

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

IBA/938/2019

*(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. Oren Hydrocarbons Pvt. Ltd.**

Akzo Nobel Industrial Chemicals BV

Velperweg, 76, 6824 BM,
Arnhem,
The Netherlands

... Operational Creditor

-Vs-

M/s. Oren Hydrocarbons Private Limited

28/2B, Saravana Street,
T. Nagar,
Chennai – 600 017

...Corporate Debtor

Order Pronounced on 24th February 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : F.S. Dhiman, Advocate

For Corporate Debtor : K.M.D. Muhilan, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by **Akzo Nobel Industrial Chemicals BV** (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code,



2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Oren Hydrocarbons Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Company incorporated with the Registrar of Company, Amsterdam, Netherlands. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U73100TN1990PTC019419 which was incorporated on 20.07.1990 and that its Authorized Share capital is Rs.25,00,00,000/- and its paid up capital is Rs.17,29,29,520/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.28/2B, Saravana Street, T. Nagar, Chennai - 600 017 which also correlates with Company Master Data maintained in the MCA portal and filed along with the typed set to the Application. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution



Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that a sum of USD 6,68,805 (₹4,68,16,350) is being claimed by the Operational Creditor as Operational Debt, including interest. The present Application is filed before this Tribunal on 11.07.2019.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is *inter alia* engaged in the business of manufacturing of various inorganic products viz. Sodium Monocholera Acetic Acid in respect of which the Purchase Orders were raised by the Corporate Debtor in the month of November 2017 to be delivered at all sites which were being managed by the Corporate Debtor at other states within India. The copies of the Purchase Orders issued by the Corporate Debtor to the Operational Creditor are placed at pages 38 to 48 of the typed set filed along with the Application. Further, it was submitted that the Operational Creditor has raised Invoices against the goods delivered to the Corporate Debtor and the Invoices as raised by the Operational Creditor are placed at pages 49 to 151 of the typed set filed along with the Application. It was submitted by



the Learned Counsel for the Operational Creditor that the Corporate Debtor has not made any payment for a total of 8 Invoices.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had supplied the materials to the Corporate Debtor for the period between November 2017 to December 2018 at the sites and a total amount as per the Invoice is ₹3,94,45,000/- (USD 5,63,500) is due and payable by the Corporate Debtor. Although the Operational Creditor has sent various e-mails to the Corporate Debtor between November 2017 to December 2018, the Corporate Debtor has not paid the outstanding dues to the Operational Creditor. It was submitted that as per the Invoice the Operational Creditor is entitled to claim interest and as such the interest alone comes to the tune of ₹14,51,863/- and the Cost of Collection comes to the tune of ₹59,19,550/- and the Operational Creditor has filed the present petition by including all such amounts.

6. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has served a Demand Notice to the Corporate Debtor as mandated under Section 8 of IBC, 2016 in Form – 3 on 04.12.2018 and the same was



delivered to the Corporate Debtor. The Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 wherein it has been stated that there is no notice of dispute given by the Operational Creditor and the Operational Creditor has also not paid the operational debt which is due and payable by the Corporate Debtor. Under such circumstances, the Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has committed default in the payment of the dues to the Operational Creditor and hence prayed for the initiation of the CIRP in relation to the Corporate Debtor.

7. In relation to the Corporate Debtor it is seen from the record of proceedings that when the matter came up for hearing for the first time on 16.09.2019, the Learned Counsel for the Corporate Debtor submitted that he is willing to settle the matter and sought for three weeks time and based on the representation made by the Learned Counsel for the Corporate Debtor, this Tribunal granted time to the Corporate Debtor. On the next date of hearing, it was represented by the Learned Counsel for the Corporate Debtor that the parties have exchanged the schedule of payment, however the said schedule was not acceptable to the Operational Creditor. Thereafter, it is seen that the Corporate Debtor has not filed



its counter and has sought for time and more time on the pretext that negotiations between the parties for settlement are going on, which dissuade the Corporate Debtor from filing any reply and the same goes on to show that the Corporate Debtor has impliedly admitted their liability of payment due to the Operational Creditor.

8. It is seen that the Corporate Debtor was unable to adhere to the schedule of payment as promised by the Corporate Debtor himself and the Operational Creditor from the documents filed and the submissions made have proved that there is an existence of 'Operational Debt' and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor.

9. In relation to the Limitation, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational



Creditor in relation to the Corporate Debtor which discloses that the invoices have been raised commencing from November 2017 to March 2018 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 11.07.2019 and as such it falls well within the period of limitation.

10. 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 (IRP), this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **Mr. Asokan Nagarajan with Registration No. IBBI/IPA-001/IP-P01403/2018-2019/12160 and (email id:- fcsasokan@gmail.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

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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;

11. 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.

12. 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.

13. 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.

14. 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.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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