

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

C.P. (IB) No. 2519/NCLT/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of:

SQM Europe N. V.

...Operational Creditor / Applicant

V/s

Salvi Chemical Industries Limited

...Corporate Debtor / Respondent

Order Dated: 15th October 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Advocate Shivangi Agarwal

For the Respondent: Advocate S. J. Mishra and Advocate Pushpa Tiwari

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an Application being C.P. (IB) No. 2519/NCLT/MB/2018 filed by **SQM Europe N. V.**, the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Salvi Chemical Industries Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of USD 3,06,000/- (United States Dollar Three Lakh and Six Thousand Only) equivalent to ₹2,07,37,467/- (Rupees Two Crore Seven Lakh Thirty Seven Thousand Four Hundred and Sixty Seven Only) as on 22.06.2018. The Application is filed by Mr. Kristiaan Van Den Bruel, Financial Director of the Operational Creditor duly authorised to file this Application vide Resolution dated 24.05.2018.

3. The Applicant submitted that it sold on credit "Prilled Iodine 99.8%" vide Invoice dated 13.01.2014 as per the Purchase Order placed by the Corporate Debtor vide its email dated 26.12.2013. The Applicant submitted that the ordered goods were supplied to the Corporate Debtor through container vessel vide Bill of Lading dated 13.01.2014. The copy of email dated 26.12.2013, Invoice and Bill of Lading are annexed to the Application.
4. The Applicant submitted that despite accepting the goods without any protest and demur the Corporate Debtor failed to pay the due amount under the invoice. The Applicant submitted that it made several requests and reminders to the Corporate Debtor for making the payment of outstanding invoice amount.
5. The Applicant submitted that the Corporate Debtor admitted and acknowledged its liability to repay the outstanding invoice amount of USD 3,06,000/- (equivalent to ₹2,07,37,467/-) vide its email dated 15.05.2015 sent to the Applicant. In the said email the Corporate Debtor suggested two proposals for making the payment of outstanding amount. The Corporate Debtor further acknowledged the debt vide its email dated 01.07.2015 sent to Applicant, wherein the Corporate Debtor stated that it will require fresh Debit Notes for making payment of invoice. Copy of emails dated 15.05.2015 and 01.07.2015 are annexed to the Application.
6. The Applicant submitted that despite assurances the Corporate Debtor failed to repay the debt amount. Therefore, the Applicant issued Demand Notice dated 16.06.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding debt. However, the Corporate Debtor did not reply to the Demand Notice within statutory period of 10 days.
7. The Applicant filed present Application on 02.07.2018. The Corporate Debtor filed its Affidavit in Reply on 13.03.2019 and contended that the claim of the Applicant is time barred. The Corporate Debtor further contended that its email dated 01.07.2015 cannot be treated as acknowledgement of debt for computation of fresh period of limitation, as the said email does not bear the digital signature of Corporate

Debtor as required under the Information Technology Act, 2000. The Corporate Debtor contended that the Application should be dismissed being time barred.

8. We have heard the parties and perused the records.
9. On perusal of the documents submitted by the Applicant, it is evident that Applicant had supplied goods which the Corporate Debtor had duly received. Further, the Corporate Debtor has nowhere in its Reply denied the current transaction and has not disputed the existence of debt. The Corporate Debtor has even admitted its liability to repay the debt vide its emails dated 15.05.2015 and 01.07.2015.
10. This Bench further observed that, the Corporate Debtor has disputed the validity of email dated 01.07.2015 on the basis that the said email is not digitally signed and therefore the said email cannot be considered for extending the period of limitation. However, the Corporate Debtor has not denied the contents of the email dated 01.07.2015 and acknowledgement made therein. Therefore, this bench is of the view that mere non-compliance of technical requirement cannot defeat the purpose of the document and contents thereof. This Bench therefore holds that, as per Section 18 of the Limitation Act, 1963 a fresh period of limitation begins from the date of acknowledgement, in this case being 01.07.2015. This Bench further clarifies that, as per Section 4 of the Limitation Act, 1963 present Application filed on 02.07.2018 is within limitation, as on 30.06.2018 and 01.07.2018 the office of the Adjudicating Authority was closed being Saturday and Sunday respectively. Therefore, the contentions raised by the Corporate Debtor are not tenable and hence rejected.
11. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.

12. The Application is complete and has been filed under the proper form. Copy of the Demand Notice dated 16.06.2018 along with the postal track report reflecting the due receipt of the Notice by the Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 27.06.2018 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed by the operational creditor in support of its claim.
13. The Applicant has not proposed the name of an insolvency resolution professional to act as Interim Resolution Professional and carry out the functions as mentioned under I&B Code, 2016.
14. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **SQM Europe N. V.**, Operational Creditor / Applicant against **Salvi Chemical Industries Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 Securitization 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 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. That this Bench appoints **Mr Santanu T Ray**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00360/2017-2018/11055]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA

Member (Technical)

Sd/-

V. P. SINGH

Member (Judicial)

15th October 2019