

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 145
CP(IB) No. 163 of 2020

Order under Section 9 IBC, 2016

IN THE MATTER OF:

Parth Dye Chem Pvt. Ltd.
V/s
Clinch Silicones Pvt. Ltd.

.....Applicant

.....Respondent

Order delivered on ..21/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
Dr. MADAN B GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

C.P. (IB) No. 163 of 2020

[An application under section 9 of the Insolvency & Bankruptcy Code, 2016].

In the matter between:

M/s. Parth Dye Chem Private Limited

[CIN: U24220GJ2005PTC046868]

Having its address at:

345, GIDC, Pandesarab/H,

Pioneer Dyeing ,Surat

Gujarat.

...Operational Creditor

Versus

M/s. Clinch Silicones Private Limited

[CIN: U24100GJ1998PTC097934]

Having its address at:

C1-1701 & C1-1702, GIDC,

Panoli Bharuch, Bharuch,

Gujarat-394116.

...Corporate Debtor

Order reserved on: 06.12.2022

Order pronounced on : 21.12.2022

Coram: DR. MADAN B. GOSAVI, MEMBER (J)

KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

For the Operational Creditor : Ms. Prachiti Bohra, Ld. Adv. and Ms.
Richa M Goyal, Ld. Adv.

For Corporate Debtor : Ex-parte

ORDER

1. This application is filed on 17.02.2020 by M/s. Parth Dye Chem Private Limited- the Operational Creditor under section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) against M/s. Clinch Silicones Private Limited- the Corporate Debtor to initiate the Corporate Insolvency Resolution Process (“CIRP) against the Corporate Debtor on the ground that the Corporate Debtor committed default in paying an outstanding amount of Rs. 13,44,911/- (including the principal amount of Rs. 10,12,440/- and interest of Rs. 3,32,471/- @ 24% per annum). The date of default is stated to be 31.07.2019.

2. Learned Counsel for the Operational Creditor appeared and made submissions which are summarised as under:

- I. The Operational Creditor was having business relation with the Corporate Debtor and the Operational Creditor had been supplying the goods (like chemicals) to the Corporate Debtor since 2017. The Corporate Debtor had been regularly making payments to the Operational Creditor for the supply of the goods. Thereby, the account of the Corporate Debtor was a running account.
- II. The Operational Creditor raised seven invoices from 11.11.2017 to 01.05.2018 for an amount of Rs 10,12,440/-. The total outstanding amount of Rs. 13,44,911/- (including principal amount of Rs. 10,12,440/- and interest of Rs. 3,32,471/- @ 24% per annum) is due and payable by the Corporate Debtor to the Operational Creditor.
- III. The Corporate Debtor issued two cheques, bearing cheque nos. 603484 and 603485 of Vijaya Bank dated 11.01.2019 and 19.01.2019 respectively. Both cheques were dishonoured when the Operational Creditor presented for clearance in the Bank. Even after a number of reminders and requests, the Corporate Debtor failed to make the payment. In the compelling circumstances, the Operational Creditor issued a demand notice under section 8 of the IBC, 2016 read with Rule 5(1)(a) and (b) of the Insolvency and

Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 in Form-3 and Form-4 through registered post. The same has been duly served to the Corporate Debtor on 31.07.2019. Thereafter, the Operational Creditor sent the reminder notice dated 21.08.2019 through registered post. But the Corporate Debtor neither paid the outstanding amount nor raised any dispute with respect to the outstanding amount.

IV. The Corporate Debtor is an obligation to pay the operational debt as per the terms of the invoices issued by the Operational Creditor which specifies that 100% payment has to be made within 30 days from the receipt of the goods and on failure to pay the invoice amount within 30 days, interest @ 24% per annum shall be charged. Hence, this application for initiation of the CIRP against the Corporate Debtor is filed.

3. Notice of this application is duly served to the Corporate Debtor but no one appeared in the matter. Hence, the hearing of this application proceeded Ex-parte against the Corporate Debtor.

4. We heard Learned Counsel for the Operational Creditor and perused the material on record. The Operational Creditor supplied the goods (chemicals) to the Corporate Debtor and raised seven invoices from 11.11.2017 to 01.05.2018 for the total amount of Rs. 10,12,440/- In the said invoices, the payment term is 30 days from the date of receipt of goods failing which the Operational Creditor is entitled to levy the interest on the outstanding amount @ 24% per annum. As on 31.07.2019, the total outstanding amount of Rs. 13,44,911/- (including principal amount of Rs. 10,12,440/- + interest amount of Rs. 3,32,471/- @ 24% per annum) is due and payable by the Corporate Debtor to the Operational Creditor. The Operational Creditor served a demand notice under section 8 of IBC, 2016 on 31.07.2019 and thereafter a reminder notice on 21.08.2019. But the proof of delivery of demand notice was not produced on record. In view of the order dated, 12.01.2022, the Operational Creditor on 30.05.2022 filed written submission wherein it is mentioned that after six months from the date of postage, the delivery

status remains unavailable. Hence, an application was filed with the Postal Department for obtaining the delivery status of the said notice. The Postal Department has given its report on 12.05.2020 which is annexed with the written submission dated 30.05.2022. On going through the report of the Postal Department, it appears that the notice which was sent to the Corporate Debtor on 31.07.2019 was delivered to the Corporate Debtor on 02.08.2019. Further, as per the Bank Statement of the Operational Creditor, the Corporate Debtor issued two cheques in favour of the Operational Creditor, bearing cheque no. 603484 and 603485 for an amount of Rs. 50,000/-. But both cheques got dishonored on 14.01.2019 and 21.01.2019 respectively. This application was filed on 17.02.2020. However, after the issuance of the notice and giving a number of opportunities to the Corporate Debtor, no one appeared for the Corporate Debtor. Hence, on 14.06.2021, this Adjudicating Authority proceeded with the matter as ex-parte against the Corporate Debtor. For the purpose of limitation, if we consider the first invoice raised by the Operational Creditor dated 11.11.2017 for the total amount of Rs. 1,48,680/-, then it appears to us that this application is well within the period of limitation. The total amount claimed in this application is Rs. 13,44,911/- which is also more than the threshold limit prescribed under section 4 of the IBC, 2016.

5. This application is defect free. The Operational Creditor did not suggest the name of the Insolvency Professional for appointment as the IRP. Hence, we appoint **Mr. Naveen Brijmohan Bazari** to act as IRP from the list circulated by IBBI against whom no disciplinary action is pending. Hence, we allow this application and pass the following orders:

ORDER

- I. The application is admitted and the moratorium 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. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. Naveen Brijmohan Bazari, having Registration No. IBBI/IPA-001/IP-P01312/2018-2019/12007 and having E-mail id: nbazarica@gmail.com** to act as an IRP under Section 13(1) (c) of the IBC, 2016.
- IV. 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 legal obligation under Section 19 of the Code to extend every assistance and co-operation 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.

- V. 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.
- VI. It is further directed that the supply of goods/services to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- VII. 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. The Operational Creditor is directed to pay an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.
- VIII. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and to Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within

seven working days and upload the same on the website immediately after pronouncement of the order.

6. Accordingly, CP (IB)/163(AHM)2020 is allowed.

-SD-
(KAUSHALEDRA KUMAR SINGH)
MEMBER (TECHNICAL)

-SD-
(Dr. MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer
Ramashish B./LRA