

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

T.C.P. No. 269/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of
Leuchtstoffwerk (India) Pvt. Ltd.
....Applicant

v/s.

Saphire Life Sciences Pvt. Ltd.
....Respondent

Order delivered on 09.01.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Laxmi Maria Jenkins, Adv. a/w
Devanshi K. Sanghvi, Adv.

For the Respondent: None.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral Order dictated in the open court on 03.01.2018

It is a Company Petition filed u/s 9 of Insolvency and Bankruptcy Code against the Corporate Debtor for having the Corporate Debtor failed to make payment of ₹6,77,147 for the goods supplied to the Corporate Debtor on the invoices raised by the Petitioner towards the goods supplied by it. In pursuance thereof, the Petitioner filed this Petition u/s 9 of IBC to initiate the Insolvency Resolution Process against this Corporate Debtor.

The facts of the case are as follows:

2. The Corporate Debtor issued Purchase Orders dated 03.02.2014, 07.03.2014, 08.05.2014, 30.07.2014, 08.09.2014 and

08.11.2014 for supply of Colloidal Silicon Dioxide. In pursuance thereof, the Petitioner supplied the chemicals aforementioned by raising invoices dated 17.05.2014, 10.09.2014, 12.11.2014 and 23.12.2014 for an amount aggregating to ₹11,77,147, out of which, the Corporate Debtor having already paid ₹5,00,000 (on 10.06.2014 ₹1,00,000, on 22.10.2014 ₹3,00,000 and on 11.02.2015 ₹1,00,000), the same has been adjusted against invoices dated 25.02.2014, 18.03.2014 and partly adjusted against invoice dated 17.05.2014. As to remaining outstanding balance, the Corporate Debtor having failed to pay the same despite the debtor has been put on reminders on several times, the Petitioner gave notice u/s 433, 434 of the Companies Act, 1956 on 14.08.2015, for which also there being no response denying the claim made by the Petitioner except sending an e-mail dated 13.11.2015 saying that the Corporate Debtor would make payment in the same month i.e. November 2015, the petitioner remained rest assured hoping payment would be made by the corporate debtor, but no payment was made. Then again, the petitioner got issued another notice to the corporate debtor on 18.02.2016 under new Companies Act 2013.

3. For no payment has come as stated by the Corporate Debtor, this Petitioner finally filed Company Petition u/s 433, 434 & 439 of the Companies Act, 1956 making a claim of ₹6,77,147 along with interest @24% aggregating to ₹7,99,666 as on 05.07.2016.

4. Soon after this Petition was filed before the Hon'ble High Court of Bombay, for there being jurisdictional transfer to the winding up petitions pending before Hon'ble High Court of Bombay to NCLT,

Mumbai, this Petition has come before this Bench for dealing with this case u/s 9 of IBC. Owing to this jurisdictional transfer, this Petitioner filed Form-5 prescribed under Adjudicating Authority Rules within the time stipulated by Central Government of India. Soon after this Petition has been taken up u/s 9 of IBC, this Petitioner issued notice to the Corporate Debtor by serving copy of the form as well as date of hearing, since the Corporate Debtor till date not appeared before this Bench, today this matter has been heard and disposed of as follows:

5. On perusal of this Company Petition, we have ascertained that this Petitioner filed proof in respect of Purchase Order made by the Corporate Debtor upon the Petitioner and also the invoices raised by the Petitioner upon the Corporate Debtor evidencing supply of chemicals to the Corporate Debtor on the respective dates and also reminder letters and statutory notice upon the Corporate Debtor to prove that debt and default are in existence as on date of filing this Company Petition. The creditor has also filed all the correspondence in between the Petitioner and the Corporate Debtor to prove that no dispute is in existence in between the Petitioner and Corporate Debtor having regard to the quality and quantum of the money claimed by the Petitioner. The petitioner has filed statement of accounts as well as bank certificate reflecting that the claim amount has not been paid by the Corporate Debtor to the Petitioner. As to the affidavit envisaged u/s 9 is concerned, since this Petition was filed before Insolvency and Bankruptcy Code come into existence, the requisite for filing an affidavit in this case will not arise. However,

the Petitioner has filed an affidavit on 18.09.2017 disclosing that the Corporate Debtor acknowledged the existence of debt in the e-mail sent on 13.11.2015. Therefore, we are of the view that the Petitioner has furnished all the material proof to believe that debt and default is in existence and no dispute has been raised by the Corporate Debtor in respect to the claim made by the Petitioner henceforth, this Company Petition is hereby **admitted** u/s section 9 of the Insolvency and Bankruptcy Code, declaring Moratorium with directions as follows:

- i) That this Bench hereby prohibits 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; 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, 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; 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) of Section 14 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 09.01.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

6. This Bench makes a reference to the Insolvency and Bankruptcy Board of India (IBBI) for the recommendation of Insolvency Professional for appointment as Interim Resolution Professional.

7. The Registry is directed to forward a copy of this order to IBBI and post this matter after receipt of reply from IBBI for the appointment of IRP.

8. The Registry is hereby directed to communicate this order to both the parties.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)