

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 742/ND/2018**

(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)

IN THE MATTER OF:

M/s JAGRITI PLASTICS LIMITED

...Applicant/Operational Creditor

VERSUS

M/s PROACTIVE PLAST PRIVATE LIMITED

...Respondent/Corporate Debtor

Pronounced on: 14.10.2019

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Bharat Arora, Adv.

For the Respondent: Mr. Rahul Raj Malik, Adv.

Mr. Ramesh Chandra, Adv.

MEMO OF PARTIES

M/s JAGRITI PLASTICS LIMITED

Through its authorized representative

Mr. Nutan Kumar Vashisht

Having its registered office at:

405, Fourth Floor, Pearl Omaxe,

Tower-I, Plot No. B-1,

Netaji Subhash Place, Pitampura,

Delhi- 110034.

...Applicant/Operational Creditor

VERSUS

M/s PROACTIVE PLAST PRIVATE LIMITED

Having its registered office at:

W-66, Ground Floor, Right Side,

Greater Kailash-II, New Delhi- 110019

...Respondent/ Corporate Debtor

ORDER

DR. DEEPTI MUKESH, MEMBER (J)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Jagriti Plastics Limited (for brevity 'Operational Creditor') through its authorized representative Mr. Nutan Kumar Vashisht authorized vide Board resolution dated 18.03.2015 with a prayer to initiate the Corporate Insolvency process against M/s Proactive Plast Private Limited (for brevity 'Corporate Debtor').

2. The Operational Creditor namely M/s Jagriti Plastics Limited, is a company incorporated under the provisions of Companies Act, 1956 having CIN no. U25209DL1990PLC041317 and having its registered office at 405, Fourth Floor, Pearl Omaxe, Tower-1, Plot No. B-1, Netaji Subhash Place, Pitampura, Delhi-110034.
3. The Respondent, the Corporate Debtor namely M/s Proactive Plast Private Limited is a company incorporated on 21.04.2005 under the provisions of Companies Act, 1956 with CIN No. U25203DL2005PTC135194, having its registered office at W-66, Ground Floor, Right side, Greater Kailash-II, New Delhi-110019.

4. The Authorised Share Capital of the respondent company is Rs. 7,25,00,000/- and Paid Up Share Capital of the company is Rs. 7,22,00,000/- as per Master Data of the company.
5. The Operational Creditor provided polymers, resins, solvents and printing inks to the Corporate Debtor starting from October, 2013 totaling to Rs. 16.92 Crores approximately. The Operational Creditor and the Corporate Debtor had a running account and supplies of the aforesaid materials were made to the Corporate Debtor on regular basis.
6. Subsequently, the Corporate debtor increased the quantum and frequency of the purchases however defaulted in making corresponding payments, resulting thereof in continuous increase in the outstanding balance. The copy of ledger account is annexed with the present application. The Corporate Debtor kept assuring the Operational Creditor over calls and text messages that the outstanding bills will be cleared.
7. In and around October, 2017, the Corporate Debtor issued 3 post- dated cheques against part payment of said unpaid debt, dated 15.01.2018, 15.02.2018 and 15.03.2018

respectively amounting to Rs. 10,00,000/- each. Out of the said three cheques, two were returned unpaid on presentment with remarks 'payment stopped by drawer'. The Operational Creditor has filed complaints under Section 138 of the Negotiable Instrument Act which are pending adjudication.

8. In spite of various requests made and reminders sent by the Operational Creditor, the Corporate Debtor failed to pay the amount demanded.
9. On failure to pay the outstanding amount by the Corporate debtor, the Operational creditor sent a demand notice dated 12.04.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate debtor asking them to make the balance payment of Rs. 3,35,24,547/- (Rupees Three Crores Thirty- Five Lakhs Twenty- Four Thousand Five Hundred and Forty- Seven only) failing which the Operational Creditor shall initiate the Corporate Insolvency Resolution process against the Corporate debtor.
10. In spite of various requests made and reminders sent by the Operational creditor, the Corporate Debtor never bothered to reply to demand notice nor paid outstanding dues.

11. The Operational Creditor has stated that total debt due and payable is Rs. 4,05,19,069/- (Rupees Four Crores Five Lakhs Nineteen Thousand and Sixty- Nine only) which includes the principal amount of Rs. 3,35,24,547/- (Rupees Three Crores Thirty- Five Lakhs Twenty- Four Thousand Five Hundred and Forty- Seven only) and interest amount is Rs. 69,94,521/- (Rupees Sixty- Nine Lakhs Ninety-Four Thousand Five Hundred and Twenty-one only) @18% p.a. from 14.10.2016 to 08.06.2018 and hence filed the present application.
12. The Corporate debtor filed reply and raised various objections to the present application. It is submitted by the Corporate debtor that on account of the supplies during the period from 01.04.2014 to 30.04.2017, amount of Rs.305.24 lacs is liable to be debited against the defective supplies of raw materials. It is further submitted that due to external impurities of the raw material, unfinished goods were returned by the Respondent's customers and further stated that lot of finished material lying in the Respondent's factory remained unsold to the customers of the Respondent. For this reason, invoices amounting to

Rs. 305.24 Lacs would be liable to be debited/ adjusted in the account of the Applicant.

13. It is further stated by the Corporate Debtor that Applicant agreed to its default and accepted that the invoices would be cleared to the less extent. Upon all adjustments there was only an amount of Rs. 30 lacs payable by the Respondent to the Applicant and it was agreed that a sum of Rs. 305.24 Lacs would be adjusted and not paid on account of quality deficiencies in supplies, it is for this reason that the last payment was made by the Respondent to the Applicant on 16.05.2018 and the Applicant did not raise any demand thereafter.
14. It is further submitted that series of talks took place between the parties over the difference of amount with regard to debit notes. Several rounds of meetings had taken place between the parties in order to make just and plausible adjustments but all in vain to settle the matter.
15. During the arguments on 29.08.2019, the learned counsel for the Corporate Debtor made a statement before this Bench that Corporate Debtor is not in a position to make any payment.

16. The applicant has attached the copy of bank certificate issued by HDFC Bank, Asaf Ali Road, New Delhi in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
17. In view of above, we are satisfied that the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, moreover since the Corporate Debtor has admitted its inability to pay its debts. Hence, the present application is admitted.
18. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
19. The Operational creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Mr. Rakesh Kumar Jain having registration No. IBBI/IPA-001/IP-P01297/2018-2019/12068 and email address is rakeshjainca@rediffmail.com and contact number is 9811455641, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.
21. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.
22. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.
23. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by

updating the status of 'Corporate Debtor' and specific mention regarding admission of this application must be notified.

SD/-
(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

SD/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)