

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3918/MB IV/2019

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

In the matter of

Pooransingh Vijaysingh Rathod, sole
proprietor of Meghna Colour Chem
...Operational Creditor

Versus

JK Coil Coatings Private Limited
[CIN: U24222MH2006PTC163629]
... Corporate Debtor

Order pronounced on : 18.09.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)
Mr. Ravikumar Duraisamy : Member (Technical)

Appearances:

For the Operational Creditor : Mr Ulhas Shetty i/b Ulhas Shetty
& Co, Practising Company
Secretaries

For the Corporate Debtor : Mr KC Prusty, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Mr Pooransingh Vijaysingh Rathod,

sole proprietor of Meghna Colour Chem (*Operational Creditor*), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against JK Coil Coatings Private Limited (*Corporate Debtor*).

2. The Corporate Debtor is a private company limited by shares and incorporated on 07.08.2006 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U24222MH2006PTC163629. Its registered office is at Neelsiddhi Enclave-Commercial Complex, Plot No.48/9, Sector 14, Vashi, Navi Mumbai 400703, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 25.10.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹33,99,714.00 (Rupees thirty-three lakh ninety-nine thousand seven hundred and fourteen only) as principal as on 03.10.2018, which is stated to be the date of default.
4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor, Mr Pooransingh Vijaysingh Rathod, is the sole proprietor of Meghna Colour Chem. The Operational Creditor supplied chrome pigments for manufacturing of paints to the Corporate Debtor under eleven invoices issued by his proprietary entity, Meghna Colour Chem. The total value of these eleven invoices is ₹35,75,400/- (*para 1 at page 8-9 of the Petition*);
 - (b) The Operational Creditor received an "on account" pending payment of ₹5,00,000/- from the Corporate Debtor on 03.08.2018, out of which ₹3,24,314/- was appropriated and apportioned towards the older dues, i.e., towards supplies prior to

the first invoice dated 07.07.2017. The balance amount of ₹1,75,686/- was apportioned and appropriated as part payment towards the first invoice dated 07.07.2017. The balance unpaid debt amount of ₹2,13,714/- of Invoice No.14 which was defaulted is claimed in the present petition. After adjusting the above stated payment, the total debt outstanding is to the tune of ₹33,94,714/- (*para 1 at page 9-10 of the Petition*);

(c) After regular follow-up, the Corporate Debtor issued a cheque for ₹33,35,400/- on 25.02.2019. However, even this cheque bounced when presented for payment, *vide* return memo dated 18.04.2019.

5. Invoices have been placed on record as Exhibit 'E' at pp.26-54. The invoices do not provide for interest in case of delayed payments. The total debt due and payable to the Operational Creditor is ₹33,99,714.00 (Rupees thirty-three lakh ninety-nine thousand seven hundred and fourteen only), as mentioned at page 25 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 12.09.2019 to the Corporate Debtor (Exhibit 'I', pp.63-71) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been annexed at p.120.
7. Mr KC Prusty, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.
8. We have heard the arguments of both sides and perused the records.
9. In its reply dated 29.11.2019, the Corporate Debtor has, while denying the contents of the Petition, in the same breath stated as follows: -

“8. I say and submit that no cogent proof of default is placed on record and in absence of occurrence of default, section 9 will not lie. That the Corporate Debtor company have always say that they will make the payment to the applicant company, and in fact applicant has done volume of business with debtor company and regularly received his money. Company is promised to make further payment onwards January 2020, as at present some unavoidable issue has facing by the company and hence Respondent Company could not make payments to its supplier and creditors. That Applicant Company payment from overseas buyers has struck off for market recession.” (sic)

10. The affidavit in reply dated 29.11.2019 of the Corporate Debtor, admitting the liability and stating that the Corporate Debtor is not in position to repay the debt, also establishes the existence of debt and default.
11. The matter was adjourned on various occasions on grounds of attempting a settlement. On 07.01.2020, it was reported at the bar that settlement talks have failed. At the hearing held on 07.01.2020, learned counsel appearing for the Corporate Debtor appears and submits that he has instructions to admit the liability. This submission has also been recorded in the daily order sheet of that day (07.01.2020).
12. 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.

13. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.

14. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP (IB) No.3918/MB.IV/2019 filed by Pooransingh Vijaysingh Rathod, sole proprietor of Meghna Colour Chem, the 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 JK Coil Coatings Private Limited [CIN: U24222MH-2006PTC163629], 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) Since the Operational Creditor has not proposed the name of any IRP in the matter, this Adjudicating Authority hereby appoints Mr Ramesh Chandra Kumawat, Registration No.IBBI/IPA-001/IP-P00904/2017-2018/11504, having address at E-32,

Akshya Co-op Housing Society Ltd, Jayraj Nagar, Chandravakar Lane, Borivali (West), Mumbai 400091 [email: rckassociates@gmail.com] 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 his 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 and the Operational Creditor are 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)

18.09.2020

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