

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.4767/MB.IV/2018

*Under section 9 of the Insolvency &  
Bankruptcy Code, 2016*

*In the matter of*

J.Maheshkumar Petrochemicals Pvt Ltd  
[CIN: U74999MH1985PTC038081]

...Operational Creditor

Versus

Paradise Consumer Products Limited  
[CIN: U28100MH1988PLC049613]

... Corporate Debtor

Order pronounced on : 23.09.2020

*Coram:*

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Ravikumar Duraisamy : Member (Technical)

*Appearances:*

For the Operational Creditor : Mr UL Shah, Advocate

For the Corporate Debtor : Mr Randhirsingh D. Patil (only on  
one hearing date, *i.e.*, 03.07.2019).  
(*Unrepresented on all other dates of  
hearing*)

ORDER

*Per: Ravikumar Duraisamy, Member (Technical)*

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by J.Maheshkumar Petrochemicals Pvt

Ltd [CIN: U74999MH1985PTC038081] (*Operational Creditor*), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Authorised Signatory, Mr Vipul Bhat, on the basis of a Board Resolution dated 01.11.2018, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Paradise Consumer Products Limited (*Corporate Debtor*).

2. The Corporate Debtor is an unlisted public company limited by shares and incorporated on 11.11.1988 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U28100MH1988PLC049613. Its registered office is at Lunkad Tower, Near General Post Office, Jilha Peth, Jalgaon 425001, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 13.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 52,94,356.00 (Rupees fifty-two lakh ninety-four thousand three hundred and fifty-six only) as principal and ₹ 28,43,287.77 (Rupees twenty-eight lakh forty-three thousand two hundred and eighty-seven and seventy-seven paise only) as interest.
4. The case of the Operational Creditor is as follows: -
  - (a) Between February 2014 and July 2014, the Operational Creditor supplied PVC materials through Reliance Industries Limited. The Operational Creditor is the *del credere* agent of Reliance Industries Limited. Ten invoices were raised as follows: -

Sl No.	Invoice Details		
	Number	Date	Due Date
1.	2105/RJ02941	22.07.2014	02.08.2014

Sl No.	Invoice Details		
	Number	Date	Due Date
2.	2648/RJ03074	28.07.2014	08.08.2014
3.	3681/RJ03222	11.08.2014	22.08.2014
4.	3682/RJ03223	11.08.2014	22.08.2014
5.	3683/RJ03224	11.08.2014	22.08.2014
6.	4571/RJ03477	22.08.2014	02.09.2014
7.	4858/RJ03563	26.08.2014	06.09.2014
8.	5118/RJ03562	28.08.2014	08.09.2014
9.	5119/RJ03563	28.08.2014	08.09.2014
10.	5934/RJ03934	09.09.2014	20.09.2014

*(Details at para 1 at page 9 of the Petition)*

- (b) The total amount payable against the invoices was ₹ 52,94,356.00. The Corporate Debtor failed to make the payment;
- (c) Reliance Industries Limited has issued certificate dated 29.10.2018, confirming that they have received payment of a sum of ₹ 83,79,552/- from the Operational Creditor on behalf of Paradise Polymers Limited (*the previous name of the Corporate Debtor*) for material supplied to the Corporate Debtor against various invoices for the period from 01.07.2014 to 30.09.2014. The certificate is attached as Exhibit 'O' at p.40 of the Petition;
- (d) The Corporate Debtor issued Cheque No.171446 dated 10.11.2015 for a sum of ₹ 65,54,884.87, which was dishonoured when presented to the Corporate Debtor's bankers. The copy of the cheque is placed as Exhibit 'P' at p.41 of the Petition.
5. Invoices have been placed on record as Exhibit 'A' to 'K' at pp.17-36. The invoices do not provide for interest in case of delayed payments. Bank statements are attached as Exhibit 'Y' at pp.84-108. The total

debt due and payable to the Operational Creditor is ₹ 82,53,358.77 (Rupees eighty-two lakh fifty-three thousand three hundred and fifty-eight and seventy-seven paise only), as mentioned at pp.123-124 of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 06.11.2018 to the Corporate Debtor (*Exhibit 'F-1' at pp.125-138*) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply dated 22.11.2018 (*Exhibit 'G-1' at pp.139-149*), wherein they have *inter alia* questioned the competence of the Counsel to issue Demand Notice on behalf of the Operational Creditor.
7. Thereafter, the Operational Creditor sent a letter on 27.11.2018 (*Exhibit 'H-1' at pp.150-151*), clarifying that the words “*after deduction of TDS*” appearing in the Fourth Column of Para No.1 in the Demand Notice dated 06.11.2018 was added inadvertently, and calling upon the Corporate Debtor to furnish the certificate issued by the competent authority for change of name of the Corporate Debtor from Paradise Polymers Limited to Paradise Consumer Product Limited. The letter reiterated the demand for payment.
8. The Corporate Debtor sent a reply dated 07.12.2018 (*Exhibit 'K-1' at pp.154-156*), *inter alia* contending that the particulars of unpaid operational debt provided *vide* Demand Notice dated 27.11.2018 do not survive under the provisions of the IBC.
9. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been annexed at pp.162-164.
10. In its reply dated 05.08.2019, the Corporate Debtor has set up the following defence:-

- 
- (a) Material was supplied directly by Reliance Industries Limited and the Operational Creditor is only a consignee [*para (iv) at page 7 of the Reply*];
- (b) The Operational Creditor is not carrying on business in accordance with the main objects of its Memorandum of Association. The Operational Creditor was incorporated to carry on the business of authorised distributors, commission agents, sub-agents, brokers of Indian Petrochemicals Corporation Limited, Baroda. The Operational Creditor is claiming to be acting as *del credere* agent of Reliance Industries Limited in the present Petition, which is not the main object of the Operational Creditor. Therefore, the alleged transaction is *ultra vires* and therefore void (*para 3-4 at page 11-12 of the Reply*);
- (c) The present petition lodged by Mr Vipul Bhat is without *locus standi* since power of attorney holder is not competent to file application on behalf of the applicant as 'secured creditor' (*sic*) (*para 8 at page 14 of the Reply*);
- (d) There is no cause of action for filing the present petition, since there are no pleadings of default in terms of section 47 of the Sale of Goods Act (*para 9 at page 16 of the Reply*);
- (e) The statement of accounts and bank certificate is not as per provisions of section 2A and section 4 of the Bankers Books Evidence Act (*para 10 at page 16-17 of the Reply*);
- (f) The Demand Notice is invalid, since it has not been issued by the Operational Creditor but by the Advocate (*para 11 at page 22 of the Reply*);
- (g) Affidavit under section 9(3)(b) is not as per format prescribed in the NCLT Rules (*para 15 at page 26-27 of the Reply*);
- (h) Operational Creditor has to plead on the documents on which he relies, but this has not been done in terms of the CPC (*para 16 at page 27 of the Reply*).

11. We have heard the arguments of the Learned Counsel for the Operational Creditor and perused the records.
12. We observe from the records that except on one occasion – on 03.07.2019 – that the Corporate Debtor has not chosen to be represented during the hearings held on 30.04.2019, 04.09.2019, 11.09.2019, 23.09.2019, 18.10.2019, 11.11.2019 and 28.11.2019. On 03.07.2019, the Corporate Debtor was represented by its Director, Mr Randhirsingh D. Patil. We also observe from the records that the Corporate Debtor had filed its reply to the petition on 05.08.2019. In the absence of any representation or oral submissions on behalf of the Corporate Debtor on the various dates, we have factored in only the reply of the Corporate Debtor in evaluating the merits of the present petition.
13. The reply of the Corporate Debtor is predicated wholly on technical grounds such as non-compliance with various provisions of the Code of Civil Procedure, the Sale of Goods Act, the law of evidence, the law relating to affidavits, etc. These are defences wholly untenable within the IBC architecture. The enquiry in a section 9 petition is essentially restricted in scope and extent only to the three Ds – Debt, Default and Dispute. The legislature clearly did not intend it to conform to the rigid requirements of the Civil Procedure Code. Any such exercise will effectively injure the legislative construct of the IBC itself. As the Adjudicating Authority, we are not inclined to travel beyond our remit.
14. However, there are two aspects of the Corporate Debtor's reply that need to be addressed.

15. First, in so far as the Operational Creditor acting as *del credere* agent of Reliance Industries Limited is concerned, the Corporate Debtor has stated that the MoA of the Operational Creditor does not disclose this fact. As the Adjudicating Authority, we are not concerned with this aspect, nor do we consider this a valid defence that can be taken in a section 9 petition under the IBC.
16. Second, in so far as the competence of Mr Vipul Bhat to sign and file the present petition on behalf of the Operational Creditor is concerned, the Corporate Debtor's objections cannot be sustained because the relevant part of the Board Resolution<sup>1</sup> reads as follows:

*“Resolved that Mr Vipul Bhat, our Marketing Executive be and is hereby appointed as our authorised representative to represent us in the various courts including National Company Law Tribunal as well as in all pending criminal as well as civil matters and initiate any other civil or criminal proceedings against any person, firm, company and legal entity on behalf of the Company.*

*“Mr Vipul Bhat is authorised to engage advocates, counsel, solicitors, sign and file vakalatnama, plaint, written statement, notice, complaint, affidavits, affidavits of evidence, applications, company petitions and applications, review, revision, appeal, writ petition, notice and application and petitions under the Insolvency and Banking (sic) Code, 2016, serve and accept summons, warrants, produce documents and all the legal and court proceedings, give oral/written evidence, withdraw amount from the court and give receipts in respect thereof and take necessary steps and represent us in all courts and/or tribunals of all till the logical conclusion of the matter.*

*“Further resolved that the company do hereby undertake to ratify whatever the said Mr Vipul Bhat has done legally or cause to be done on our behalf. The said Mr Vipul Bhat has been appointed as our authorised representative to represent the company in the various courts including National Company Law Tribunal in the aforesaid manner.”*

---

<sup>1</sup> Board Resolution dated 01.11.2018

17. It is very clear that by virtue of the above resolution, Mr Vipul Bhat is not acting as power of attorney holder but as Authorised Representative, duly supported by the necessary Board Resolution. When the Board Resolution duly authorises a person to act in all matters including IBC petitions and to represent the company before NCLT, there is no question of the judgments relating to power of attorney being made applicable. Therefore, the *locus standi* of Mr Vipul Bhat to sign and file the present petition for and on behalf of the Operational Creditor is beyond doubt. Further, the present petition is filed under section 9 of the IBC and not under section 7 thereof as claimed by the Corporate Debtor.
18. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
19. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
20. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing CP (IB) No.3918/MB.IV/2019 filed by J.Maheshkumar Petrochemicals Pvt Ltd [CIN: U74999MH1985PTC038081] (*Operational Creditor*), under section 9 of the IBC read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

for initiating Corporate Insolvency Resolution Process (CIRP) against Paradise Consumer Products Limited [CIN: U28100MH1988PLC049613], the 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.
- (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 Adjudicating Authority 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) Ms Preeti Vimal Agarwal, Reg.No.IBBI/IPA-001/IP-P00655/2017-2018/11144 [email: [capreeti2003@gmail.com](mailto:capreeti2003@gmail.com)], having address at Shop Nos.11 & 12, Krishna Kunj Building, Above HDFC Bank, 150 Feet Road, Bhayander (W) Mumbai 401101, as the IRP. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 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 IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP of the Corporate Debtor.
- (i) The Operational Creditor shall deposit a sum of ₹ 3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) In terms of section 9(5)(i) of the IBC, the Registry is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be also 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/-  
Ravikumar Duraisamy  
Member (Technical)  
23.09.2020

Sd/-  
Rajasekhar V.K.  
Member (Judicial)