

NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD BENCH-2

COMPANY PETITION (IB) No. 70/NCLT/AHM/2021

[An application filed under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process]

In the matter of:

Eco Green Products Private Limited

.... Operational Creditor

Versus

Gajanand Corporation Private Limited

.... Corporate Debtor

Order Pronounced on: 22 /02/2022

Coram:

**Dr. Deepti Mukesh
Member (Judicial)
Kaushalendra Kumar Singh
Member (Technical)**

MEMO OF PARTIES

Eco Green Products Pvt. Ltd.

Registered Office at:
A-5,Mantra,Opp.Amrapali-III
Judges Bungalow Road,
Ahmedabad, Gujarat 380015

Having the Factory Address at:
Block No.343,344,355
Village Alampur, Near CRPF Camp,
Gandhinagar, Chiloda Highway,
Gandhinagar, Gujarat-382042

.... Operational Creditor

Versus

Gajanand Corporation Private. Ltd.

Having the Registered Address at:
B-606, Titanium Square,
Opp. Vasant Nature Quare,
Thaltej Cross Road,Thaltej
Ahmedabad, Gujarat-380063

.... Corporate Debtor

Appearance:

For the Operational Creditor: Mr. Atul Sharma, Advocate

For the Corporate Debtor: Mr. Monaal Davawala, Advocate

ORDER

Kaushalendra Kumar Singh, Member (Technical)

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Eco Green Products Pvt. Ltd. (hereinafter referred to as 'Operational Creditor') through Mr. Hasmukhbhai Somabhai Patel who is duly authorised vide board resolution dated 30.06.2018 with a prayer to initiate the Corporate Insolvency Resolution Process (hereinafter referred to

as 'CIRP') against M/s Gajanand Corporation Pvt. Ltd. (hereinafter referred to as 'Corporate Debtor'). The amount of debt claimed in default is Rs.1,70,10,785.64/- including interest @ 24% per annum as on 22.09.2020.

2. The Operational Creditor is a Private Limited Company, incorporated under the provisions of Companies Act, 1956 on 04.09.2009 with CIN: No. U74990GJ2009PTC058000, and having registered office at A/5, Mantra, Opp. Amrapali-III, Judges Bungalow Road, Ahmedabad, Gujarat. The Operational Creditor is engaged in providing eco-friendly, cost-effective and safe bricks solutions for the construction practice of FlyAsh Blocks in India.

3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of Companies Act, 1956 on 31.08.2012, duly registered with Registrar of Companies, Ahmedabad with CIN: U45200GJ2012PTC071789, and having registered office at B-606, Titanium Square, Opp. Vasant Nature Quare, Thaltej Cross Road, Thaltej, Ahmedabad, Gujarat. The Authorized share capital of the corporate debtor Company is Rs. 25,00,000/- and the Paid-up share capital of the corporate debtor Company is Rs. 25,00,000/-.

4. The relevant facts and issues involved, as mentioned by the operational creditor in its application and presented/argued by Ld. Advocate Mr. Atul Sharma are summarized hereunder:

i. The corporate debtor had approached the operational creditor in the year 2017 with a request to purchase the Fly Ash Blocks and AAC Block Jointing Chemical as per its requirements, against which the said goods were supplied as per demand. Thereafter, the operational creditor had supplied the demanded products and accordingly raised invoices. The due date for payment of each invoice was the date on which the invoice was issued. (The copies of the said invoices, delivery challans and site unloading report are annexed with this application).

ii. The operational creditor has maintained a running account of the corporate debtor for the goods supplied, and the last invoice was

raised by the operational creditor on 21.08.2018. (A copy of the ledger account of Corporate Debtor maintained by the Operational Creditor from 01.04.2017 to 22.09.2020 is annexed with this application.)

iii. The corporate debtor acknowledged the debt in the Electronic Mail dated 09.07.2018, wherein the corporate debtor sent the ledger account of the operational creditor for the period from 01.04.2017 to 31.03.2018. (A copy of the said E-mail dated 09.07.2018 sent by the Corporate debtor is annexed with the application.)

iv. The corporate debtor is liable to pay a sum of Rs. 1,70,10,785.64/- along with interest amounting Rs. 66,58,799.67 (interest @ 24% till 22.09.2020) towards the supply of products. The operational creditor had raised the number of invoices from 28.01.2018 to 21.08.2018. As per Form 5, Part IV, the default occurred on 15.03.2018.

v. The corporate debtor failed to pay the due amount even after a number of reminders and requests made through emails on 19.08.2019, 28.08.2019, 03.09.2019, 11.09.2019 and 02.01.2020. Following that the operational creditor issued a demand notice dated 22.09.2021 in the prescribed Form 3 and 4 under Section 8 of the IB Code read with Rule 5 of AA Rules, 2016. The demand notice was delivered to the corporate debtor on 08.10.2020 at the registered address mentioned in the Master Data. (A copy of the demand notice dated 22.09.2020 along with the tracking report dated 08.10.2020 is annexed with this application).

vi. The corporate debtor replied to the demand notice vide letter dated 19.10.2020 wherein the corporate debtor raised the dispute on the quality of products without placing any evidence whereas no such dispute was raised by the corporate debtor before issuance of demand notice dated 22.09.2020. (The copies of the reply to the demand notice

dated 19.10.2020 sent by the corporate debtor is annexed with the application.)

5. The corporate debtor filed an affidavit in reply to the present application. The plea taken thereunder in defense and as argued by the Ld. Counsel for the corporate debtor is summarized hereunder :

i. The corporate debtor denies the default amount of Rs. 1,70,10,785.64/- as alleged to be due and payable. The corporate debtor states that the amount being claimed to be in default (especially the amount of interest and other charges) by the operational creditor and totally disputed and not admitted by it since there is no basis for the same.

ii. The corporate debtor is in the business of real estate and construction, and one of its major clients M/s. M.V. Omni Projects (India) Limited used to give work orders for construction at various sites of its ongoing projects across the country. However, the said M.V. Omni Projects (India) Limited itself went into CIRP vide order dated 29.08.2019 passed by the NCLT in Company petition No. 404 of 2019. The resolution plan of the said Company was approved by the Adjudicating Authority. The corporate debtor had received a meagre amount of Rs. 5,41,908 against its outstanding dues of 23,46,45,560/-. Due to the aforesaid circumstances as well as the COVID-19 pandemic lockdown, the financial position of the corporate debtor has deteriorated.

6. The registered office of the corporate debtor is situated in Ahmedabad, therefore, this Authority has jurisdiction to entertain and try this application.

7. As per part IV of Form 5, the date of default is 15.03.2018 and the present application is filed on 08.04.2021 which is beyond the period of three years, but, the corporate debtor on 16.05.2018 made a payment of Rs.10,40,417/-with multiple transactions in the bank of the operational

creditor which extend the limitation period. Hence, the present application is within the period of limitation.

8. We have heard learned counsels for the operational creditor and corporate debtor and have gone through the documents on record. It appears that goods were supplied to the corporate debtor and a number of invoices were raised by the operational creditor for the total amount of Rs.1,03,51,985.90 (Rs.1,70,10,785.64 – Rs. 66,58,799.67). Due to failure for making the payment of the default amount by the corporate debtor, the operational creditor issued a demand notice dated 22.09.2020 which was delivered to the corporate debtor on 08.10.2020. The corporate debtor replied to the said demand notice and disputed the claim amount of the operational creditor on the ground for supplying substandard quality of goods. However, no documentary evidence is placed on record by the corporate debtor to substantiate the existence of a pre-existing dispute prior to the issue of demand notice under section 8 of IBC. We are of the considered view that the plea of a pre-existing dispute of a corporate debtor is not well-founded. Moreover, we also note that no such plea regarding the substandard quality of goods is raised by the corporate debtor in its affidavit to reply on the application under section 9 of IBC.

9. The total amount due (including the interest) is stated to be Rs. 1,70,10,785.64. The corporate debtor has objected to the charge of interest. However, it is noted that even if the interest is excluded, the amount due remains as of Rs.1,03,51,985.90 which exceed the threshold limit prescribed under section 4 of IBC. Thus, the present application meets the threshold limit as given under section 4 of the code. Thus, the present application is complete and accordingly admitted in terms of Section 9 (5) of the IB Code, 2016.

10. The operational creditor has proposed the name of the Interim Resolution Professional (IRP) and also annexed the written consent in Form - 2 with this application. Therefore, this Adjudicating Authority hereby appoints Mr. Dhaval Jitendrakumar Mistry, having Registration No:

IBBI/IPA-001/IP-P-01853/2019-2020/12849 having Email Address: cadhavalmistry@yahoo.co.in and office at 9B, Vardhan Tower, Near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad, 380009 to act as an IRP under Section 13(1) (c) of the Code.

11. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the IRP, namely Mr. Dhaval Jitendrakumar Mistry 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 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 is subject to adjustment by the Committee of Creditor(s), as accounted for by IRP, and shall be paid back to the Operational Creditor.

12. 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 into force.

13. A copy of the order shall be communicated to the Operational Creditor, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. The operational creditor is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.

Kaushalendra Kumar Singh
Member (Technical)

Dr. Deepti Mukesh
Member (Judicial)

Rahul/LRA