

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

**C.P. NO.1337/I&BP/NCLT/MAH/2017**

**Under Section 9 of IBC, 2016**

In the matter of

J J Plastalloy Pvt Ltd ..... Petitioner

vs.

Santoshi Barrier Film India Pvt. Ltd.... Respondent.

Order delivered on 8.1.2018

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)  
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Shyam Kapadia, Mr. Prateek Pai, Mr. Harish Adwant, Mr. Amanjhot Anand, Advocates, i/b Keystone Partners

For the Respondent: Ms. Chaitrika Patki, Advocate, i/b Vidhi Partners

*Per B. S. V. Prakash Kumar, Member (Judicial)*

**ORDER**

***Oral order dictated in open court on 4.1.2018.***

It is a Company Petition filed u/s 9 of Insolvency and Bankruptcy Code, 2016 by the Operational Creditor, viz. J J Plastalloy Pvt. Ltd. stating that this Operational Creditor supplied plastic granules and master batches to the Corporate Debtor herein, viz. Santoshi Barrier Film India Pvt. Ltd., upon which, the Operational Creditor raised invoices (Annexures B-1 to B-30) raised against the Corporate Debtor from 18.12.2014 to 26.3.2017 for an amount aggregating to ₹62,70,916, when money was not paid, the operational creditor on 16.8.2017 issued notice u/s 434 of the Companies Act, 1956

(Annexure-F), then notice (Annexure-G) u/s 8 of the Code on 26.12.2016 against the corporate director. For which also, no response from the corporate debtor, hence this petition.

2. Since the Corporate Debtor having failed to make payment of the invoices raised from 14.6.2015 to 26.3.2016 for an amount aggregating to ₹27,08,404, the Petitioner herein initially issued notice dated 27.9.2016 under Section 434(1) of the Companies Act, 1956. When payment has not been received, the Petitioner again on 26.12.2016 issued statutory notice under Section 8 of the IB Code, 2016 for the same amount along with interest @ 24%. On having received this notice, the Corporate Debtor sent an email on 5.1.2017 stating that it had received demand notice dated 26.12.2016. Responding to the same, it has been informed that it was unable to release payment owing to financial issues. It further says that it would like to assure the Petitioner that the payment would be settled by the end of the current financial year. Despite such a reply came from the Corporate Debtor, the full payment not being paid except part payment of ₹5,34,996 on 19.5.2017 and 20.6.2017, the Petitioner filed this Company Petition under Section 9 of the Code, claiming default amount as ₹21,73,408 along with interest of ₹14,69,052 up to 15.8.2017 to initiate Corporate Insolvency Resolution process against the Corporate Debtor herein.

3. Though the Corporate Debtor Counsel appeared all along, she has not disputed any of the facts mentioned in this Company petition nor has any reply been given to Section 8 notice except sending an email on 5.1.2017 making assurance that it would make payment within current financial year. The Counsel appearing on behalf of the Corporate Debtor, though filed Vakalatnama on behalf of the Corporate Debtor, has submitted now that she has no instructions either to contest or not to contest the matter.

4. On perusal of the material documents placed before this Bench, it is clear that the invoices are reflecting supply of goods and also demand for payment towards the goods supplied to the Corporate Debtor herein, apart from this, the Corporate Debtor has also filed Bank



Certificate (Annexure E) reflecting the Corporate Debtor making payment of ₹40,97,508 up to 20.6.2017 by further saying that no payment has come to this account after 20.6.2017. It is also not the case of the Corporate Debtor that payment has been made to the Petitioner or the goods have not been supplied to the Corporate Debtor. Since the Petitioner having furnished the proof to believe that debt and default are in existence, for there being no dispute from the Corporate Debtor side against the claim made by the Petitioner, this Bench, having satisfied with the proof filed by the Operational Creditor in compliance of provisions of section 8&9 of the Insolvency and Bankruptcy Code, admits this Application declaring Moratorium with directions as follows:

- i) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv) That the order of moratorium shall have effect from 8.1.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section

(1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

5. Accordingly, this Petition is admitted.

6. This Bench makes a reference to the Insolvency and Bankruptcy Board of India (IBBI) for the recommendation of Insolvency Professional for appointment as Interim Resolution Professional.

7. The Registry is directed to forward a copy of this order to IBBI and post this matter after receipt of reply from IBBI for the appointment of IRP.

8. The Registry is hereby directed to communicate this order to both the parties.

**Sd/-**

V. NALLASENAPATHY  
Member(Technical)

**Sd/-**

B.S.V.PRAKASH KUMAR  
Member (Judicial)