

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

C.P (IB) No.1082/KB/2020

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

UIL Commodities DMCC, having its Registered office at Unit 1101, Platinum Tower, Cluster-I, Jumeirah Lakes Towers, PO Box 119975, UAE.

... Operational Creditor

Versus

In the matter of:

Maxgrow Overseas Limited, CIN U51909WB2008PTC128225, having its registered office at Natural Height Complex, 1C, Building No.5 Phase I, VIP Road, Opp. Haldiram (Air Port) Kolkata- 700052.

...Corporate Debtor

Date of hearing :07/04/2022

Order Pronounced on :19 /05/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Rajendra Eknath Pawar, Adv.] For Operational Creditor

1. Mr. Praveen Singh, Adv.] For Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **UIL Commodities DMCC**, through its Authorised representative namely Mr. Shashikant Narkar, vide Board Resolution dated 07/09/2020 (Exhibit-A) (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Maxgrow Overseas Limited**, having its registered office at Natural Height Complex, 1C, Building No.5 Phase I, VIP Road, Opp. Haldiram (Air Port) Kolkata- 700052, (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor is a company incorporated at Dubai UAE under DMCC regulations, having their registered office located at the address mentioned in the cause title of the petition. The Operational Creditor is engaged in the business of trading in Metals.
4. It is submitted that the Corporate Debtor had approached Operational Creditor for supply of Copper Cathodes. It is submitted that the Operational Creditor agreed to supply such goods to the Corporate Debtors on credit basis and entered into a Sales Contract dated 4th December, 2018. Copy of the Sales Contract dated 4th December, 2018.
5. It is submitted that the Operational Creditor thereafter supplied the said goods to the Corporate Debtor. Copy of invoice is annexed as Exhibit-G, Copy of Packing List Exhibit- I and copy of the Bill of Lading Exhibit- I.
6. It is submitted that the Corporate Debtor, however failed to honor its obligations and defaulted to pay to the Operational Creditor, an amount of

USD 18,67,080.88 along with interest thereon, which remained due and payable by the Corporate Debtor to Operational Creditor.

7. It is submitted that the Operational Creditor made a lot of correspondence with the Corporate Debtor requesting them to release the payment. Copies of the letters sent by the Operational Creditor to the Corporate Debtor is annexed as Exhibit J (Colly). The Corporate Debtor on various occasions requested Operational Creditor to extend the time for payment of the said outstanding dues. Copies of the letters received from Corporate Debtor acknowledging the debt is annexed as Exhibit K (colly).

8. It is submitted that as the Corporate Debtor failed to fulfill its obligations, the Operational Creditor issued statutory demand notice dated 07/09/2020 under Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor and demanded the entire amount along with interest. Copy of the Statutory Demand Notice dated 7th September, 2020 issued by the Advocate of the Operational Creditor is also annexed with the petition. Though the notice was served but there was no reply to this Demand Notice.

9. It is stated that date of default is 3rd April, 2019.

10. It is submitted that notice of this petition under section 9 of the IBC,2016 was duly served on the Corporate Debtor and the Corporate Debtor was represented through Mr. Pravin Singh.

11. In reply to the petition, the Ld. Counsel for the Corporate Debtor through its Director namely Rajendra Prasad Saraf, admitted their business relations with the Operational Creditor. It is stated that Corporate Debtor purchased various goods from the Operational Creditor on credit basis.

12. It is submitted that the Corporate Debtor has received the said goods under the said aforesaid Sales Contract. However, on 16th June, 2019 the Promoter of the Corporate Debtor, Mr. Rahul Saraf, met with an accident and succumbed to his injuries. It is stated that due to sudden death of the

Promoter of the Corporate Debtor, the business of the company was badly affected and the company went into financial stress. It is stated that Corporate Debtor, therefore, unable to pay Operational Creditor's dues. Copy of the death certificate of Mr. Rahul Saraf, the deceased Promoter of Corporate Debtor is annexed as Exhibit A to the reply.

13. It is submitted that the Director of Company was duly authorised to make such statement and instruct attorney by the management and board of directors of the company vide Board Resolution dated 2nd March, 2021. Copy of the Board Resolution is annexed as Exhibit-B.

14. From the reply affidavit filed by and on behalf of the Corporate Debtor , it is very clear that the Corporate Debtor had received the goods under the Sales Contract and admittedly the amount is also due to the Operational Creditor but it is specifically stated in the reply that on 16th June, 2019 the Promoter of the Corporate Debtor Mr. Rahul Saraf, had met with an accident and succumbed to his injuries, therefore, due to sudden death of the Promoter of the Corporate Debtor, the business of the Company is stated to have been badly affected and the company went into financial crisis. It is, therefore, admitted by the Corporate Debtor that the Corporate Debtor is unable to pay the dues of the Operational Creditor. A copy of the death certificate of the Promoter of the Corporate Debtor is enclosed with the reply affidavit.

15. Since, the Corporate Debtor has expressed its inability to pay the operational debt due to the Operational Creditor for the above said reasons, the company has to go under CIRP. We, therefore, deem fit it to pass the following Orders:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate

Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits 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 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Sushil Kumar Agrawal, IRP** having Reg. No. **IBBI/IPA-001/IP-P02136/2020-2021/13281**, email avafca@gmail.com act as Interim Resolution Professional (IRP). She shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x) **Mr. Sushil Kumar Agrawal, IRP**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- 16.Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- 17.List the matter on 29/06/2022 for filing of **Progress Report**.
18. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 19th day of May, 2022

PJ