

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

CP No.1111/I&BC/NCLT/MB/MAH/2019

In the matter of Application filed by the **‘Operational Creditor’** to initiate Corporate Insolvency Resolution Process **Under Section 9** of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016).

Aries Agro Limited. : Petitioner/Operational Creditor

V/s

ETCO Industries Private Limited. : Respondent/Corporate Debtor

Order delivered on: 26.09.2019

Coram :

Hon’ble M.K. Shrawat, Member (J)
Hon’ble Chandra Bhan Singh, Member (T)

For the Petitioner(s) : Advocate Mr. Atul Modyi/b Mody Law Offices.

For the Respondent(s) : None for Respondents.

Per: M.K. Shrawat, Member (J)

ORDER

1. A Petition in Form No. 1 was filed on 15.03.2019 by the **“Operational Creditor” M/s Aries Agro Limited, under section 9** of the Insolvency and Bankruptcy Code, 2016 of the Insolvency & Bankruptcy Application to Adjudicating Authority Rules, 2016 for initiating Corporate Insolvency Resolution Process against the **“Corporate Debtor” M/s ETCO Industries Private Limited for a total debt amount of Rs. 38,77,425/-** (Rupees Thirty-eight Lakhs Seventy-seven Thousand Four Hundred Twenty-five only) as per Chapter IV of the requisite form.
2. As prescribed **U/s 8** of the Insolvency & Bankruptcy Code a ‘Demand Notice’ dated 02.02.2019 was served upon the Respondent/debtor. In the said Notice it was informed that an amount of Rs. 38,33,699/- i.e.(Rs. 35,00,000/- towards Principal and Rs. 3,33,699/- towards the interest) is outstanding as on 31st January 2019. However, no Reply was filed by the Debtor.

Brief History of the case:

3. In this case it is informed that the Petitioner/Operational Creditor has given an Order for supply of Cloth and Packing Material. In this regard our attention was drawn on 27.08.2012, a copy of an 'Order of supply of Goods' through which Cotton Denium Fabric and Packing Bag Woven were to be delivered and in consideration advance was given for supply of the goods. On 30.08.2012 an Advance of **Rupees Fifty Lakhs through RTGS of HDFC Bank was transferred.** The Operational Creditor was following up with the Corporate Debtor about the supply of the goods, however, after lapse of few months the Corporate Debtor expressed its inability to supply the material. **Against the advance of Rupees Fifty Lakhs the Corporate Debtor had refunded only a sum of Rupees Fifteen Lakhs on 16.04.2014,** as a consequence, this Petition is in respect of the debt amount of **Rupees Thirty-five Lakhs** and interest thereon of Rs. 3,77,425/- totalling to Rs.38,77,425/-

FINDINGS.

4. Considering the totality of the facts and circumstances of the case, it is now established that this is a fit case under section 9 of the I&B Code because the debt and default of non-payment is established. No dispute has been raised about existence of debt. As a consequence, this Bench is of the view that this is a fit case of existence of Debt and Default in payment of the said Debt; hence this Petition deserves '**Admission**'..
5. Further this Bench has also perused the Form-2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Operational Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional. Hence, after perusal of the provisions of the Code as well as facts and circumstances of this case along with the evidences placed on record by the petitioner, it is hereby held that this Petition/Application is **Admitted.**
6. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. Vijay Pitamber Lulla**, Address :201,Satchitanand Building, 12th Road, Opp. Ram Mandir, Khar (West), Mumbai-400052, having registration No. IBBI/IPA-001/IPP-001/IPP-0323/2017-18/10593 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

7. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
8. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
9. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
10. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
11. Ordered Accordingly.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

M.K. SHRAWAT
Member (Judicial)

26.09.2019
Aah