

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.312/ALD/2019

In the matter of

An application under Section 9 of Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

And

In the matter of:

Prayag Polytech Private Limited
Having Registered Office at:
C-587, Industrial Area, Phase-I,
Bhiwadi-301019, Rajasthan

.....Operational Creditor

Versus

Avon Moldplast Limited
Having Registered Office at :
A-7/36-39, South of G.T.Road
Industrial Areas ,Vijay Nagar,
Ghaziabad, Uttar Pradesh 201009

.....Corporate Debtor

Order reserved on 26.04.2022

Order pronounced on 13.06.2022

Coram :

Sh. Rajasekhar V.K. : Member (Judicial)
Sh. Virendra Kumar Gupta : Member (Technical)

Appearances (via Video Conference):

For Operational Creditor : Sh. Vipul Ganda & Vinayak Mittal, Advs.
For Corporate Debtor : Sh. Dhruv Gandhi & Rohan Gupta, Advs.

ORDER

Per: Virendra Kumar Gupta., Member (Technical)

1. The present application has been filed by Operational Creditor, namely "***Prayag Polytech Private Limited***" under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "IBC,2016") for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor, namely "***Avon Moldplast Limited***". The amount of debt that has been claimed is ₹12,64,405/- including interest @24% p.a. as stipulated in the invoices.

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Brief Facts of the Case

2. The facts, in brief are the operational Creditor has supplied goods *i.e.*, master batches to the corporate debtor for the period from 05.06.2017 till 08.07.2017 for which invoices were raised amounting to ₹9,21,287/-. In spite of requests, the amount due was not paid, hence, the operational creditor sent a demand notice dated 25.03.2019, which was duly received by the corporate debtor but was not replied within the statutory period of 10 days. A reminder was sent by the operational creditor on 07.04.2019 for the same. Thereafter, the Corporate Debtor replied to the demand notice on 08.05.2019 taking the plea that the materials supplied by the operational creditor were of inferior quality and there exist a counter claim against the operational creditor. Affidavit in compliance of Section 9(3)(b) of IBC, 2016 has also been placed on record.

Arguments on behalf of the Operational Creditor

3. Ld. Counsel appearing on behalf of the Operational Creditor submitted that the operational creditor has supplied master batches to the corporate debtor and raised four invoices for which the amount due is ₹9,21,287/-. It is further submitted that for the amount due the corporate debtor alleged that the settlement has reached between the corporate debtor and the operational creditor on 11.08.2017, in terms of which the corporate debtor had a claim of ₹17,64,000/- towards operational creditor but has not produced any document with regard to the settlement reached between the parties.
4. It is further submitted that the first unpaid invoice by the corporate debtor towards for the service provided by the Operational Creditor was issued on 05.06.2017 for the amount of ₹1,53,765/- and the debt fell due on 20.07.2017 and the last payment of ₹4,02,915/- was made on 20.10.2017.

Reply filed by the Corporate Debtor

5. It is submitted that the Corporate Debtor suffered production losses on account of defective finished products supplied by the operational creditor and after negotiations with the operational Creditor, settlement has arrived at between the parties on 11.08.2017, in terms of which the alleged debt was duly settled and the operational creditor undertook to make good such losses as incurred by the

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Corporate Debtor on account of defective supplies by issuing a debit note to the Corporate Debtor for the sum of counter claim or such amount as settled against future supplies but the same was not followed by the operational Creditor.

6. It is further submitted that the counter claim of Corporate Debtor in an admitted liability on part of the Operational Creditor which the Corporate Debtor is legally entitled to recover from the Operational Creditor.
7. It is further stated that the Corporate Debtor is a listed public company and an ongoing concern with sound financials, therefore, the Corporate Debtor cannot be deemed to be a concern which is unable to pay its debts. It is further alleged that operational debt is not payable to the Operational Creditor, thus, the petition is liable to be dismissed.

Rejoinder filed by the Operational Creditor (Applicant)

8. The Learned counsel for the Operational creditor apart from relying on the pleas made earlier submitted that the Operational Creditor has repeatedly asked for a copy of the settlement agreement dated 11.08.2017 in which the corporate debtor is relying upon but the Corporate Debtor never supplied the copy of it. It is further stated the letter dated 11.08.2017 is a fabricated document which does not bear any endorsement of receipt by any person duly authorised by the Operational Creditor and is signed by one Mr. Umesh Sharma who was a commissioned agent of the Operational Creditor and was never authorized to sign any such document on behalf of Operational Creditor.

Findings and Conclusion

9. Considered the submissions made on behalf of both the parties and material on records. It is noted that supplies have been made by the Operational Creditor to the Corporate Debtor during the period from 05.06.2017 till 08.07.2017 for which the invoices remained unpaid.
10. The main plea that has been taken by the Corporate Debtor is that there were quality issues, because of which the Corporate Debtor suffered a loss. For this plea, a strong reliance has been placed on the letter dated 11.08.2017 written by

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the Corporate Debtor to the Operational Creditor wherein loss due to inferior quality of goods supplied by the operational creditor has been estimated of ₹17,64,000/- and the remarks given by the alleged employee of the Operational Creditor are as under: -

“Received letter. Matter discussed with Q.C. Deptt.. For further action as per confirmation from the management. Your losses will be covered in future supply”.

11. The operational creditor has, however, strongly denied the above letter and stated that the person who has signed the letter was never authorised for this purpose. Be that as it may, on the plain and cursory look at the observation of such person, it is apparently clear that the claims of the loss have not been accepted as such, because further action is to be taken as per confirmation from the management of the operational creditor. It is also mentioned that your losses will be covered in future supply. This observation, in our view, goes against the Corporate Debtor as it has foregone the claim of losses which may be adjusted against the supply in future and in case there is no supply in future for any reason whatsoever, such claims gets extinguished.
12. Having said so, we further note that the said material has been retained by the Corporate Debtor and used in its operations. Further, on perusal of the letter dated 11.08.2017 it is found that the total loss caused to the corporate debtor due to inferior quality of material is mentioned as of ₹17,64,000/- whereas the evidence given of the return of rejected supplies by the third party is of ₹6,74,701/- which itself justify that the claim of the corporate debtor is inflated and the document placed is also self-serving document and there is also nothing on record to show that the raw material was purchased only by operational creditor and not by the third party.
13. The Corporate Debtor has submitted some photographs of the finished products. However, in our view, the same does not help to the cause of the Corporate Debtor as no co-relationship has been established between the status of such finished products being due to inferior quality of materials being supplied.

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14. The Corporate Debtor has also taken a plea that it is a commercially solvent company; hence, it is a pressure tactics of the Operational Creditor to recover the said money through the mode of this application. In this regard, we are of the view that when the default has occurred, an event/cause of action arises for filing an application under section 9 of IBC, 2016 and, generally, the said application is liable to be admitted subject to condition that said application has not been filed for malicious initiation of insolvency proceedings of the Corporate Debtor and for purposes other than the insolvency of the corporate debtor.
15. In the facts and circumstances of the case, these two ingredients are absent. Hence, this claim of the Corporate Debtor cannot help its cause.
16. It is seen from the records that notice of default under Section 8, IBC has been delivered and affidavit under Section 9(3)(b) of IBC has also been filed and debt fell due on 20.07.2017 and this application has been filed on 08.08.2019 so the application is found well within the limitation.
17. It is noted that the application filed under section 9 is complete and complies with the requirements of the relevant provisions of IBC, 2016 read with Rules and Regulations made thereunder. The outstanding amount is more than the threshold limit of ₹1,00,000/- (Rupees one lakh only). There does not exist any dispute within the meaning of provisions of Section 8 & 9 of IBC, 2016
18. The Operational Creditor has not proposed the name of any person to function as Interim Resolution Professional. Therefore, this Bench will appoint a person from the panel of names made available to it by the Insolvency & Bankruptcy Board of India.
19. Thus, the application, on the face of it, is liable to be admitted. Accordingly, this application is admitted on the following terms and conditions :-

ORDER

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency

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Resolution Process against the Corporate Debtor *Avon Moldplast Limited* is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) This Adjudicating Authority hereby appoint Mr. Parag Singhal [Reg No. IBBI/IPA-001/IP-P-02127/2020-2021/13322], having address at 002-B, Eldeco Apartment, Sector-4, Vaishali, Ghaziabad, Uttar Pradesh 201010 [email: sparagca@yahoo.co.in], to act as the IRP under Section 13(1)(c) of the Code.
- iv) 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 immediately.
- v) 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 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 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.
 - vi) The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
 - vii) 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.
 - viii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
 - ix) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the

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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.

- 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 prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit ₹2,00,000/- (Rupees Two lakh only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
20. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.
21. List the matter on 27.07.2022 for filing of the progress report.
22. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Virendra Kumar Gupta
Member (Technical)

Rajasekhar V K
Member (Judicial)

Digitally signed by Rajasekhar V K
DN: c=IN, o=Personal, email=0605,
pseudoym=490a81134c36d68c23615d6f55b7504,
ee43a691c9e489ac8d70a7ff6a5cc,
postalCode=600018, st=Tamil Nadu,
serialNumber=65130ae097978474f18a3ac75eb59,
d09e83e4928509393c6ed8a8c7396,
cn=Rajasekhar V K
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