IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – II, CHENNAI

CP(IB)/28(CHE)/2023

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. HR Polycoats Private Limited***

HR Polycoats Private Limited,
4257/2, Jai Mata Market,
Tri Nagar, New Delhi-110 035

... Petitioner / Operational Creditor

-Vs-

Kolon Glotech India Pvt. Ltd.,
Building No. B-300,
Unit B, Indospace Industrial Park 104,
Polivakkam,
Sriperumbuthur Main Road,
Thiruvallur, Tamil Nadu-602 002

... Respondent / Corporate Debtor

Order Pronounced on ***13th October, 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present: -
For Operational Creditor: Mr.Aman Dhyani, Advocate

For Corporate Debtor: Exparte

ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This Application has been filed under Section Section 9 of the IBC, 2016 by **HR Polycoats Private Limited** seeking to initiate commencement of the Corporate Insolvency Resolution Process

("CIRP") against the Respondent Company viz. **Kolon Glotech India Pvt. Ltd** ("the Corporate Debtor").

2. The Operational Creditor is a private limited having its registered office at 4257 Jai Mata Market, Tri Nagar, New Delhi-110 035.

3. The Corporate Debtor is the private limited company registered under the Companies Act, 2013. Having its Registered Office at Building No. B-300, Unit B, Indospace Industrial Park 104, Polivakkam, Sriperumbuthur Main Road, Thiruvallur, Tamil Nadu-602 002.

4. In Part IV of the Application the total amount claimed by the Applicant is mentioned as Rs.1,34,44,354/-.

5. It is averred in the application that the Corporate Debtor from November 2019 was regularly placing orders to the Applicant/ Operational Creditor. Pursuant to that the Operational Creditor had been supplying coated textile fabrics to the Corporate Debtor time to time.

6. It is stated that only after the samples were approved by the representative of the Corporate Debtor, the products were manufactured and sent to the Corporate Debtor. Subsequently, respective invoices were raised. However, the Corporate failed to make payment towards invoices cumulatively amounting to Rs.1,34,44,354/-. It is stated that the Corporate Debtor is liable to

pay 18% interest on the same from 23.11.2021. The details of the invoices are as below,

Invoice	Amount (Rs.)
HRPPL/ 2122/2975 dt. 30.10.2021	65,95,199/-
HRPPL/ 2122/3042 dt. 02.11.2021	68,49,155/-

7. It is stated that the Operational Creditor reminded the Corporate Debtor vide e-mails dated 22.11.2021 & 23.11.2021 to pay the amount but the Corporate Debtor instead, coerced the Operational Creditor to pay the due payments of the third party, only then it will pay the dues of the Corporate Debtor.

8. It is stated that thereafter the Corporate Debtor raised the issue of embossing variations in the materials supplied by the Operational Creditor. In turn, the Operational Creditor explained the facts and demanded the Corporate Debtor to pay its dues. Since, the Corporate Debtor has not paid its outstanding dues the Operational Creditor issued demand notice dated 17.12.2021.

9. It is stated that subsequently, a meeting was held between the Corporate Debtor and the Operational Creditor where the issue of payment and material supplied was discussed. Thereafter, the Corporate Debtor vide letter dated 25.01.2022 sent the reply to

the Demand Notice, wherein Corporate Debtor without any proof alleged that entire material supplied by the Operational Creditor was defective. In such circumstances the Operational Creditor has filed this Application to initiate CIR Process against the Corporate Debtor.

10. In the instant case Respondent/Corporate Debtor neither filed the reply nor appeared before this Adjudicating Authority. On 16.02.2023 the Operational Creditor was directed to serve notice to the Corporate Debtor and its authorised persons. Complying with the same, the Operational Creditor filed an Affidavit of Service dated 18.03.2023.

11. On 28.03.2023 the Registry was directed to issue notice to the Corporate Debtor. The notice could not be delivered to the Corporate Debtor by ordinary mode. Accordingly, this Tribunal directed for substituted service through publication in newspapers Business Standard (All India Edition) and Makkal Kural (Tamilnadu Edition.

12. Despite, publication effected in the aforesaid newspapers on 16.06.2023, none appeared on behalf of the Corporate Debtor and hence the Respondents were already *set exparte* on 27.06.2023.

13. We have heard Ld. Counsel for the Applicant and perused the record.

14. At page 49, vide e-mail dated 07.12.2021, Mr. Anil Ojha, Authorized Representative of Operational Creditor communicated to the Representatives i.e. Mr.Junhyeok Son and Team Kolon of the Corporate Debtor as under,

> *"... We have duly received a sum of Rs.1,24,17,451/- on 07.12.2021 against invoice nos. HRPPL/2122/2780 and HRPPL/2122/2854.*
>
> *Today i.e. 07.12.2021 we have received a PO for 10,000 Mtrs ..."*

In reply to above e-mail, the Corporate Debtor stated as under,

> *"We've given you the payments as promised, but you're still not solving the issues of Eunsung's payments'*
>
> *You told us you'll clear up the payments for Eunsung in 1st DEC after get the payments from us. Eunsung still stops supplying products to us.*
>
> *Please clear this issues ASAP, otherwise we won't process the payments."*

Noting the above this Tribunal on 17.07.2023 directed the Operational Creditor to file the copy of purchase orders as well as the payment made by Mr.Junhyeok Son and Team Kolon.

15. Abiding the above, the Operational Creditor filed the copy of purchase orders and invoices in typed set dated 26.07.2023. ON perusal it is noted that the Purchase Order was issued on 14.02.2022 much after the demand notice dated 17.12.2021. Had Corporate Debtor been not satisfied with the Operational Creditor it would have not preceded further business with the Operational Creditor.

16. The debt amount is above one crore. The Applicant has acknowledged the debt in the e-mail. The Corporate Debtor has not appeared before this Tribunal and was *set expate* on 27.06.2023. Till date no application to set aside *exparte* order has been filed. In such circumstances, this Tribunal is constrained to admit this application and initiate CIRP against the Corporate Debtor.

17. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between July 2023 – December 2023 hereby appoints **Mr. M MANOHAR** with Registration Number **[IBBI/IPA-001/IP-P-02402/2022-2023/14268]** ***E-mail ID:- camanoharm@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. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the

initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. 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 the 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 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;

19. However, during the pendency of the moratorium period terms of Section 14(2) (2A) and 14(3) shall apply 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 the 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 arrangements 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.

20. 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 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.

21. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** *(Rupees Two Lakh 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 him in accordance with Regulation 6 of Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. Based on the above terms, CP(IB)/28(CHE)/2023 stands **Admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into 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.

23. 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 is also furnished with a 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.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Technical Member Ravichandran Ramasamy** on behalf of the Bench Comprising of **Sanjiv Jain, Member (Judicial)** and **Ravichandran Ramasamy, Member (Technical)***

Court Officer