

C.P. (IB) No. 286/KB/2017

M/S Pushkar Impex Pvt. Ltd.

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

Company Petition (IB) No. 286/KB/2017

In the matter of:

Section 9 of the Insolvency and Bankruptcy code

And

In the matter of :

PUSHKAR IMPEX PRIVATE LIMITED

Mohisgote, P.S. Sankrail, P.O. Chaturbhuj Kati,

Howrah, West Bengal-711313.

....Petitioner Company / Operational Creditor

Versus

DIAMOND POLYMERS PRIVATE LTD.

3, Saheed Nityananda Saha Sarani,

2nd Floor, Kolkata, West Bengal-700001.

....Respondent Company / Corporate Debtor

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Judgement/Order delivered on 09th August 2017

CORAM: Ms.manorama Kumari,Member (Judicial)

For the Petitioner/Operational Creditor

Mr. Navneet Misra, Advocate

For the Respondents/Corporate Debtor

Mr.P.K Jhunjhunwala, Advocate

Mr. Samit Rudra, Advocate

An application for initiation of Corporate Insolvency Resolution Process by the Financial Creditor in respect of Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 .

ORDER

Heard the Petitioner/operational creditor as well as respondent/Corporate debtor at length

The petitioner, operational creditor namely, Pushkar Impex Pvt. Ltd. has filed an application Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code 2016 for (hereinafter called as "Code") initiating Insolvency Resolution Process against the respondent Company/ Corporate Debtor Diamond Polymer Private Limited, claiming that the petitioner is an Operational Creditor within the meaning of Section 5 (20) of the Code and the respondent owes operational debt to the petitioner within the meaning of Section 5 (21) of the Code. It has also been claimed that the respondent is a defaulter in making the payment of operational debt and the claim is within the period of limitation and well within the jurisdiction of this Bench.

The Petitioner/Operational Creditor is engaged in the business of various types of PVC goods including PVC soles for Hawaii chappals. He has submitted that at the request of the respondent/Corporate Debtor, the operational creditor sold and delivered the said goods on 24th March 2016 to the corporate Debtor for an aggregate quantity of 1,13,500 kg of the said goods at the agreed rate of Rs. 68.10 per kg and VAT at the rate of 5% advalorem on credit of 90 days and raised 7 commercial tax invoice No.PIPI/15-16/2640 to 46 cum challan upon the corporate Debtor on that very day for an aggregate sum of Rs.81,15,818 vide 'Annexure-B'.

2. It is further submitted that out of the total dues to the tune of Rs. 81,15,818, part payment of Rs.10,19,036.75/- in respect of invoice No PIPL/15-16/2640 was paid. After such adjustment and appropriation balance amount to the tune of Rs.70,96,781.25 remained due and payable by corporate debtor to the operational creditor on or before 22nd June 2016 but the corporate debtor failed to do so, therefore, the operational creditor is entitled to and claim interest @ 12% per annum on the outstanding dues which comes to Rs.8,516,13.72 w.e.f 23rd June 2016 till 23rd April 2017.the commutation of the amount in default is annexed and marked as 'Annexure-J'.

Particulars of the claim

(a)Balance price of goods sold
and delivered by the operational creditor
to the corporate debtor

Rs.70,96,781.25

(b)Interest at the rate of 12%
per annum from 23rd June 2016
upto 23rd april 2017.

Rs.8,516,13.72

Rs.79,48,394.97

3. Operational creditor made several demand upon the corporate debtor at its registered office through special messenger which was duly received by him vide 'Annexure-D' but the coporate Debtor remained silent over the issue.

4. Be that as it may, the operational creditor sent a notice by registered post dated 29th march 2016 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 to the corporate Debtor at its registered office and demanded payment of a sum of Rs.70,96,781.25 and interest thereon @12%per annum w.e.f 23rd June 2016 till the date of payment vide 'Annexure-F'. Despite service of Notice, the corporate Debtor neither made payment of the outstanding sum nor replied to the said notice, bringing on record the existence of dispute, if any, and /or pendency of any suit or arbitration proceedings filed before the receipt of such notice or invoice(s).

The Petitioner / operational creditor has prayed for the following relief(s):

1. To allow and admit the present application in order to initiate the Corporate Insolvency Resolution process against the respondent / corporate debtor i.e. DIAMOND POLYMER (P) LTD., having its address at 3, Saheed Nityananda Saha Sarani, 2nd Floor,Kolkata, West Bengal-700001

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2. To appoint the proposed Interim Resolution professional as the Interim Resolution Professional as per the provisions of section 16 of IBC 2016 to conduct the Corporate Insolvency Resolution Process;

Though the name of the Insolvency Resolution Professional has not been mentioned in the petition, but during the course of argument, he has submitted written communication by proposed Interim Resolution Professionals in Form 2 alongwith a copy of the certificate of registration of IRP.

3. The petitioner has proposed the name of Shri Jitendra Lohia as Interim Resolution Professional whose registration number is mentioned as under:

Name: Mr.Jitendra Lohia

Address: 2, Lal bazar Street,

2nd Floor,Room No.204 & 205

Kolkata 700 001

Registration Number: IBBI/IPA-001/IP-P00170/2017-18/10339

The petitioner has also certified that Shri Jitendra Lohia is fully qualified and permitted to act as Interim Resolution Professional. The proposed IRP, Shri Jitendra Lohia has also given his consent letter in form No.2 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and he has also certified that no disciplinary proceeding is pending against him with the Board of Indian Institute of Insolvency Professional of ICAI, Insolvency Professional Agency as specified in Section 9(5)(i) of IBC Code 2016.

On perusal of the records it reflects that the applicant / operational creditor has delivered demand notice of unpaid operational debt/copy of Invoices on 29th March, 2016 to Corporate Debtor in prescribed manner as specified in Rule 5(2) of Insolvency and

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Bankruptcy Code 2016 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 which is Annexure - F. The demand notice was duly served upon Corporate Debtor on 30.03.2017 vide Track Consignment Report which is at page 27 of the petition. The respondent / corporate debtor is required to reply within 10 days of the receipt of copy of notice but he neither raised any dispute nor he discharged his obligation to repay the operational debt.

Since the reply has not been received from the corporate debtor within the stipulated time, the operational creditor has filed an application before this Tribunal for initiating Corporate Insolvency Regulation Process Under Section 9 (1) with documents as specified in Section 9 (3) of the Insolvency Code.

Operational Creditor has proposed the name of Resolution Professional Mr. Jitendra Lohia to be appointed as Interim Resolution Professional in terms of Section 9(4) of the Insolvency Code.

The applicant operational creditor certified that no disciplinary proceeding is pending against the proposed Resolution Professional under Section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016.

11. Under the facts and circumstances as aforesaid, it is evident that corporate debtor committed default by not making payment of outstanding dues amounting to Rs.79,48,394.97 along with interest to operational creditor, despite receipt of demand notice, which is not disputed.

This Bench admits this Petition u/s.9 of the Code declaring moratorium for the purposes referred to in section 14 of the Code with following directions:

- (i) That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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,

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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 and 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) 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.
- (iii) That 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.
- (iv) That the order of moratorium shall have effect from 10.08.2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.
- (v) That his Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.
- (vi) That this Bench hereby appoints Mr. Jitendra Lohia enrolled with IPA – ICSI Insolvency Professional Agency as Interim Resolution Professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.
- (vii) That this Bench hereby directs the Registry of NCLT, Kolkata to communicate this order to the Petitioner i.e., Operational Creditor and the Corporate debtor.
- (viii) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

Accordingly, this Petition is admitted.

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This order be communicated to the Financial Creditor as well as Corporate Debtor in terms of Section 9 of the Insolvency and Bankruptcy Code, 2016.

List on 11/9/2017 for submission of progress report by the Interim Resolution Professional.

(MANORAMA KUMARI)
Member (Judicial)