

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

C.P. (IB) 2249/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Berger Paints India Limited

Berger House, 129, Park Street, Kolkata,
West Bengal- 700017

.... Petitioner

v/s.

Nirmangold Alloys Private Limited

Gut No.- 17, Sultanpur Shivar, near
JikthanPhata, Aurangabad-Nagar Road,
Aurangabad, Maharashtra- 431133

.... Corporate Debtor

Order Delivered on 11.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Japula Ku

For the Corporate Debtor: None Present

Per: *Suchitra Kanuparthi, Member (J)*

ORDER

1. This Company Petition is filed by Berger Paints India Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Nirmangold Alloys Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹25,42,438/- including interest at the rate of 18% per annum on the delayed payment, as on 24.05.2019, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The petition reveals that the Corporate Debtor approached the Petitioner in its usual course of business for purchase of powder coatings and related products manufactured by the Petitioner. The Corporate Debtor used to place orders, orally as well as through purchase orders, upon the Petitioner. Accordingly, the Petitioner made supply of the materials in good faith and raised invoices upon the Corporate Debtor. These invoices were duly received and acknowledged by the Corporate Debtor without any demur or protest. Also, in the minutes of the meeting dated 14.11.2018



between the representative of the Petitioner and Corporate Debtor, the Corporate Debtor acknowledged the total outstanding amount due to the Petitioner as ₹18,61,455 and the said minutes is enclosed to the Petition at page no. 44.

3. The Petitioner issued Demand Notice dated 15.03.2019 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding repayment of the total amount of debt of ₹24,77,265/-.
4. The Petitioner has annexed the copies of the Invoices raised pursuant to the delivery of products. The Petitioner has annexed the copies of the delivery challans of the goods delivered to the Corporate Debtor and invoices raised pursuant to the delivery. The petitioner has also annexed ledger account of the Corporate Debtor in their books of accounts which shows a balance of ₹18,61,374/- as receivable from the Corporate Debtor.
5. The Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.
6. The Counsel for the Petitioner submitted that the petition was served on the Corporate Debtor but the tracking report of the petition sent to the Corporate debtor shows "Dispatched to BO" and it is not clear whether the petition was served or not. In view of this, the Counsel for the Petitioner was permitted to take out substituted service by paper publication in two newspapers, for which the Petitioner filed proof of service. Subsequently, when the matter was listed on 24.09.2019, there was no representation from the Corporate Debtor's side.
7. The above facts clearly shows that the Corporate Debtor is liable to pay the amount as claimed in the Petition and committed default.
8. Mr. Murlidhar Namdeo Bhalekar, having office at Nilayam, 29 Vishwkarma Co-Op. Housing Society, CIDCO, N-8-E, Aurangabad, Maharashtra-431003, having email address mnbhalekar@gmail.com, having Registration No. IBBI/IPA-002/IP-N00373/2017-18/11116 has given his consent in Form No. 2 to act as an Interim Resolution Professional.
9. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:
 - (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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.

- (b) 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.
 - (c) 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.
 - (d) that the order of moratorium shall have effect from 11.11.2019 till the completion of the CIRP 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.
 - (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
 - (f) that this Bench hereby appoints Mr. Murlidhar Namdeo Bhalekar, having office at Nilayam, 29 Vishwkarma Co-op. Housing Society, CIDCO, N-8-E, Aurangabad, Maharashtra- 431003, having email address mnbhalekar@gmail.com, having Registration No. IBBI/IPA-002/IP-N00373/2017-18/11116 as Interim Resolution Professional to carry the functions as mentioned under the Code.
10. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 26/11/19
Assistant Registrar
National Company Law Tribunal Mumbai Bench