



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.1
C.P.(IB)/119(AHM)2022

Order under Section 9 IBC

IN THE MATTER OF:

Krishna Colour Chem through its
Partner Bhaveshkumar K Maniar
V/s
SpelGranito Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 19/05/2023

Coram:

Mr. Praveen Gupta, Hon'ble Member(J)
Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

PRAVEEN GUPTA
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP(IB)/119(AHM)2022

In the Matter of:

(An application 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)

Krishna Colour Chem

Represented through its partner

Mr. Bhaveshkumar K. Maniar

Survey No.45P4/P1/P1

Plot No.5, Shakti Industrial Estate 2,

Trajpar, Morbi-363642 (Gujarat)

**Applicant/
Operational Creditor**

Versus

Spel Granito Private Limited

Sr.No.488, Nr.Pavadiyari Temple

Taluka-Morbi, District-Morbi

Jasmatgadh, Rajkot-363630

**Respondent/
Corporate Debtor**

Order reserved on: 11.04.2023

Order pronounced on: 19.05.2023

Coram: Hon'ble Praveen Gupta, Member (J)

Hon'ble Kaushalendra Kumar Singh, Member (T)

Present:

For the Applicant: Ld. Adv. Ms. Noopur K Dalal

For the Respondent: Ex-parte

ORDER

1. The Petition is filed by Krishna Colour Chem (Applicant/ Operational Creditor) through its Partner Mr. Bhaveshkumar K. Maniar, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for initiation of Corporate Insolvency Resolution Process



(CIRP) against SpelGranito Private Limited (Respondent/ Corporate Debtor). The amount of claimed debt in default is Rs.2,25,14,171/- [(Rupees two crore twenty-five lakhs fourteen thousand seventy-one) - principal amount Rs.1,66,41,709/- and the interest Rs.58,72,462/-]. The date of default is 30.12.2020.

2. Briefly, the facts of the case as mentioned in the petition and submitted by the applicant are that the applicant is a partnership firm engaged in the business of trading pigments, color chemicals & its allied products and operates its business from the registered office mentioned in the memo of parties, whereas the respondent is registered under the Companies Act, 2013. According to the applicant, during the period from 10.05.2019-01.12.2020 the applicant issued 113 sales invoices amounting to Rs.1,70,26,666/- against the respondent for pigments, color chemicals & digital inks used in the ceramic product. The respondent made part payment of Rs.2,88,155/- and made sales return to the extent of Rs.96,801/-. Thus the outstanding amount is Rs.2,25,14,171/- which includes the principal amount payable by the respondent for the sale by the applicant amounting to Rs.1,66,41,709/- and the remaining amount of Rs.58,72,462/- is the amount of interest payable on the principal amount.

The applicant has sent various emails to obtain confirmation of the outstanding amount, however, the respondent did not reply to any. Subsequently, the applicant served a demand notice dated 02.02.2022 upon the respondent under section 8 of the Code through the post as well as on their email id as available on MCA master data. It is the case of the operational creditor that the said demand notice was sent thrice and was finally delivered to the respondent on 28.02.2022. According to the applicant, the respondent has neither replied nor



raised any dispute nor made any payment towards outstanding dues and therefore, the applicant filed an application under section 9 of the Code.

3. Pursuant to the order dated 11.05.2022 passed by this Adjudicating Authority the applicant served the application to the respondent. However, the respondent never appeared even after service of notice, therefore, this Adjudicating Authority vide order dated 14.09.2022 directed to proceed ex-parte against the respondent in the matter.

4. We have heard the learned counsel for the applicant and have perused the material available on record. It is noted that the applicant issued around 113 invoices amounting to Rs.1,70,26,666/- for the sale of pigments, color chemicals etc to the respondent during the period 10.05.2019-01.12.2020 against which the respondent made part payment amounting to Rs.2,88,155/- in the year 2020 and sales return to the tune of Rs.96,801/-. It is also noted that the operational creditor sent various emails however, the respondent never replied to any of them. The outstanding amount as claimed by the applicant is Rs.2,25,14,171/- which includes the principal amount of Rs.1,66,41,709/- and the balance amount of Rs.58,72,462/- being the interest.

5. It is noted that the applicant issued a demand notice upon the respondent twice or thrice and subsequently the same was accepted by the respondent on 28.02.2022, however, it appears that no reply to the demand notice was sent by the respondent. It is also noted that the respondent neither ever appeared during the proceedings nor filed any reply and therefore, direction to proceed ex-parte was given vide order dated 14.09.2022.



6. Considering the facts of the case it appears that the respondent made part payment and made a sales return which itself indicates that sales were made and in the case of certain defective goods the respondent returned the same. The claim of the applicant stands established and prima facie there is a default in payment of the amount due to the applicant without any dispute in existence.

7. The default amount meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. The application is otherwise defect-free & on record.

8. In view of the above, the respondent has defaulted in the payment of its debts. Accordingly, we admit this application and order as under:

(i) The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 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 Securitisation 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 corporate debtor.



(ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iii) The Operational Creditor has not proposed the name of the IRP, therefore, this Adjudicating Authority hereby appoints Mr.Premraj Ramratan Laddha having registration No.IBBI/IPA-001/IP-P00060/2017-18/10138 to act as an IRP under Section 13(1) (c) of the IBC, 2016.

(iv) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(v) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.



(vi) It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(vii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 50000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

(viii) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

9. Accordingly, **CP(IB) 119 of 2022** is allowed.

-SD-

Kaushalendra Kumar Singh
Member (Technical)

-SD-

Praveen Gupta
Member (Judicial)

Swati