

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) No.228/ALD/2018**

In the matter of

An application under Section 9 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*And*

In the matter of:

**Arysta Life Science India Ltd**

Having Registered Office at:

A-301, Kanika Zillion, LBS Marg,

Kurla West

Mumbai-400070

.....Operational Creditor

*Versus*

**Coromandel Agrico Pvt. Ltd.**

Having Registered Office at :

A-73, Industrial Area, Bulandshahr,

Sikandrabad, Uttar Pradesh-203205

.....Corporate Debtor

Order reserved on 06.04.2022

Order pronounced on :19.04.2022

*Coram :*

Sh. Rajasekhar V.K.

: Member (Judicial)

Sh. Virendra Kumar Gupta

: Member (Technical)

*Appearances (via Video Conference)*

For Operational Creditor : Sh. Pratik Chandra & Sh. Rajesh Kumar, Advs.

For Corporate Debtor : Ms. Babita Jain, Adv

**ORDER**

*Per: Virendra Kumar Gupta., Member (Technical)*

**Brief Facts of the Case**

1. The present application has been filed by Operational Creditor, namely **Arysta Life Science India Ltd.** under Section 9 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "IBC, 2016") for initiation of

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Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor, namely **Coromandel Agrico Pvt. Ltd.**

2. In support of its claim, the operational creditor has placed on record copies of invoices that were raised for supplying certain pesticide products. The purchase order was dated 23.09.2015. In spite of requests by the operational creditor when the amount due was not paid, the operational creditor sent a demand notice dated 2<sup>nd</sup> April 2018 which was duly received by the corporate debtor and the same was replied to by the corporate debtor. Affidavit in compliance with Section 9(3)(b) and Section 9(3)(c) of IBC, 2016 has also been placed on record.

**Arguments on behalf of the Operational Creditor**

3. Ld. Counsel appearing on behalf of the Operational Creditor submitted that the corporate debtor made 3 part-payments of 17,60,063; 15,00,000 and 10,00,000. The operational creditor then issued a credit note of 8,39,901. After this corporate debtor was liable to pay a sum of Rs.37,00,349 to the operational creditor. The learned counsel for the operational creditor submitted that the amount fell due on 31/01/2018 and the creditor sent a Legal Notice of Demand dated 31/01/2018 calling upon the corporate debtor to pay the remaining amount of Rs.37,00,349 along with interest @ 18% per annum from 26/01/2016 i.e., after three months of the credit period. Thereafter the corporate Debtor sent a letter dated 28/03/2018 along with a demand draft of Rs.5,00,000 in favour of the Operational Creditor and a payment plan to pay Rs.35,44,350 instead of Rs.37,00,349 to the operational creditor which he refused and returned the demand draft asking the corporate debtor to pay the entire outstanding amount.
4. A legal notice was again sent on 02/04/2018 by the operational creditor to the corporate debtor which is annexed at **Pg. 39 to 43** as **Annexure 12** of the application demanding the outstanding dues amounting to Rs.51,43,485/- inclusive of interest @ 18% per annum. The notice was duly received at the

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registered office of the Corporate Debtor on 10/04/2018. The corporate debtor replied to the Demand Notice on 26/05/2018 which is annexed as **Annexure 13** but the reply was not sent within the stipulated period of 10 days.

5. The learned counsel for the petitioner has also attached the copies of the ledger account maintained by the Operational creditor in their books of account which is annexed as **Annexure 7 pg. 26** of the application and has also attached the bank statements of the Operational Creditor of 30.12.2017 of HDFC Bank which is marked on **page 55** of the application in support of his application

**Arguments On Behalf of Corporate Debtor**

6. The learned counsel filed their reply to the Demand Notice on 26.04.2018 and denied the averments made by the operational creditor. The debtor also contended that the creditor failed to reprocess Propozyte due to which the debtor suffered a loss of Rs.20 Lakh which the debtor is now entitled to recover from the creditor. Also, the creditor had agreed to give a reduction of Rs.1,55,999 owing to the wrong pricing of the material by the operational creditor and the due amount was now Rs.35,44,350 instead of 37,00,349 which the corporate debtor was ready to pay in instalments. The operational creditor refused to accept part payments and also refused to reprocess the Propozyte. Thus, the demand notice is bad in law. The debtor was also ready to meet for an amicable settlement without any legal proceedings.
7. In reply to the creditor's application under section 9 of IBC, 2016 the corporate debtor submits that no cause of action had ever accrued in favour of the operational creditor and against the corporate debtor to entitle the creditor to institute the present application. The creditor has also withheld information from the Tribunal. When the creditor communicated corporate debtor for payment of alleged outstanding dues, the respondent/Corporate Debtor requested the petitioner/operational creditor to reprocess PROPARGITE as M/s Chemtura Chemicals India Private Limited (now M/s Arysta Life Science India Limited) was under an obligation to do so. Even after expiry, the material could be reprocessed bearing some losses. When the debtor requested the

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creditor to reprocess the material, the creditor stated that the material would only be reprocessed when the debtor would pay the outstanding amount. The copy of the said email is annexed on **page 21** as **Annexure R-5**. Since this issue couldn't be resolved, it caused a loss of Rs.25,00,000 to the debtor i.e. the present value of 3.2 KL of PROPARGITE.

8. The learned counsel also submits that the operational creditor does not mention the name of any insolvency professional and the application not being in conformity and consonance with the provisions of the Insolvency and Bankruptcy Code of India, 2016 is liable to be dismissed on this ground alone.
9. Further another defence taken by the learned counsel for the corporate debtor is that the respondent company is not liable to pay the rate of interest as mentioned in the **legal demand notice (Annexure 12)** and has admitted in **Part IV para 1** of the reply that the corporate debtor was continuously paying the dues and the last payment was made via demand draft of 5 lakhs which was returned by the creditor. The debtor had also proposed a scheme of part payments via its letter dated 28.03.2018 but these payments were subject to processing of PROPARGITE by the creditor. Thus, the legal demand notice and this present application are bad in law and liable to be dismissed. The outstanding amount of Rs.51,43,485 is neither tenable on law nor facts and the interest rate of 18% is also not tenable in law.

**Rejoinder filed by Operational Creditor (Applicant)**

10. The operational creditor denies the averments made by the corporate debtor in the present suit under this Counter Affidavit. It is further reiterated herein that the letter dated 19/05/2017, subjecting "FULL & FINAL PAYMENT" covered the pending invoices of Product "Clodinofof" only and which is also the subject matter of this present petition. The debtor is trying to deviate the attention of the Hon'ble Tribunal in the wrong direction by mixing the irrelevant issue of reprocessing expired insecticide product, which is against the law as enumerated u/s Rule 10A of the Insecticide Rule, 1971 and thus, the creditor does not owe Rs.25 lakhs to the debtor.

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11. It is also submitted that nowhere in the communications as sent by the operational Creditor, it has been agreed that it will reprocess the expired PROPERGITE or has given a reduction of Rs.1,55,999 in outstanding amount i.e. Rs.37,00,349. Furthermore, the operational creditor sent various emails to the corporate debtor requesting him to clear all outstanding dues with immediate effect. Also, the amount of Rs.51,43,485 is not non-tenable on law or facts.

**Findings & Conclusion**

12. During the course of hearings of this application on various occasions the Ld. Counsel appearing on behalf of the corporate debtor had sought time to arrive at an amicable settlement of the dues out of Court. On 16.02.2022 time was granted by this Adjudicating Authority to reach an amicable solution and the matter was listed on 23<sup>rd</sup> February 2022 and on this date of hearing, Ld. Counsel appearing on behalf of the corporate debtor submitted that despite best efforts the settlement could not be arrived at.
13. In the reply, the corporate debtor has also admitted that the principal amount due is Rs.35,44,350 /- which is more than the threshold limit at the relevant point of time. The last payment was made on 30<sup>th</sup> December 2017. Thus, the debt is payable in fact and in law. The interest @ 18% on the principal amount has not been mentioned in any invoice by the operational creditor and hence is not liable to be paid.
14. It is seen from the records that notice of default under Section 8 has been delivered and an affidavit under Section 9(3)(b) of IBC has also been filed.
15. It is noted that the application filed U/s 9 is complete and complies with the requirements of the relevant provisions of IBC, 2016 read with Rules and Regulations made thereunder. The outstanding amount is more than the threshold limit of ₹1,00,000/- (Rupees one lakh only). There does not exist any dispute within the meaning of provisions of Section 8 & 9 of IBC, 2016.
16. Thus, the application, on the face of it, is liable to be admitted.

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17. As the operational creditor has not proposed the name of IRP. Hence, a duly qualified Insolvency Professional registered with IBBI and eligible for the location of the corporate debtor may be appointed as IRP. Accordingly, we appoint Mr. Sushil Kumar Singhal from the list of IBBI which is currently in operation for the jurisdiction of this Adjudicating Authority.
18. Accordingly, this application is admitted on the following terms and conditions:-
- 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 **Coromandel Agrico Pvt. Limited** 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) This Adjudicating Authority hereby appoints **Mr. Sushil Kumar Singhal [Reg No.IBBI/IPA-001/IP-P01655/2019-2020/12536], having address at A-3/Flat no504, Krishna Apra Gardens, Plot No-7, Vaibhav Khand, Indirapuram, Ghaziabad- 201014, Uttar Pradesh** [email: [sksinghal66@gmail.com](mailto:sksinghal66@gmail.com)], to act as the IRP under Section 13(1)(c) of the Code.
  - iv) 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.
  - v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
  - vi) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
    - a) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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- b) 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);
- c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- vii) 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.
- viii) 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.
- ix) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- x) 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.
- 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.2,00,000/- (Rupees Two lakh only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

19. Registry is hereby directed to communicate the order to the Operational

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Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.

20. List the matter on 04.07.2022 for filing of the progress report.

21. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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**Virendra Kumar Gupta**  
Member (Technical)

**Rajasekha**  
**r V K**

Digitally signed by  
Rajasekhar V K  
Date: 2022.04.19  
15:34:20 +05'30'

**Rajasekhar V.K.**  
Member (Judicial)