

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/189/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. Kumararaja Paper Mill Private Limited***

M/s. Arjun Chemicals Private Limited

Survey No.23, 101, Thandalam Group,
Velanthangal Village, Irungattukottai,
Sriperumbudur, Kancheepuram,
Tamil Nadu – 602 105.

... Operational Creditor

-Vs-

M/s. Kumararaja Paper Private Limited

146, Main Road, Srikumar Complex,
Tiruchengode,
Tamil Nadu – 637 211

... Corporate Debtor

Order Pronounced on 4th March 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Rohan Rajasekharan, Advocate

For Corporate Debtor : None appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This is an application filed by M/s. Arjun Chemicals Private Limited (hereinafter referred as “**Operational Creditor**”) under

section 9 of the Insolvency and Bankruptcy Code 2016 seeking to initiate Corporate Insolvency Resolution Process against the Company, namely, M/s. Kumararaja Paper Mill Private Limited (hereinafter referred as “**Corporate Debtor**”).

2. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company. From Part – II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 22.05.2000 and as per the Application, the registered office address of the Corporate Debtor is stated to be situated at 146, Main Road, Srikumar Complex, Tiruchengode, Tamil Nadu – 637 211. From Part – III of the Application, it is seen that the Operational Creditor has not proposed the name of any Insolvency Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

3. Part – IV of the Application, discloses the details of the Operational Debt, from which, it is seen that the Operational Creditor has claimed a sum of Rs.2,48,792/- and interest for a sum of Rs.1,08,261/- as due and payable by the Corporate Debtor.

4. Part – V of the Application sets out the details of the documents which are being filed in order to prove the existence of an Operational Debt, which are as follows:

- (i) Purchase Order dated 22.03.2017.
- (ii) Invoice dated 25.03.2017 with proof of consignment and test certificate.
- (iii) Correspondent dated 22.03.2017 with cheques dated 08.04.2017 & 10.04.2017 along with their respective return memos.
- (iv) Letter of the Corporate Debtor dated 24.07.2017 with replacement cheques dated 24.07.2017 and return memo.
- (v) Correspondences of the Corporate Debtor dated 10.06.2017 and 31.07.2017.
- (vi) Entire Ledger Statement.

5. It is averred in the Application that the Operational Creditor is engaged in the business of manufacturing and supply of various chemicals and compounds and that the Corporate Debtor had approached the Operational Creditor for the supply of compositize – cationic rosin dispersion in plastic barrels and based on the Purchase Order dated 22.03.2017, the Operational Creditor has duly supplied the chemicals and raised Invoice for a sum of Rs.1,08,261/- on 25.03.2017 for the same.

6. It is averred in the Application that as per the terms of the Invoice, the said sum of Rs.1,08,261/- was to be paid within a period of 30 days thereof, by providing post – dated cheques(s) and further interest at the rate of 18% p.a. was payable on all accounts unpaid after the due date. It is stated that the Corporate Debtor has issued two cheques vide cheque No. 514241 & 514242 for Rs.60,000/- each dated 08.04.2017 and 10.04.2017, however when the said cheques were presented for realization, the same were returned with an endorsement “*funds insufficient*”. It is further stated in the Application that the Corporate Debtor has issued correspondences dated 05.05.2017 and 10.06.2017 to the Operational Creditor seeking further time to repay the amount due and vide their letter dated 24.07.2017 provide replacement cheque no. 514265 & 514266 dated 24.07.2017 for an amount of Rs.54,261 and Rs.54,000/- and when the said cheques were presented, the same was once again returned with an endorsement as “*funds insufficient*”.

7. It is averred in the Application that the Corporate Debtor having received and utilized the goods, had defaulted in making payments to the Operational Creditor and hence the Corporate Debtor has committed default in repayment of the said ‘operational

debt' to the Operational Creditor. Further, it is stated in the Application that the Corporate Debtor has failed to return a dosing pump capacity 130 LPH 2 Nos. with Serial Number 090619240 / IM2012357-074 and Serial Number 130240998 that was provided by the Operational Creditor for dosing chemicals, vide suspense gate pass number 087/18.07.2014 and 150 dated 13.01.2016. It is stated that the cost of the two pumps owned by the Operational Creditor and misappropriated by the Corporate Debtor amounts to a sum of Rs.92,000/- and the same is liable to be reimbursed by the Corporate Debtor.

8. It is further stated in the Application that the Operational Creditor has issued several correspondences to the Corporate Debtor seeking for payment of the outstanding debt, however, no payments were forthcoming eventhough the outstanding debts were acknowledged and confirmed by the Corporate Debtor. Further, it is averred that the Corporate Debtor had never disputed the pending amounts. It is stated that since the substratum of the Corporate Debtor has eroded and it is unable to make payment of amounts due to its creditors, a Demand Notice under Section 8 of IBC, 2016 was sent to the Corporate Debtor on 21.10.2019 which was delivered to the Corporate Debtor on 13.11.2019 and after the

expiry of 10 days period, there was no reply received from the Corporate Debtor and the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 to this effect. Hence, it is averred in the Application that since there is no dispute of the unpaid operational debt and that the default on the part of the Corporate Debtor is proved, the Operational Creditor has sought for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

9. In relation to the Corporate Debtor, it is seen that there was no appearance on behalf of the Corporate Debtor and the Operational Creditor was permitted to take Private notice by way of Speed post on 24.11.2020 and to this effect, an Affidavit of Service is also filed by the Operational Creditor. In spite of notice having been served, there was no representation on behalf of the Corporate Debtor.

10. From the documents filed along with the typed set and also from the averments made in the Application it is seen that the Corporate Debtor has committed default in payment of the “operational debt” which is due and payable by the Corporate Debtor to the Operational Creditor. Further, in the present case it is

seen from the records that the Corporate Debtor has not preferred to reply to the Demand Notice issued by the Operational Creditor in spite of receiving the same.

11. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 crore as on and from 24.03.2020 and the claim made thereof in the Petition filed on 30.01.2020, which exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

12. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, inspite of opportunity given to the Operational Creditor to name the same, as the one proposed after filing of the

Petition, was handling numerous assignments as stated in the order dated 01.02.2021 and gave an opportunity to propose the name of some other IRP, however the same was not availed and hence this Tribunal, based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021, appoints **Ms. Chitra Perinkulam Ragavan** with Registration No. *IBBI/IPA-002/IP-N00720/2019-2020/12558* (email id:- *chitraprc@yahoo.com*) as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

13. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
 - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

14. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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 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.

15. The Operational Creditor is directed to pay a sum of **Rs.2,00,000 / -** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a

copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond