



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -I**

CP (IB) 773/MB/C-I/2020

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Shalimar Paints Limited

[CIN:L24222HR1902PLC065611]

Stainless Centre, Fourth Floor, Plot No. 50, Sector 32,
Gurugram, Haryana-122001.

... Operational Creditor/Petitioner

Versus

JK Surface Coating Private Limited.

[CIN:U45202MH1998PTC117291]

Neel Sidhi Enclave Commercial Complex, Plot No.
48/9, Sector 14, Vashi, Navi-Mumbai-400703.

...Corporate Debtor/Respondent

Order Delivered on 18.05.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh



Appearances:

For the Operational Creditor : Ms. Dyuti Ghai., Advocate.

For the Corporate Debtor : Mr. KCP Prusty, Proxy Advocate.

ORDER

Per Coram:

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Shalimar Paints Limited** ("the Operational Creditor hereafter referred to as Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **JK Surface Coating Private Limited** ("the Corporate Debtor hereafter referred to as Respondent").
2. The Respondent was incorporated on 01.12.1998 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U45202MH1998PTC117291. Its registered office is at Neel Sidhi Enclave Commercial Complex, Plot No. 48/9, Sector 14, Vashi, Navi-Mumbai-400703. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Total Outstanding amount alleged to be in default is Rs. 54,16,867/- (Rupees Fifty-Four Lakh Sixteen Thousand and Eight Hundred Sixty-Seven Only) comprising of principal amount of Rs. 33,83,456/- and interest of Rs.20,33,411/-. The working computation of default is annexed to the Petition at Page 118.

Submissions made by the Petitioner:

4. The Petitioner submits that the debt arose owing to supply of goods to the Corporate Debtor. The said products were sold to the Corporate



Debtor on receipt of purchase orders. The Petitioner, at the request of the Respondent provided a revolving line of credit facility to the Respondent for goods which were periodically supplied to the Respondent. The Petitioner submits that the Respondent on 27.07.2019 made a part payment of Rs.10,15,768 towards outstanding liability owed to the petitioner. However, the Petitioner submits that he has not received any amount from the Respondent thereafter. The Petitioner in support of the claim has placed on record invoices and ledger account of the Respondent in books of the Petitioner.

5. Since, no amount was received by the Petitioner, the Petitioner issued Demand Notice dated 13.08.2019 under Section 8 of the Code. However, the petitioner withdrew the Demand Notice dated 13.08.2019 due to some inadvertent error. Subsequently, a fresh Demand Notice dated 12.12.2019 was issued in Form 3 under Section 8 of the Code claiming the total unpaid operational Debt. The Demand Notice dated 12.12.2019 was delivered to the Corporate Debtor on 16.12.2019. The Corporate Debtor has replied to Demand Notice vide email dated 16.12.2019 stating that the amount claimed is incorrect.

Submissions made by the Corporate Debtor/ Respondent by way of Affidavit in reply dated 20.06.2022

6. The Corporate Debtor submits that the Operational Creditor has filed a complaint under Section 138 of the Negotiable Instruments Act for a cheque amount of Rs.20,44,590 before Judicial magistrate Calcutta and the Corporate Debtor has made part payment of Rs.10,15,767 on 15.01.2020.



7. Further, the Corporate Debtor submits that there is no provision for interest and proof of default is not placed on record. The Corporate Debtor has raised a counter claim of Rs.25,76,284 on the Operational Creditor for work done by the Corporate Debtor.

Findings

8. We have heard the submissions of both sides and perused the records.
9. It is appropriate to mention that, when the matter was listed on 28.04.2023, the Ld. Counsel appearing for the Corporate Debtor conceded that an amount of Rs.8,00,000/- is due and payable to the Operational Creditor. Since, the quantum of the amount appeared to be very meagre this bench advised the parties to explore the possibility of settlement, failing which the matter will be admitted by this bench since it was above threshold limit at the time of filing of the Company Petition.
10. Subsequently, the matter was specifically listed on board today, for reporting settlement. However, the Corporate Debtor once again sought time for Settlement. Since the Corporate Debtor himself admitted the liability to a tune of Rs. 8 lakhs, this is a case of admitted debt and default.
11. As far as pre-existing dispute is concerned, the Corporate Debtor has not placed on record any material or correspondence exchanged between the parties prior to the issuance of demand Notice dated 12.12.2019.
12. Therefore, this bench is left with no option except to admit the above company petition. Accordingly, the above Company petition is admitted.



13. The Petition bearing **CP (IB) 773/MB/C-I/2020** filed by **Shalimar Paints Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **JK Surface Coating Private Limited [CIN: U45202MH1998PTC117291]**, the Corporate Debtor, is **admitted**.
14. There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- 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 (SARFAESI) Act, 2002;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
15. Notwithstanding the above, during the period of moratorium: -



- e. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - f. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
16. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
17. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
18. The Tribunal hereby appoints Mr. Shashi Bhushan Prasad, Registration No. IBBI/IPA-001/IP-P00738/2017-2018-11266, Office at E-43, Basement, Panchsheel Park, New Delhi-110017, having email address as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
19. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of



the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

20. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
21. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
22. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
23. Ordered accordingly.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

18.05.2023

Priyal

Sd/-

H.V. SUBBA RAO

Member (Judicial)