

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-826/ND/2019

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

IN THE MATTER OF:

Bajaj Rubber Company Private Limited

...Applicant/ Operational Creditor

VERSUS

Capital Auto Rubber Products Private Limited

...Respondent/ Corporate Debtor

Judgment Pronounced on: 06.09.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

MEMO OF PARTIES

Bajaj Rubber Company Private Limited

Registered office at: C-47, Phase-II

Maya Puri, New Delhi-110064

...Applicant/Operational Creditor

VERSUS

Capital Auto Rubber Products Private Limited

Registered office at: 8482, Jaina Building

Roshanara Road, New Delhi-110007

...Respondent/Corporate Debtor

For the Applicant: Mr. Shailandra Kumar

For the Respondent: Mr. Kumal Kher, Advocate

JUDGEMENT

Per-Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC', 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Bajaj Rubber Company Private Limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Capital Auto Rubber Products Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a company duly incorporated under the Companies Act, 1956 and engaged in the business of trading and import of rubber, chemicals etc. and other industrial chemicals and marketing of the same throughout India and having its registered office at C-47, Phase-II, Maya Puri, New Delhi-110064.
3. The Corporate Debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 and engaged in the business of manufacturing of auto rubber products and having CIN U74899DL1984PTC018352 as per Master Data. The Authorized Share Capital of the Corporate Debtor is Rs. 300,00,000/- and Paid Up Share Capital is Rs. 2,84,00,000/- as per Master Data of the company.

4. The Applicant has stated that the corporate debtor approached the applicant and placed purchase order for supply of chemicals, carbon, colors/pigments etc. The applicant delivered the goods as per purchase order and raised various bills on credit in the name of the corporate debtor. The applicant has provided goods/chemicals through various invoices to the corporate debtor having its works at 137, Rojka Meo Industrial Area, Sohna, Gurgaon, Haryana on the specific verbal purchase orders placed by corporate debtor.
5. The Applicant submits that the running account is maintained by the applicant with respect to corporate debtor and 15 days credit period was agreed as per invoice and thereafter interest @24% on the delayed payment was to be paid. It is submitted that corporate debtor was making payment irregularly in running account and till date the corporate debtor is liable to pay a sum of Rs 1,37,06,827/- (consisting of cost of the goods, VAT and GST as applicable to the class of goods) alongwith interest @24% p.a. since 07.04.2018 being accumulated since 25.10.2016.
6. The Applicant raised various bills to the tune of Rs 1,37,06,827/- and after repeated follow ups, the corporate debtor paid Rs 1,00,000/- on 05.04.2018 vide NEFT towards admission of liability and discharge of partial liability. The applicant further submits that corporate debtor had issued cheques for

- an amount of Rs 69,012/- and Rs 1,00,000/- towards partial discharge of liability but both the cheques got dishonored as asserted by the applicant.
7. It is submitted by the applicant that corporate debtor accepted goods without any dispute and promised to pay the outstanding dues with interest, but however kept on avoiding payment to applicant and the applicant had no options but to stop giving goods on credit as no payment was forthcoming.
 8. The Applicant issued a demand notice dated 20.02.2019 in Form 3 under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 1,37,06,827/- along with interest @24% p.a. The said notice was served through speed post on the registered address as reflected in master data of MCA website and has been delivered to the corporate debtor as per the proof of service of section 8 notice annexed with the application.. The corporate debtor has neither replied to the said notice nor made the payment against the outstanding dues claimed by applicant.
 9. The Applicant claims that as on date, the corporate debtor is liable to pay an amount of Rs. Rs. 1,37,06,827/- along with interest @24% which is due and payable as per Part IV of the application.

10. The Applicant has filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly received by the Corporate Debtor as per the affidavit of service filed by the applicant.
11. The Applicant has filed an affidavit affirming that in respect of the amount claimed or any part thereof, the Applicant has not received any notice of dispute raised by the corporate debtor under section 9(3)(b) of the IBC, 2016.
12. The Applicant further states that in spite of several opportunities, no reply is filed but on 29.07.2019 Mr. Kunal Kher advocate appeared for the corporate debtor and submitted that the financial condition of the corporate debtor is not good and not in a position to make any payment.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The default occurred from 07.04.2018, hence the debt is not time barred and the application is filed within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records, the present application is admitted.

16. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Kumud Shekhar, with registration number IIBI/IPA-003/IP-N00206/2018-2019/12358 (email- kumud.shekhar@gmail.com, Mobile No. 965438328) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
17. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Kumud Shekhar to meet out the expense, to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the

- Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
19. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant 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 IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)

