

In the National Company Law Tribunal

Kolkata Bench

Kolkata

C.P. (IB) No. 105/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. GANDHAR OIL REFINERY (INDIA) LIMITED, a Company incorporated under the Companies Act, 1956 and having its Registered Office at 12, Shivanth Shastri Sarani, Block-E, New Alipore, Kolkata 700052, within the aforesaid jurisdiction;

... Operational Creditor / Applicant

Versus

In the matter of :

M/S. SAPPHIRE EQUITIES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its Registered Office at 12, Shivanth Shastri Sarani, Block-E, New Alipore, Kolkata 700052, within the aforesaid jurisdiction;

.....Corporate Debtor / Respondent

sq

sq

In the matter of :

M/S. GANDHAR OIL REFINERY (INDIA) LTD] OPERATIONAL CREDITOR

M/S. SAPPHIRE EQUITIES PRIVATE LIMITED] CORPORATE DEBTOR

Date of pronouncement of order : 10/07 /2019

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

Counsel on Record :

Ms. Rakhi Purnima Paul] For the Applicant/Operational
Creditor

ORDER

Per Shri Harish Chander Suri, Member (T).

1. This application 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 had been filed by **M/s. Gandhar Oil Refinery (India) Limited** (hereinafter called the **Operational Creditor**) against **M/s. Sapphire Equities Pvt. Ltd.** (hereinafter called the **Corporate Debtor**) alleging that Rs. 3,07,21,702/- (Rupees Three Crore Seven Lakh Twenty One Thousand Seven Hundred and Two Only) along with interest @ 18% p.a. was due and payable by the Corporate Debtor to the Operational Creditor.

sd

sd

2. It was stated in the application that the Corporate Debtor had committed default in payment of the debt due. After pleadings had been completed, this Tribunal after hearing the Ld. Counsel for both the parties delivered its judgement on 8th August, 2018 and held that the application of the Operational Creditor has no merits and the Operational Creditor had failed in proving that the demand notice had been delivered to the Corporate Debtor and that the Corporate Debtor had succeeded in establishing a pre-existing dispute between the Corporate Debtor and Operational Creditor regarding the quality of the goods and regarding the amount liable to be paid. Consequently, this Tribunal rejected the application under section 9 (5)(i)(a) and (d) of the Insolvency and Bankruptcy Code.
3. The Operational Creditor being aggrieved by the order dated 8th August, 2018 passed by this Tribunal had preferred an appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi. The Hon'ble Appellate Tribunal heard the Counsel for the appellant and set aside the aforesaid order passed by this Tribunal i.e. NCLT, Kolkata Bench and remitted the matter back to this Tribunal for admission of the application under section 9 and initiating of Corporate Insolvency Resolution Process after issuing notice to the Corporate Debtor.
4. Pursuant to receipt of the order passed by the Hon'ble NCLAT on 15th March, 2019, notice was issued to the Corporate Debtor by way of e-mail for its

appearance. So, the matter was listed on 19th June, 2019. However, on 19th June neither the Operational Creditor nor the Corporate Debtor was represented. However, the affidavit of service had been filed by the Operational Creditor without proof of delivery of notice to the Corporate Debtor. The Tribunal therefore issued fresh notice to both the sides and the matter was posted for hearing on 8th July, 2019.

5. It would be pertinent to mention that the Hon'ble National Company Law Appellate Tribunal, New Delhi, while delivering its verdict in **Company Appeal (AT) (Insolvency) No. 631 of 2018** vide order dated **15.03.2019**, observed and held that the demand notice under section 8(1) was duly served on the Respondent.
6. It was further observed by the Hon'ble National Company Law Appellate Tribunal that Rs. 2,78,00,000/- (Rupees Two Crore Seventy Eight Lakh Only) was payable and that the Respondent had intimated that only Rs. 1 (One) crore was due after discount of Rs. 1.76 crore, for bad quality material. It was held by the Hon'ble Appellate Tribunal that there was no dispute with regard to Rs. 1 (One) crore and the finding of the NCLT, Kolkata Bench that there existed a dispute with regard to the amount claimed by the appellant, was set aside.
7. The NCLAT also observed that since the appellant had pleaded that out of Rs. 1 (One) crore, Rs. 40,00,000/- (Rupees Forty Lakh Only) was paid and the

cheque for Rs. 60,00,000/- (Rupees Sixty Lakh Only) had bounced, it was held that the default with regard to payable amount for which the application under section 9 had been filed, was not disputed.

8. The National Company Law Appellate Tribunal, New Delhi, vide order dated 15.03.2019, while setting aside the order of this Tribunal had remitted the matter back to this Tribunal for admission of the application under section 9 and for initiation of Corporate Insolvency Resolution Process. We, therefore, admit the petition and 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. Sapphire Equities Private Limited 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

SQ

SQ

immediately.

- 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.
- v) 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.

52

52

- 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. Pankaj Lunawat**, an Insolvency Professional, registered with Insolvency and Bankruptcy Board of India, having **registration number IBBI/IPA-001/IP-P00066/2017-18/10152**, **E-mail ID: plunawatca@gmail.com**, **Mobile No. 9830876705** 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

Gandhar Oil Refinery (I) Ltd - vs - Sapphire Equities Pvt. Ltd.

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 **19th August, 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.

sq

(Harish Chander Suri)
Member (T)

sq

10/7/19

(Jinan K.R.)
Member (J)

Signed on this, the 10th day of July, 2019.

vc

sq