

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI**

C.P.No.IB-568/(ND)/2017

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

In the matter of:

**J.J.Plastalloy Pvt. Ltd.
A-2, Badshah Bagh, Maldahiya,
Varanasi-221002.**

... Operational Creditor/ APPLICANT

**R.K.Polytex Pvt. Ltd.
Parasrampur Chamber,
Opp.Raon No.1,
VKI Area, Jaipur-302013**

..Corporate Debtor/RESPONDENT

Coram:

R.VARADHARAJAN,

J.J.Plastalloy Pvt. Ltd. v. R.K.Polytex Pvt. Ltd. CP.No.IB-568/(ND)/2017

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Hon'ble Member (JUDICIAL)

**Counsel for the Petitioners: Mr.Kaustav Saha,
Ms.Arunima Kadia, Ms.Vasudha
Sharma, Advocate**

Counsel for the Respondents : -

Order delivered On: 09.02.2018

ORDER

M/s J.J.Plastalloy Pvt. Ltd. representing that it is a company incorporated under the provisions of Companies Act, 1956 and is engaged in the business of manufacture and supply of inter alia plastic granules and master batches to its customers and in the course of its business had made supplies to R.K.Polytex Pvt. Ltd. a company incorporated under the provisions of Companies Act, 1956 and having its registered office at VKI Area, Jaipur to the extent of Rs.50,29,358/= by virtue of 16 invoices and in relation to the same payments have become due on the dates set out in each of these invoices. It is also represented by the said J.J. Plastalloy Pvt. Ltd. that R.K.Polytex Pvt. Ltd. is engaged in the



manufacture of woven sacks and hence as between the Petitioner company and the Respondent company there is a relationship of Operational Creditor and that of a Corporate Debtor and as payment in relation to Rs.13,45,444/= is due from the Corporate Debtor out of the total sum in relation to the 16 invoices raised commencing from 14.07.2016 and ending on 04.03.2017 aggregating to Rs.50,29,358/= a default had arisen in relation to the invoices on different dates as given in Annexure II(b) to the typed set filed along with the application. Operational Creditor in the application filed in the format prescribed under the provisions of Insolvency and Bankruptcy Code (IBC), 2016 read along with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for brevity hereinafter called as "AAA" Rules, 2016 has stated that the Corporate Debtor has intermittently remitted amounts aggregating to Rs.36,83,914/= to the Operational Creditor as payment due under the invoices thereby leaving a balance of Rs.13,45,444/= and in view of delay, interest amount of Rs.3,52,263/= is also due upto 27th

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November, 2017. Since the payment of the balance amount was pending for long, a statutory demand notice dated 19.08.2017 was issued by the Operational Creditor as required under the provisions of IBC,2016 wherein the amount in default excluding interest in a sum of Rs.13,45,444/= was demanded along with contractual rate of interest at 24% per annum and also calling upon the Corporate Debtor to repay the unpaid Operational Debt in full within 10 days or to demonstrate that the amount claimed as in default has been paid or in the alternative to provide for the existence of any dispute in relation to the unpaid Operational Debt.

2. Perusal of the application as filed by the Operational Creditor also shows that a reply has been received from the Corporate Debtor to the statutory demand notice vide letter dated 28.8.2017 claiming to have been sent by the authorized signatory without disclosing the name. As per the reply sent by the Corporate Debtor, it is represented by the Operational Creditor that a vague dispute has been sought to be raised on the



premise of quality and /or quantity of the supplies effected under the invoices. It is also stated in the application that a rejoinder to the reply has been duly sent by the Operational Creditor vide letter dated 5.9.2017 denying that there is any deficiency in the quality of goods or the quantity supplied and the allegations are baseless and false.

3. In view of non-payment of the amount in default, it is submitted that the present application has been preferred under Section 9 of IBC,2016 read along with attendant rules seeking for the initiation of Corporate insolvency Resolution Process (CIRP) as against the Corporate Debtor. It is represented by Ld. Counsel for the Petitioner that an advance copy of the application has been duly dispatched to the Corporate Debtor prior to filing of this petition on 30.11.2017 and that the tracking report in relation to the service of notice has also been brought to the notice of this Tribunal by virtue of affidavit of service filed vide Diary No.3154 dated 12.12.2017. On 06.12.2017 the Petitioner was directed to take one more notice on the Corporate Debtor at



its registered office as disclosed in the Master Data as maintained by MCA, New Delhi website. In pursuance to the said directions, notice seem to have been taken to the Corporate Debtor at its registered office as is seen from the records of this Tribunal vide Diary No. 3154 dated 18.12.2017. Perusal of tracking report however discloses that the consignment seems to have been unclaimed despite an attempt for delivery was made on 15.12.2017 by India Post. In view of the fact that Section 8 notice under IBC,2016 as well as notice of advance copy of the application had been received by the Corporate Debtor at its registered office, this Tribunal is of the view as expressed vide order dated 25.1.2018 that the subsequent notice issued has been deliberately not received by the Corporate Debtor with a view to avoid the proceedings and in the circumstances the Tribunal was constrained to proceed with the matter in the absence of the Corporate Debtor on 25.01.2018, Ld. representative of the Operational Creditor was heard in detail. Ld. Counsel for Operational Creditor took this Tribunal through the



application as filed by the Operational Creditor by virtue of "AAA" Rules, 2016 and also pointed out to the enclosures filed along with the application. Perusal of the enclosures clearly show that notice under Section 8 in relation to the amount in default had in fact been received by the Corporate Debtor as the same has also been replied to vide reply dated 28.08.2017 enclosed as Annexure-II E at p.No.37-38 of the typed set of documents filed along with the application. The reasons given therefor is to the effect that inferior quality of material was supplied to the Corporate Debtor by the Operational Creditor and that because of which the Corporate Debtor has suffered huge loss. However, it is also stated in the reply that materials were forced on by the Operational Creditor to the Corporate Debtor even though the Corporate Debtor was not in requirement of the materials and in view of the poor quality of material supplied, there is delay in payment and the question of charging interest does not arise at all. However, this reply as sent by the Corporate Debtor seems only to be a moon shine with a view to purely raise a dispute



which is not in existence and cannot be categorized as a pre-existing dispute. There seems to be no plausible dispute based on which the Corporate Debtor could avoid the payment due to the Operational Creditor for the material supplied as well as consumed by the Corporate Debtor, as laid down by the Hon'ble Supreme Court in Mobilox Innovations Private Ltd. vs. Kirusa Software Private Ltd. in Civil Appeal No.9405 of 2017. Further non-appearance before this Tribunal and putting forward reply and contesting this matter also shows that the Corporate Debtor is not in a position to answer to the claim as made by the Operational Creditor in relation to the amount due under the invoices. Since materials have been supplied to the Corporate Debtor by the Operational Creditor for the manufacture of its products and the Operational Creditor falls squarely within the definition of Operational Creditor as contained in Section 5(20) of IBC,2016 and the debt and default of which has been committed also fall within four corners of Operational Debt as defined in Section 5(20) of IBC,2016, and hence in the circumstances this



Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.

4. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Suneel Maggo, No.IBBI/IPA-001/IP-P00715/2017-2018/11262, email:suneelmaggo26@gmail.com Mobile: 9891415989 as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Corporate Debtor and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of



this order. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- (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 the possession of the corporate debtor.

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central



Government in consultation with any financial sector regulator.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

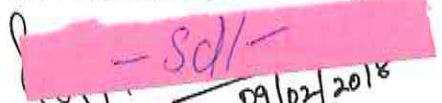
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

5. The Applicant is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of IBC, 2016 to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



6. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC,2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.


09/02/2018
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

U.D.Mehta
09/02/2018