

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III
Special Bench

2. C.P.(IB)-1288(MB)/2021

CORAM: MS. SUCHITRA KANUPARTHI, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **25.04.2022**

NAME OF THE PARTIES: KHUSHBU DYE-CHEM PRIVATE LIMITED

Vs.

BHANGE ORGANIC CHEMICALS PRIVATE LIMITED

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

None appeared on either side.

Order pronounced in the open court vide separate order. In the result, the
above Company Petition No. 1288/2021 is admitted and Mr. Rakesh Maganlal
Nathwani is appointed as IRP.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
MS. SUCHITRA KANUPARTHI
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-III**

CP (IB) No. 1288 of 2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016).

In the matter of

KHUSHBU DYE CHEM PVT. LTD.

M/403, Vardhaman Nagar, Dr. R. P. Road, Mulund (w), Mumbai- 400 080.

.... Operational Creditor

versus

BHANGE ORGANIC CHEMICALS PVT. LTD.

Gut No. 116-17, Bhausahab Bhang, Nagar, (Khadka), Post Deogad, Taluka Newasa, Ahmednagar- 414001.

.... Corporate Debtor

Order delivered on: 25.04.2022

Coram:

Hon'ble Ms. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing) :

For the Operational Creditor : Mr. Zain Khan, Advocate

For the Corporate Debtor : None present

Per Shri. Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company Petition is filed by M/s. Khushbu Dye Chem Pvt. Ltd., (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s. Bhang Organic Chemicals Pvt. Ltd. (hereinafter

called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called the “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Resolution of Operational Debt of Rs. 1,36,11,373/- including interest.

2. The counsel appearing on behalf of the Operational Creditor submitted that the Operational Creditor is engaged in the business of trading, supplying, importing and exporting of various chemicals for over 16 years.
3. The counsel for the Operational Creditor further mentions that on 05.06.2019, Corporate Debtor approached the Director of the Operational Creditor and represented that it is engaged in the business of manufacturing and production of Ethyl Acetate. The Corporate Debtor gave a proposal wherein it requested the operational creditor to provide/Acetic Acid, Ethyl Alcohol, ASDS and imported Ethanol and pay directly to third parties for purchase of Ethanol, custom duty payable on the same, applicable taxes thereof in lieu of the aforesaid. The Corporate debtor would provide the operational creditor the ready/ finished product of Ethyl Acetate.
4. In pursuance of aforesaid, an Agreement dated 24.06.2019, was entered into between the operational creditor and the corporate debtor. Under the aforesaid Agreement, the corporate debtor agreed to supply the Ethyl Acetate at the total cost of Rs. 47.61/- (Rupees forty seven and sixty one paise) per Kg which included the cost of Special denatured spirit (SDS), Acetic Acid, conversion

rate of the same to Ethyl Acetate of 0.65%, the labor cost for manufacturing Ethyl Acetate and the transportation charges for the same had to be paid by the operational creditor at the agreed rate as mentioned in the said agreement.

5. The counsel for the Operational Creditor stated that the operational creditor supplied 12,65,920 Kgs of Acetic Acid worth Rs. 5,20,83,007/- (Rupees five crore twenty lakh eighty three thousand seven only) under 55 separate invoices which is inclusive of applicable GST and 950 drums for packaging worth Rs. 12,35,903/- under 5 separate invoices which is inclusive of applicable GST. In addition, it made payments of an amount of Rs. 5,84,00,616/- towards the SDS, Imported Ethanol, third party payment, customs, custom duty charges etc. for enabling the corporate to produce Ethyl Acetate for supplying to the petitioner. In this process the operational creditor in all incurred an amount of Rs. 11,17,19,527/- for supplying/ providing the raw material for production of Ethyl Acetate.
6. The counsel for operational creditor states that the against the aforesaid amount of Rs. 11,17,19,527/- the corporate debtor only supplied 15,00,635 Kg of Ethyl Acetate in tanker load worth Rs. 8,85,55,142/- under 85 separate invoices which is inclusive of applicable GST and 148,680 Kg in drums worth 96,67,731/- under separate invoices which is inclusive of applicable GST and thereby aggregately supplied Ethyl Acetate 16,49,315/- Kg. for an aggregate value of Rs. 9,82,22,873/-. Accordingly, as per the petition an amount of Rs. 1,34,96,652/- was balance and outstanding against which the corporate debtor had to supply Ethyl Acetate.
7. The Counsel for operational creditor states that the corporate debtor informed that it would not be possible to supply more Ethyl

Acetate. Accordingly, the operational creditor and the corporate debtor entered into a Memorandum of Understanding (MOU) dated 03.01.2020 wherein the aforesaid facts were recorded, and the corporate debtor agreed to pay the aforesaid amount of Rs. 1,34,96,652/- within a period of 18 months i.e., on or before 03.07.2021. As per the terms of said MOU dated 03.01.2020, the corporate debtor handed over 18 cheques. The said cheques were returned with remark "Payment stopped by drawer" vide 18 separate return memos all dated 07.07.2021.


8. The counsel for the Operational Creditor stated that as there was no payment received from the Corporate Debtor as Corporate Debtor failed to make the outstanding payment and therefore, the Operational Creditor sent a Demand Notice under Section 8 of the Code dated 30.07.2021, inter alia, demanding payment in respect of unpaid operational debt amounting to Rs.1,36,11,373/-.
9. The counsel for the Operational Creditor stated that the demand notice was dispatched by speed post at the registered office of the corporate which was duly received. The corporate debtor failed to send a reply towards the said demand notice from which it can be presumed that there is no preexisting dispute regarding the outstanding payment.
10. The Operational Creditor has annexed the following documents with the petition:
 - i. Copy of 55 Invoices raised by the Operational Creditor (Exhibit-"C" of the Petition) (Colly);
 - ii. Copy of Agreement dated 24.06.2019 entered into between the operational creditor and the corporate debtor. (Exhibit-"B" of the Petition);
 - iii. The copy of the Memorandum of Understanding (MOU) dated 03.01.2020 entered between the operational creditor

- and the corporate debtor entered (Exhibit-“F” of the Petition);
- iv. Copy of the 18 cheques and bank memo dated 07.07.2021 (Exhibit-“G” of the Petition);
 - v. Copy of Ledger accounts of corporate debtor maintained in the books of operational creditor (Exhibit-“H” of the Petition);
 - vi. Copy of Demand Notice dated 30.07.2021 (Exhibit-“I”) of the Petition);
 - vii. Copy of postal acknowledgement slip and tacking reports of demand notice dated 30.07.2021 (Exhibit-“J”) of the Petition);
 - viii. Copy of certificate and statement of bank account confirming nonpayment of operational debt Exhibit-“K”) of the Petition);

Findings:

11. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file reply but also failed to make any representation before this Bench. Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 08.02.2022. The Bench on 21.03.2022 heard the counsel appearing for the Operational Creditor and perused the documents submitted by him. The counsel appearing for the Operational Creditor successfully demonstrated and proved the existence of debt and default. The debt is within limitation. Thus, this Company Petition satisfies all the requirements for admission. Since the Corporate Debtor has been set ex-parte, the claim of the applicant remains unchallenged. This Tribunal upon considering the arguments of the petitioner and the documents, passed the following order:

ORDER

- (a) The above Company Petition No. (IB)- 1288/(MB)/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Atharva Metals Pvt. Ltd. 
- (b) This Bench hereby appoints Mr. Rakesh Maganlal Nathwani, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02058/2020-2021/13190, email: rakesh@carmn.in, Contact No. 9503006408, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- (c) The Operational Creditor shall deposit an amount of Rs.2 Lakhs (two) towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) 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 Securitization 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.
- (e) 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.

- (f) 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.
- (g) That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- (j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- (k) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.
- (l) Accordingly, this Petition is “**Allowed**”.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
SUCHITRA KANUPARTHI
MEMBER (JUDICIAL)