

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP 522/(IB)/2018

*(U/s 9(2) of Insolvency & Bankruptcy Code, 2016
r/w Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016)*

In the matter between

M/s Bostik India Private Ltd.

... Petitioner/Operational Creditor

and

M/s Florind Shoes Private Ltd.

... Respondents/Corporate Debtor

Order delivered on: 10.09.2018

Coram: K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For petitioner : M/s S. Parthasarathy, I. David Singh & S. Cholarasan, Advocates

For respondent : Mr. Aditya Mukerjee, Advocate, M/s BFS Legal

ORDER

**Per: K. Anatha Padmanabha Swamy, Member
(Judicial)**

Under consideration is the application filed by the Petitioner herein praying for an order to initiate Corporate Insolvency Resolution Process

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(CIRP) in respect of the Respondent Company under Section 9(2) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. It is the case of the Petitioner that a sum of ₹32,37,010/-, as on 31.03.2017, is the debt due from the Respondent that emanates out of the non payment of the amounts due to the Petitioner company that has supplied adhesives and allied materials to the Respondent company. The petitioner has averred that the amount claimed in this petition was demanded from the respondent vide the below tabulated invoices:

Date	Invoice No.	Amount in Rupees
09.09.2015	1800058768	25,313
14.09.2015	1800059261	36073
21.09.2015	1800059929	6857
22.09.2015	1800060025	36353
22.09.2015	1800060024	312989
29.09.2015	1800060676	312989
09.10.2015	1800061679	283995
15.10.2015	1800062150	312868
24.10.2015	1800062893	225204

26.10.2015	1800063012	95660
30.10.2015	1800063576	241788
05.11.2015	1800064266	403859
20.11.2015	1800065238	346600
25.11.2015	1800065660	11834
10.02.2016	1800073098	156220
Total amount in default		2808332
Interest on delayed and default payment @ 8% p.a.		428678
Total amount claimed		3237010

The Petitioner contended that the operational debt has become due in terms of Section 55(1) and 61 of the Sale of Goods Act, 1930 and in terms of Section 3 of the Interest Act, 1978.

3. The respondent filed counter stating that in response to the demand notice issued by the petitioner, the respondent has issued a notice of dispute bringing to light the pre-existing and subsisting dispute over the amount claimed within 10 days of the receipt of the demand notice. It is also averred that the Petitioner having acknowledged the notice of dispute issued by the Respondent, the present petition is not maintainable and is liable to be dismissed.

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The Respondent further stated certain payments made by them were not accounted for by the Petitioner and that the Respondent invited the Petitioner for a joint account reconciliation exercise to ascertain the true financial picture. As the Petitioner failed to act on the request of the Respondent, doubt and lack of clarity continues as regards the total amount due to the Petitioner. The Respondent submitted that the scope of the jurisdiction of NCLT is limited to acting upon precisely admitted quantifiable amounts and the same cannot be utilized in situations wherein there is a lack of clarity on the the total amounts due. On such grounds the Respondents prayed to dismiss the Petition.

4. Heard the arguments and perused the documents. The point for consideration is whether the instant Petition is to be admitted or not.

5. Though the Respondent has stated that they raised some disputes in their reply to the statutory notice received from the petitioners, it is seen that no dispute in fact has been pointed out either in relation to the amounts claimed in the

mentioned invoices or with regard to quality / quantity of the goods received by them from the Petitioner. Further, it is observed that the Respondent has not totally refused the claim as false but stated that there is some doubt and lack of clarity with regard to the amount due and payable to the Petitioner. From the type set of documents filed along with the Petition, it is obvious that the Respondent on 21.06.2017 has clearly admitted that an amount of ₹28,08,332/- is due and payable to the Petitioner as on 31.03.2017 (Balance confirmation at Page 165 of the Application). Furthermore, the Respondent has not produced any proof of having paid any amount in relation to the amount claimed by the Petitioner under various invoices. On the other hand, the Petitioner has submitted copies of all the invoices under which the present claim is made, balance confirmation by the Respondent, bank statement, latest balance sheet and the statutory notice of demand issued to the Respondent to establish their claim. Also, the respondent has not placed any rebuttals with regard to the interest claimed by the Petitioner.

6. In view of the foregoing, we hereby hold that the Petitioner has clearly established that the

amount claimed in the instant petition is due and payable by the Respondent and, therefore, **we admit the Petition.** We order Corporate Insolvency Resolution Process (CIRP) in respect of the Respondent Company which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

7. The Petitioner has not proposed name of any Insolvency Resolution professional and prayed this Tribunal to appoint one. We hereby appoint Mrs. Ramela Rangasamy as Interim Resolution Professional (IRP) whose name is reflected in the panel drawn up by IBBI and against whom no disciplinary proceedings are pending.

8. The Registry of this Tribunal is directed to communicate this order and intimate Mrs. Ramela Rangasamy regarding her appointment as IRP to obtain her consent in Form 2 at the earliest.

9. We declare the moratorium which shall have effect from the date of this order till the completion of the CIRP for the purposes referred to in Section 14 of the IBC, 2016 and order to prohibit all of the following, namely: ✓

(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.

10. The supply of essential goods or services of the Respondent/Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(1) shall not apply to such transactions, as notified by the Central Government.

11. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of IBC. The Directors, Promoters or any other person associated with the management of the Respondent/Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section

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19 of the IBC and for discharging his functions under Section 20 of the IBC.

12. The Registry is directed to communicate this order to the Petitioner / Operational Creditor and the Respondent / Corporate Debtor. The Petitioner/ Operational Creditor as well as the Registry are directed to send copy of this order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this order in terms of the provisions of IBC.

13. The details of IRP are as follows:


Mrs. Ramela Rangasamy

Reg. No.: IBBI/IP1-002/IP-N00506/2017-18/11700

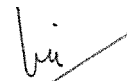
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Mobile No.: 90804 25353 / 94426 17180

14. The present petition CP/522/IB/2018 is disposed of as allowed. No order as to costs.



[S. Vijayaraghavan]
Member (Technical)



[K. Anantha Padmanabha Swamy]
Member (Judicial)