP.

18. As a consequence, the **Application No. IBA/35/KOB/2019** is **admitted** in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of 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 off 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;

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.

19. It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.

a) 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 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

b) That the public pronouncement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

20. The Operational Creditor suggested the name of **Mr.Sathiq Buhari** having registration **No.IBBI/IPA-001/IP-P00758/2017-18/11307** (Email sathiq33@gmail.com (address-Sagreen Law Chamber, Vanchiyoor, Thiruvananthapuram- 695 035 Kerala) who is in the empanelled list of

Insolvency Professionals notified by IBBI valid from 1. 01. 2020 to 30. 06. 2020. He has also submitted his consent in Form 2 dated 02.03.2020 to act as IRP. Accordingly, Mr. Sathiq Buhari has been appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/ Directions issued in this regard. The proposed IRP is directed to submit copy of AFA issued to him by Insolvency Professional Agency in the prescribed format within 2 days through e mail to the Registry. **This order will come into force from the date the lock down is relaxed by the Government authorities and the IRP is advised to initiate necessary steps for CIRP from the date of relaxation only.**

21. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional to meet out the initial expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

22. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 22th day of April, 2020.

Sd/-

Veera Brahma Rao Arekapudi
Member (Technical)

Sd/-

Ashok Kumar Borah
Member (Judicial)

Tej/R