

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

**CP (IB) No.884/MB-IV/2021**

Under Section 9 of the I&B Code, 2016

In the matter of:

**M/s Bhartia Chemicals**

[IN: NG000003290]

...Operational Creditor/Applicant

V/s

**Indounique Flame Ltd**

[CIN: U23201MH1987PLC044597]

...Corporate Debtor/Respondent

**Order Dated: 03.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Piyush Pande, Advocate.

For the Respondent(s) : Mr. Pranav Avhad, Advocate.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an application bearing C.P. (IB) No. 884/MB/C-IV/2021 filed by M/s Bhartia Chemicals, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Indounique Flame Ltd, Corporate Debtor.

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2. The Operational Creditor is a Partnership Firm. The Application is filed by Mr. Tarun Chaturhuj Bhartia, Partner of Operational Creditor, duly Authorised vide Authority Letter dated 11.02.2021, claiming total outstanding amount of Rs.4,22,09,849/- (Rupees four crore twenty-two lakh nine hundred eight hundred forty-nine only), which includes;
    - Rs.3,50,41,426/- as the Principal Amount; and
    - Rs.71,68,423/- as the Interest Amount as on 30.11.2020
  3. The Date of Default as mentioned in Part-IV is 30.01.2020. The Petition is filed on 18.09.2021, hence this Petition is filed within the period of three years from the Date of Default.
  4. The Operational Creditor has supplied coal for 7,943.640 metric tons in quantity to the Corporate Debtor. Pursuant to the said supply, the Operational Creditor raised a Tax Invoice bearing Tax Invoice No. BC/NGP/19-20/001 dated 31.12.2019 for total amounting to Rs.4,00,41,426/- which provides credit period of thirty days to the Corporate Debtor for clearing the said dues.
  5. On 12.02.2020, the Corporate Debtor made part payment of Rs.50,00,000/- to the Operational Creditor. Thereafter, the Corporate Debtor didn't pay due amount to the Corporate Debtor. Hence, the Operational Creditor issued Demand Notice dated 01.12.2020 in Form 3 upon the Corporate Debtor claiming total outstanding of Rs.4,22,09,849/-(Rupees four crore twenty-two lakh nine hundred eight hundred forty-nine only) as on 30.11.2020.
  6. The Operational Creditor has filed Affidavit of No Dispute under section 9 (3) (b) of the Code. The Operational Creditor has filed the Ledger Accounts for the period from 01.04.2019 to 30.11.2020. The

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Operational Creditor has also Bank Statement of SVC Co-operative Bank Ltd.

7. The Corporate Debtor has filed its Affidavit-in-reply dated 02.11.2022 stating that the goods under cover of invoice annexed with petition were never received by the Corporate Debtor; invoice attached to the Petition is forged and fabricated and no documents evidencing delivery of goods for which the default occurred. The Corporate Debtor further stated that there no correspondence or request or letter by the Operational Creditor for recovery of the dues.
8. The Operational Creditor has filed Affidavit-in-rejoinder dated 20.01.2023 refuting the claims of corporate Debtor in its reply.

*Findings:*

9. We have heard the arguments of the Learned Counsel for both the parties.
10. On perusal of the records we find that the Corporate Debtor had paid a sum of Rs.50,00,000/- on 12.02.2020 and the goods in question were supplied on 31.12.2019. The Corporate Debtor in its reply has not stated on account this payment was made by him. Hence, the plea of non-receipt of the goods appears to have no substance. As regards the allegation of annexation of the invoice than what was given to Corporate Debtor upon supply of the goods, we find that in substance the nature of goods quantity, rates, nature of goods, total value are identical. The difference in the invoice number is insignificant as instead of "001", "1" is stated in the invoice with the Corporate Debtor. However, it establishes the fact that the Corporate debtor has received an Invoice for the supply of goods, in question, from the Operational

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Creditor and the Corporate Debtor has not placed on record any evidence disputing the supply of goods stated in the invoice in its possession. As regards disputing the claim of Operational Creditor on ground of non-payment GST, CESS and TCS on the transaction in question, we are of the view that such non-payment cannot negate the fact of supply under invoice in possession of Corporate Debtor and subsequent payment of Rs.50,00,000/- by the Corporate Debtor to the Operational Creditor. Further, the Operational Creditor vide its Re-joinder has submitted a copy of the E-mail from the Corporate Debtor to one Mr. Garg who forwarded to the Operational Creditor. The said E-mail is stated to contain on attachment having details of invert supplies by the Operational Creditor to the Corporate Debtor.

11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.
12. The application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.
13. On perusal of the material on record, this Bench is of considered view that the this is fit case for admission under section 9 of the Code to initiate the CIRP against the Corporate Debtor.
14. The Operational Creditor has proposed the Mrs. Megha Agrawal as Insolvency Resolution Professional in the matter.

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**ORDER**

15. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing CP (IB) 884/MB-IV/2021 filed by M/s Bhartia Chemicals, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Indouneque Flame Ltd, Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
  - (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

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- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
  - (ii) That 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;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (e) 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.
- (f) Mrs. Megha Agrawal, Registration No. [IBBI/IPA-001/IP-P-01456/2018 -2019/12272]; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) 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.

- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.
- (i) 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.
- (j) 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.

Sd/-  
Prabhat Kumar  
Member (Technical)

03.03.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)