

In the National Company Law Tribunal

Kolkata Bench

Kolkata

C.P. (IB) No. 1717/KB/2018

In the matter of:

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 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:

M/S. TEXCHEM (INDIA), a Proprietorship firm having its registered office at 1A, Halwasiya Road, Kolkata 700007 in the State of West Bengal, within the aforesaid jurisdiction;

... Operational Creditor/Applicant

-Versus-

In the matter of:

M/s. BHOWMIK DYEING AND BLEACHING PRIVATE LIMITED, having Corporate Identity Number U24100WB2008PTC125612, a Company registered under the Companies Act, 1956 and having its registered office at P-16, Motijheel Avenue, 3rd

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Floor, Plot-B, Kolkata 700074 in the State of West Bengal, within the aforesaid jurisdiction;

... Corporate Debtor

In the matter of :

M/S. TEXCHEM (INDIA)

] OPERATIONAL CREDITOR

M/S. BHOWMIK DYEING AND BLEACHING PVT. LTD.] CORPORATE DEBTOR

Date of pronouncement of order : 02/08/2019

Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

MR. ARNAB BASU MULLICK, Advocate

] For Operational Creditor

ORDER

Per Shri Harish Chander Suri, Member (T).

1. This Petition No. CP(IB) 1717/KB/2018 under section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by M/s. Texchem (India), (hereinafter called the Applicant/Operational Creditor), a Proprietorship firm having its registered office at Calcutta through its sole Proprietor Mr. Harsh Poddar, seeks initiation of Corporate

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Insolvency Resolution Process, in respect of M/s. Bhowmik Dyeing and Bleaching Private Limited, a Corporate person having its registered office at Calcutta, hereinafter referred to as the Corporate Debtor.

2. It is submitted that the Corporate Debtor was incorporated on 12th May, 2008 and is engaged in the business of dyeing, bleaching, paints, varnishes distempers, pigments, writing and printing ink, chemical products of any nature chemical compounds tannins, tannins extracts, textile auxiliaries hosiery goods fabrics, for which it required chemicals like Acetic Acid, Caustic Soda Flakes, Core Alkali Neutralizer (IG Surf 860WT), Demineralizer, Hydrogen peroxide, low forming wetting agents, lubricating agents, reactive DBF Dyes, soda ash light and sodium hydro sulphate, for which the Corporate Debtor had approached the Operational Creditor for supply of the said goods and after due negotiations, orders were placed by the Corporate Debtor on the Operational Creditor from time to time, and the goods were supplied as ordered by the Corporate Debtor, to the satisfaction of the Corporate Debtor. The Operational Creditor was raising invoice from time to time, some of them were cleared and many invoices were kept pending by the Corporate Debtor without any genuine reason or legitimate cause.
3. It is submitted that the Operational Creditor had been sending statement of accounts to the Corporate Debtor depicting the outstanding sums due and payable which were confirmed by the Corporate Debtor by putting their stamp and seal on the same.

4. According to the Operational Creditor once the purchase orders were issued by the Corporate Debtor and accepted by the Operational Creditor, it created a binding contract between them and on the supply of goods and acceptance thereof without demur or protest till date, made the Corporate Debtor liable for payment under the said contract.
5. It is submitted that the Operational Creditor was constrained to send notice dated 1st October, 2018 under Form 3 and 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with annexures which was duly received by the Corporate Debtor on 4th October, 2018 but the Corporate Debtor despite having received the said notice did not raise any dispute with regard to the claim of the applicant and rather paid Rs. 1,32,274/- (Rupees One Lakh Thirty Two Thousand Two Hundred Seventy Four Only) to the Operational Creditor on 22nd November, 2018 towards part discharge of its debt. The Operational Creditor has informed the Corporate Debtor vide letter dated 26th November, 2018 sent by e-mail that the amount received has been adjusted against the outstanding debt as mentioned in the statutory notice.
6. The Operational Creditor has submitted that as per the Master Data of the Corporate Debtor, reveals that it is an "active" Non Government Company having its authorized share capital of Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only) with paid up capital of Rs. 70,62,000/- (Rupees Seventy Lakh Sixty Two Thousand Only).

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7. The Operational Creditor has annexed 24 (Twenty Four) invoices relating to the period ranging from 16th March, 2017 to 13.04.2018 for which a sum of Rs. 21,97,772/- (Rupees Twenty One Lakh Ninety Seven Thousand Seven Hundred Seventy Two Only) is due as principal amount along with interest @ 24% p.a. amounting to Rs. 6,52,719.38.
8. It is mentioned in the petition that Notice dated 1st October, 2018 under section 8 of the Insolvency & Bankruptcy Code was issued by the Operational Creditor and duly received by the Corporate Debtor. This amount has been duly mentioned in the said notice and interest computation chart enclosed therewith. The total amount claimed inclusive of interest is stated to be Rs. 28,50,491.98 (Rupees Twenty Eight Lakh Fifty Thousand Four Hundred Ninety One and Paise Ninety Eight Only) and the date on which the default has occurred is 28th September, 2018.
10. The matter was listed for admission before this Tribunal on 3rd January, 2019 and a notice was directed to be issued to the Corporate Debtor, and thereafter an affidavit of service dated 4th February, 2019 was filed specifically mentioning that the notice of admission as issued by the Tribunal to the Corporate Debtor was served at the Registered address by speed post as also by e-mail and as per the track report also the same was delivered on 19th January, 2019 at 18:21 p.m. to the Corporate Debtor directing them to appear on 21.02.2019.
11. In spite of the said notice having been received by the Corporate Debtor there

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was no appearance or representation on behalf of the Corporate Debtor on the said date and thus the matter was adjourned to 24th April, 2019. Even on 24th April, 2019 the matter was called out but the Corporate Debtor was found absent and a supplementary affidavit was filed by the Operational Creditor to bring to the notice of this Tribunal that subsequent payments were made by the Corporate Debtor. On 3rd July, 2019, the matter was directed to be heard ex-parte in the absence of the Corporate Debtor, and finally the hearing took place on 25th July, 2019 of course, in the absence of the Corporate Debtor.

12. It would be seen from the record that the Operational Creditor has produced all the requisite documents proving the existence of Operational debt on the basis of purchase orders, and the invoices which were duly received by the Corporate Debtor, copies of the statement of accounts and balance confirmation, bank statements of the Operational Creditor showing receipt of payment from time to time. The Operational Creditor has also filed a copy of the notice dated 1st October, 2018 which was duly received by the Corporate Debtor on 4th October, 2018 along with another letter dated 26th November, 2018 acknowledging the receipt of part payment of Rs. 1,32,274/- on 22nd November, 2018, which was adjusted against the debt outstanding. This letter was also received by the Corporate Debtor both by speed post as well as by e-mail.
13. It is strange that the Operational Creditor had been repeatedly sending notices and letters including the notice of this Tribunal which was also duly served on

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them but it appears that the Corporate Debtor has deliberately chosen not to appear before this Tribunal and present its defence, if any. In the absence of any response from the Corporate Debtor we have no option but to decide the case on the merits of the documents produced by the Operational Creditor before us.

14. The Operational Creditor has prayed that the application might be allowed and admitted and the Corporate Insolvency Resolution Process might be initiated against the Corporate Debtor by appointing an Interim Resolution Professional for taking over the affairs and control of the Corporate Debtor post admission.
15. During the course of arguments, the Counsel for the Operational Creditor has taken us through all the documents placed on record by it in support of its case and we are convinced that the Operational Creditor has been able to successfully prove its case. Since the Corporate Debtor has failed to discharge its liability of operational debt of the Operational Creditor and has defaulted in doing so, the Corporate Debtor is liable to suffer the initiation of Corporate Insolvency Resolution Process.
16. We have heard the Ld. Counsel for the Applicant and perused each and every documents placed on record by the Operational Creditor. We are of the considered view that the admitted liability of the Corporate Debtor towards the Operational Creditor has been confirmed time and again by the Corporate Debtor. It has failed to discharge its liability, and its failure to

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discharge its admitted liability tantamounts to committing a default in payment, as envisaged under Section 9 of the Insolvency and Bankruptcy Code, in spite of notice u/s 8 of the Code. The application is meritorious and deserves to be admitted in view of the admission of the liability on the part of the Corporate Debtor and in view of the fact that in spite of this Tribunal's notice issued to the Corporate Debtor at its registered address it has failed and has rather chosen to stay away from the proceedings. In the aforesaid facts and circumstances, we, therefore pass the following orders:-

ORDER

- 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, M/s. Texchem (India) is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP 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.

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- 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 judgement, 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 (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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

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- 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) **Mr. Raj Singhania, an Insolvency Professional registered under Insolvency and Bankruptcy Board of India, having IP Registration No. IBBI/IPA-001/IP-P00188/2017-18/10367, E-mail ID rajsinghania_ca@yahoo.co.in, Mobile No. 9830227678** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- x) 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.

- xi) The Corporate Applicant is directed to deposit Rs.3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP.
- xii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xiii). List the matter on **02nd September, 2019** for filing of the progress report.
- xiv) 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 (T)

(Jinan K.R.)
Member (J)

Signed on this, the 2nd day of August, 2019.

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