

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

ITEM No.07
CP (IB) No. 173/BB/2022

IN THE MATTER OF:

M/s. Choice Wires Pvt Ltd ... Petitioner
Vs.
M/s. Indicarb Ltd ... Respondent

Order under Section 9 of Insolvency & Bankruptcy Code, 2016

Order delivered on 05.01.2023

CORAM:

TMT. T.KRISHNAVALLI
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Sh. Srivatsa Rao
For the Respondent : Sh. Pavan.V

ORDER

1. The present petition is filed on 13.07.2022, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), R/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s. Choice Wires Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Indicarb Limited (hereinafter referred as 'Corporate Debtor/Respondent'). The contents of the Application are supported by the affidavit dated 29.03.2022 filed by Mr. Rajeev Jain, acting as a Director of the Petitioner Company is at Page No. 16 of the Petition.
2. The Corporate Debtor namely M/s. Indicarb Limited is a Company registered under Companies Act, 1956 incorporated on 26.03.1975 with CIN: L29299KA1975PLC002761 having its registered office situated at No. 69/5A, II Floor, Swamy Krupa Building, Next to Bhanu Nursing Home,

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Bommanahalli, Bangalore – 560068, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised share capital of the company is Rs.4,00,00,000/- and paid up share capital is Rs.2,50,00,000/- as per the Company Master Data attached at Annexure-B of this Petition.

3. The present application has been filed by the Operational Creditor against the Corporate Debtor in respect of the default amount of Rs.4,66,48,000/- (Rupees Four Crore Sixty-six Lakhs Forty Eight Thousand only).
4. It is stated that the Corporate Debtor intended to buy MS Bright and Special Steel Bars (“Goods”) from the Operational Creditor to which the Operational Creditor supplied the sample of goods of 25.087 MT quantity to Corporate Debtor on 24.03.2006. Upon satisfaction of the quality of the goods, the Debtor issued Purchase Order (hereinafter referred as “PO”) for the supply of 350 Mt of Goods on 03.04.2006. The Operational Creditor supplied the same from 06.04.2006 to 26.06.2006 to the Debtor as a part of obligations under the PO. Further, the tax invoices and delivery challans were submitted immediately after dispatch of the goods for due payments to Hosur factory of the Debtor.
5. It is further stated that in terms of the PO, the Corporate Debtor was under the obligation to make the payment upon submission of the invoices and challans to the Corporate Debtor. However the Corporate Debtor failed to make the payment and therefore, the notice of payment of outstanding amount was issued by the Operational Creditor on 28.07.2006, calling upon the Corporate Debtor to make the payment within 30 days, along with the interest at 18% p.a. for the period of delay in making the payment. The Debtor failed to make the payment even upon the serving the notice. However, the Corporate Debtor has subsequently acknowledged the debt outstanding towards the Operational Creditor in their balance sheet and other written confirmations.
6. The Corporate Debtor has filed an affidavit vide Diary No. 5414 dated 13.12.2022 stating that in the year 2006, the Corporate Debtor started facing financial difficulty due to market conditions and defaults from its vendors; and also due to increasing competition from imports from China. The Corporate Debtor’s sales

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had resultantly reduced to an insignificant amount; and it was also unable to pay its workers. The workers of the Corporate Debtor were also on frequent strikes and hence, the operations had come to a complete halt. Further, it is stated that the pandemic has further deteriorated the Company's financial position and unless a third-party investor invests into the Corporate Debtor, it is very difficult to revive the business. Hence, in light of the present situation, the Corporate Debtor will not be in a position to repay the said outstanding dues to the Operational Creditors; and further states that they have no objections for initiation of Corporate Insolvency Resolution Process in order to have a chance for revival.

7. We have heard the learned Counsel for the Petitioner and learned Counsel for the Respondent and have also perused the records carefully.
8. The first issue for consideration is whether the demand notice in Form 3 was served. It is observed that the demand notice dated 28.03.2022 was served on the Corporate Debtor and in response to the same, the Corporate Debtor did not dispute the transaction of receipt of amount but has raised few issues so as to consider the reply as a notice of dispute.
9. The other issue for consideration is whether present application is filed within limitation. The date of default of the debt is well within the 3 years period from the date of filing of the C.P., as discussed above. Therefore, the Petition has been filed within the period of limitation.
10. The Corporate Debtor in its affidavit filed on 13.12.2022, admitted the debt and its liability to pay the same to the Operational Creditor, however, due to its financial difficulties they have failed to pay the same.
11. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Operational Debt for the default amount of above Rs.1,00,00,000/-, the petition is **admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

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- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
- ii. any court of law, tribunal, arbitration panel or other authority;
- iii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iv. 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;
- v. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- vi. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- vii. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- viii. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

12. In Part III of Form No.5, Mr. Venkataraman Jayagopal bearing Registration No. IBBI/IPA-002/IP-N00574/2017-2018/11741 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form No.2 dated 08.07.2022 has been filed along with the C.P at Page Nos.54-56 of the Petition. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Venkataraman Jayagopal and there is nothing adverse against him. In view of the above, we appoint Mr. Venkataraman Jayagopal, bearing Registration No. IBBI/IPA-002/IP-N00574/2017-2018/11741, registered address at E-003, Victoria Haven, Patel Ram Reddy Road, Domlur 1st Stage, Bangalore - 560071, e-mail: gopal_venus@hotmail.com, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under the

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IBC, under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor, constitute the Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the CoC within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
16. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(T.KRISHNAVALLI)
MEMBER (JUDICIAL)

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