



CP (IB)/186(AHM)2022
Lubrizol Advanced Materials. Vs MIKU Polymers & Plastics Ltd.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-2**

C.P. (IB) No. / 186 (AHM) / 2022

[Application by the Applicant/Operational Creditor to initiate the Corporate Insolvency Resolution Process Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

In the matter of:

**Lubrizol Advanced Materials,
INC., Brecksville USA.**

....Applicant/Operational Creditor

VERSUS

MIKU Polymers & Plastics Ltd.

.... Respondent/Corporate Debtor

Order Pronounced on: 11/07/2023

CORAM:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

In the matter of:

**Lubrizol Advanced Materials,
INC., Brecksville USA.**

Having its registered office at:
9911 Brecksville Road,
Brecksville, OH 44141 USA.

....Applicant/Operational Creditor

VERSUS

MIKU Polymers & Plastics Ltd.

Bearing Corporate Identification No.
(CIN) :- U51902GJ2019PLC106891
Having its registered office at:
518, Yashkamal Building, Sayajigunj,
Vadodara – 390 020,
Gujarat, India.

.... Respondent/Corporate Debtor

APPEARANCE:

For the Applicant/Operational Creditor: Mr. Ankit Lohia a/w. Mr. Sunil
Tilokchandani, Ms. Nadita Shah, Ms. Noopur Dala,
Adv. and Mr. Anip Gandhi, Adv.

For the Respondent/Corporate Debtor: **Ex-parte**



ORDER

1. This present application is filed on 04.07.2022 under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the IBC, 2016**”) by the Applicant/Operational Creditor, i.e., **Lubrizol Advanced Materials, INC., Brecksville USA** to start the Corporate Insolvency Resolution Process (hereinafter referred to as the “**the CIRP**”) against the **MIKU Polymers & Plastics Ltd.** - the Respondent/Corporate Debtor on the ground that the Respondent/Corporate Debtor committed default in paying the operational debt of Rs.1,80,52,062.33 (Rupees One Crore Eighty Lacs Fifty Two Thousand Sixty-Two and Thirty-Three Paise Only) due and payable as on 25th April 2022.
2. The Respondent/Corporate Debtor was incorporated on 1st March, 2019 under the Companies Act, 2013. The registered office of the Respondent/Corporate Debtor is situated at 518, Yashkamal Building, Sayajigunj, Vadodara – 390 020, Gujarat, India. Therefore, this Bench has jurisdiction to deal with this Application.
3. Brief facts of the case as submitted in the Application are summarised here under :-



- (i) The Respondent/Corporate Debtor had executed a Distributorship Agreement dated 15th July, 2019 with the Applicant/Operational Creditor's European counterpart, for the sale of products and also agreed that a late payment fee computed at a daily rate of 1% per month shall be charged on failure to disburse the payment on the due date as enlisted in the aforesaid Agreement.
- (ii) In furtherance of the understanding as recorded in the Distributorship Agreement, in the year 2021, the Respondent/Corporate Debtor placed Purchase Orders on Applicant/Operational Creditor, and also on its European Counterpart. The copies of the purchase orders are annexed with the application.
- (iii) In consonance with the Purchaser Orders, products were sold, supplied and delivered to the Respondent/Corporate Debtor and the Respondent/Corporate Debtor, without any objection, accepted those products.
- (iv) In addition to the products purchased from the Applicant/Operational Creditor, Respondent/Corporate Debtor had also entered into business transactions with Lubrizol Advance Materials, Korea, Lubrizol Advance Materials, Spain



and Lubrizol Advance Materials, Belgium. However, the Respondent/Corporate Debtor has also defaulted in making payment of the dues to the aforesaid entities.

- (v) Vide email dated 31.05.2021, the Respondent/Corporate Debtor shared a payment plan assuring that payment of INR 2 Crores will be made to Lubrizol group entities within 3 months. However, the Respondent/Corporate Debtor failed to do so.
- (vi) Vide email dated 08.07.2021, the Respondent/Corporate Debtor requested for additional time from the Applicant/Operational Creditor to arrange the funds and clearance of all dues by the end of August, 2021.
- (vii) In order to ease out the burden of repayment, the Applicant/Operational Creditor introduced a third-party purchaser, i.e., IMCD India Pvt. Ltd. IMCD India Pvt. Ltd. purchased products and paid an amount of Rs.72 lacs to the Respondent/Corporate Debtor. However, the Respondent/Corporate Debtor failed to pay the said amount to the Applicant/Operational Creditor. Such an act of dishonesty and misappropriation of funds has been recorded in the email dated 25.08.2021. The said fact has not been denied or disputed by the Respondent/Corporate Debtor.



- (viii) The Applicant/Operational Creditor, vide its email dated 8th September, 2021, recorded the events which transpired from time to time and the said communication distinctly records Respondent/Corporate Debtor's failure to clear the outstanding dues. The Applicant/Operational Creditor also accorded a final opportunity to the Respondent/Corporate Debtor to clear the payment on or before 15th September, 2021.
- (ix) Email dated 9th September, 2021, sent by the Respondent/Corporate Debtor elucidates a fresh repayment plan for the outstanding amount of Rs.3.50 Crores.
- (x) Pursuant to the Respondent/Corporate Debtor's failure to make the payment, the Applicant/Operational Creditor vide email dated 4th October, 2021 addressed a legal warning to the Respondent/Corporate Debtor for payment of pending dues.
- (xi) On 5th October, 2021, the Respondent/Corporate Debtor addressed an email to the Applicant/Operational Creditor and in unambiguous and unequivocal terms admitted its liability subject to reconciliation of Stock Transfer Value.
- (xii) The Applicant/Operational Creditor vide its email dated 11th October, 2021, specifically refuted the Respondent/Corporate



Debtor's allegation of reconciliation of Stock Transfer Value in order to determine the outstanding dues.

- (xiii) Due to non-payment and lack of co - operation on the part of the Respondent/Corporate Debtor, the Applicant/Operational Creditor terminated the Distributorship Agreement by issuing a termination letter vide email dated 13.10.2021.
- (xiv) Vide email dated 19.10.2021, the Respondent/Corporate Debtor acceded to the repayment plan of the entire outstanding dues as suggested by the Applicant/Operational Creditor.
- (xv) Vide email dated 30.11.2021, the Respondent/Corporate Debtor once again assured the Applicant/Operational Creditor that it will clear the balance outstanding dues vide email dated 30th November, 2021. Once again, vide emails dated 2nd December, 2021 and 13th December 2021, the Respondent/Corporate Debtor assured to make the entire payment which is due and payable.
- (xvi) The Respondent/Corporate Debtor time and again acted contrary to its repeated assurances of making payment, however, failed to so do which constrained the Applicant/Operational Creditor to issue a Legal Notice dated 24th January, 2022 through its advocate to the Respondent/Corporate Debtor calling upon it to



remit the outstanding amount aggregating to USD 305854.516 and Euro 44718.41 along with late payment fee at the rate of 1% per month.

(xvii) The Corporate Debtor once again made bogus assertions of paying the outstanding amount vide its email dated 30th March, 2022. However, till date, the same has not been paid by the Corporate Debtor.

(xviii) As the Respondent/Corporate Debtor was not discharging the admitted dues of the Applicant/Operational Creditor, despite several reminders and requests, the Applicant/Operational Creditor was constrained to issue a Statutory Demand Notice dated 10th May, 2022 under Section 8 of the IBC, 2016 calling upon the Respondent/Corporate Debtor to clear the outstanding dues aggregating to Rs.1,80,52,062.3 together with the late payment fee at a daily rate of 1% per month till payment and / or realization.

(xix) After receiving the said Demand Notice under Section 8 of the IBC, the Respondent/Corporate Debtor replied to the said Notice vide its letter dated 25th May, 2022, and raised objections though admitting its liability.



4. On issuance of the notice, the Respondent/Corporate Debtor neither appeared nor filed any reply. Hence, this Adjudicating Authority vide its order dated 01.11.2022 declared Respondent/Corporate Debtor ex-parte. Later on Respondent/Corporate Debtor appeared through Counsel 20.02.2023 and filed only Vakalatnama but no reply was filed by the Respondent/Corporate Debtor. Even, thereafter in spite of several opportunities to the Respondent/Corporate Debtor neither reply was filed nor anyone appeared in the matter in hearings dated 11.04.2023, 09.05.2023 & 17.05.2023. Hence, this Adjudicating Authority vide its order dated 17.05.2023 ex-parte heard the matter and reserved.
5. Heard the learned Counsel for the Applicant/Operational Creditor and perused the documents available on record.
6. It is reflected from the records that the Applicant/Operational Creditor had supplied goods to the Respondent/Corporate Debtor, and had raised various invoices during the period from 10.04.2021 to 30.05.2021 for an amount of Rs.1,80,52,062.33 (USD 2,35,328.67).
7. The Respondent/Corporate Debtor has admitted its liability vide letter dated 25.05.2022, which reads as under:-

“In view of the aforesaid, we are unable to contact our clients from whom amounts are to be collected which will in turn will be paid to



your Company. We have very honest intention to repay all but due to difficulties we require your support in these times.”(sic)

8. The present application is well within limitation, as the date of default is 10.04.2021 and the present application is filed before the Adjudicating Authority on 04.07.2022. The amount of debt is above 1 crore and meets the threshold prescribed under section 4 of IBC, 2016. The present application is otherwise complete and defect-free.
9. Hence, In the given facts and circumstances, the Applicant/Operational Creditor has established the operational debt and default in payment against the Respondent/Corporate Debtor. Therefore, present application deserves to be admitted against the Respondent/Corporate Debtor in terms of Section 9(5)(i) of the IBC, 2016.
10. Hence, we allow the present application with the following directions:-
 - (i) The Application bearing CP(IB)186/(AHM)/2022 filed by **M/s. Lubrizol Advanced Materials, INC., Brecksville USA.** (the Applicant/ Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s MIKU Polymers & Plastics Ltd.** (the Respondent/Corporate Debtor) is hereby admitted and the moratorium under Section 14 of the IBC, 2016 is declared for



prohibiting all of the following in terms of Section 14(1) of the

Code:-

- (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 Securitisation 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 corporate debtor.*
- (ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- (iii) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or



suspended or interrupted during the moratorium period as per provisions of sub-Sections (2) and (2A) of Section 14 of IBC, 2016.

- (iv) The Applicant/Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). We hereby appoint **Mr. Rahul Shah**, having Registration No. IBBI/IPA-001/IP-P-02170/2020-2021/13367 and having e-mail id: carahulnshah@gmail.com and Mob. No. 992515 1588 subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed within a period of one week from the date of this order.
- (v) The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under a legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to



assist or co-operate with IRP, do not assist or Co-operate. IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (vi) This Adjudicating Authority directs the IRP to make the public announcement of the initiation of the Corporate Insolvency Resolution Process (CIRP) and call for the submission of claims under Section 15 as required by Section 13(1) (b) of the IBC, 2016.
- (vii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (viii) The IRP shall be under the duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- (ix) The IRP or the RP, as the case may be shall submit to this



Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- (x) We direct the Applicant/Operational Creditor to deposit a sum of **Rs. 2.00 lacs (Rupees one lakh only)** with the Interim Resolution Professional, namely, Mr. Rahul Shah to meet 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 Applicant/Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Applicant/Operational Creditor.
- (xi) The Registry is directed to communicate a copy of this order to the Applicant/Operational Creditor, Respondent/Corporate Debtor, and to the Interim Resolution Professional and the IBBI, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate



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Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

11. Accordingly, the present application being CP (IB) No. 186 of 2022 is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

S/d-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

S/d-

SHAMMI KHAN
MEMBER (JUDICIAL)

Rahul/LRA