IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-1761/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Korea Trade Insurance Corporation (Ksure)
A company having it office at
14, Jongno, Jongno-gu, 110-729,
Seoul, South Korea

...Applicant

Versus

M/s Aquashield Chemtech Pvt. Ltd.
Registered office at:
Khasra No.51/21/2, Village Tikri Kalan,
Nagloi, Delhi 110041, India

Also at:
Khasra No.93/9, Mundaka Industrial Area,
Village Mundaka, Delhi 110041,
India

...Respondent Company

Coram:

SHRI P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Manish Dhir, Advocate for the applicant.

ORDER

Date: .10.2019

1. This is an application filed by the Applicant M/s Korea Trade Insurance Corporation (Ksure) seeking to initiate corporate insolvency resolution process ("CIRP") of the Respondent M/s Aquashield Chemtech Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") for the alleged default on the part of the Respondent in settling the debt of USD 1,26,781.20 towards the shipping and delivery of goods to the Respondent. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

   i. The Respondent approached M/s SilkRoad C&T for supply of certain goods (hereinafter referred to as 'said goods') to be supplied from Korea and shipped to the Respondent in India.

   ii. Relying upon the representation made by the Respondent, M/s SilkRoad C&T supplied and delivered their goods to the Respondent in accordance with their specifications and requirements.

   iii. M/s SilkRoad C&T thereafter issued its invoices for sale of such products, the particulars of Invoices are given as under:

Invoice No.	Invoice Date	Invoice Amount

		(USD)
SR- AQ150421-015	April 27,2015	20,124
SR- AQ150427-016	April 21,2015	20,124
SR- AQ150404-017	May 04,2015	20,124
SR- AQ150404-018	May 27,2015	20,124
SR- AQ150527-019	June 9,2015	20,124
SR- AQ150609-020	June 11,2015	20,124
SR- AQ150611-021	June 17,2015	20,124
SR- AQ150617-022	July 03,2015	20,124
SR- AQ150703-023	April21,2015	20,124
Total		181,116

iv. Thereafter the Respondent made some part payments amounting to USD 54,334.80 thereby leaving the balance outstanding to USD 126,781.20. However, the Respondent failed to make payment of the remaining outstanding payments to M/s SilkRoad C&T, who kept pursuing and following up with the Respondent for payment for the outstanding dues.

v. The Respondent admitted its complete liability towards M/s SilkRoad C&T and promised to make the payment of its pending dues in a phased manner, vide its e-mailed dated

January 17, 2017. However, the Respondent failed to make the payment of the outstanding dues, despite the above.

vi. The aforesaid transaction was insured by the Applicant, Korea Trade Insurance Corporation (Ksure), who is one of the official Export Credit Agencies wholly operated by the Korean Government. The applicant herein had been continuously involved and assisting M/s SilkRoad C&T in following up the matter with the Respondent. The Respondent had been aware of the applicant, and has in this respect also communicated with the applicant on various occasions.

vii. The Respondent has vide its e-mail dated April 19,2017, once again admitted its liability to pay the outstanding sums and also provided a payment plan for the entire debt.

viii. The Applicant reimbursed M/s SilkRoad C&T for the loss caused to them in the aforesaid transaction and pursuant thereto, M/s SilkRoad C&T assigned all its rights against the Respondent under or in relation to the aforesaid Sales, including the right to recover the aforementioned outstanding amount of USD 1,26,781.20 from the Respondent, to the applicant herein, vide a letter of assignment dated 30th May, 2017.

ix. Thereafter the Applicant herein has been continuously following up the matter with Respondent and for payment of the outstanding dues. However, the Respondent has failed to respond to such communication and also failed to make payment of the admitted debt.

x. There is specific admission of liability all long by the Respondent and time and again the Respondent had promised to repay the same but in spite of the said promises, the Respondent failed to pay and/or clear the admitted liability.

xi. Despite the delivery of the goods to the Respondent and continuously following up the issue, it has failed to make payment of their outstanding dues till date. This is despite the fact that the Respondent has on various occasions acknowledged the pendency of the debt.

xii. The Applicant being aggrieved by the conduct of the Respondent and feeling cheated at the hands of Respondent despite it showing good faith and belief issued a demand notice dated December 10, 2016 and May 24, 2019 under section 8 of the Insolvency and Bankruptcy Code, 2016 ("Statutory Demand Notice") to the Respondent, through its counsel, calling upon it to make the full and final payment of its admitted outstanding to the applicant. The statutory demand notice dated December 10, 2018 and May 24, 2019 was dispatched by way of registered post and courier on the registered office of the Respondent in Delhi as appearing in the records of the Registrar of Companies. The statutory demand notice had also been sent by the Applicant, through its counsel upon the Respondent and its principal officers through Email dated May 7, 2019 and May 28, 2019 on the e-mail ID as registered with the Registrar of Companies.

xiii. However, despite the same, the Respondent failed to make any payment to the applicant in discharge of its liability.

2. The Applicant has filed the affidavit of service on 08.08.2019 according to which the Applicant has dispatched the complete set of application to the directors of the Respondent company through speed post as well as through email service.

3. Despite the notices sent by the Applicant as well as the Tribunal, the Respondent failed to appear and represent the matter in the Tribunal and accordingly the Respondent was proceeded ex-parte.

4. We heard the arguments made by the counsel for the Applicant in which he has reiterated the contentions made in the Applicant. The

Applicant has established the existence of debt and default on the part of the Respondent. The Respondent failed to appear and defend its case. Since debt and default are established by the Applicant, this Tribunal initiates CIRP on the respondent company/Respondent.

5. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

> "(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.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

8. The interim resolution professional ("IRP"), named in the list provided by the IBBI, is Mr. Adarsh Sharma, email id: adarsh@adarshca.co.in, phone number: 9810074285 being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of

Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

9. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP. Renotify this case for report of the IRP on 04.11.2019.

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

(DR. P.S.N.PRASAD)
MEMBER (JUDICIAL)

Deepak