

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IBA/52/KOB/2019

(Under Section 9(6) of the IBC r/2 Rule 6 of IB(A&AA) Rules, 2016)

Order delivered on: 14.02.2020

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of:

M/s Prayag Polytech Private Limited,
Registered Office: C-587, A-585, A-585(B), A-585(C)
Phase I, RIICO Industrial Area,
Bhiwadi, Alwar, Rajasthan-301019.

..Applicant/Operational Creditor

Versus

M/s Propyl Packaging Limited,
Unit-3, Plot No.30&31, Kinfra Park,
Nalukettu Road, Koratty,
Thrissur-Kerala-680308.

.... Respondent/Corporate Debtor.

Parties present:

For Operational Creditor

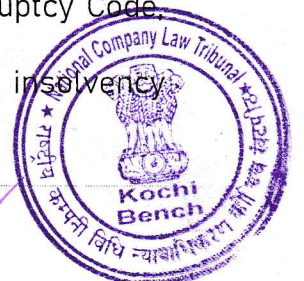
.. Mr.Pranoy Harilal, Advocate

For Corporate Debtor

.....

Mr. Madhu N Namboothiripad, Advocate

1. This application has been filed by M/s Prayag Polytech Private Limited, C-587, A-585, A-585(B), A-585(C), Phase-I, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan - 301 019, having CIN No: U28994RJ1982PTC012328 (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating insolvency

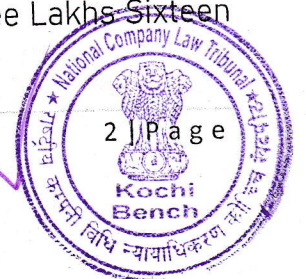


resolution process against M/s Propyl Packaging Limited, which was incorporated on 26.07.1996 having CIN No: U25202KL1996PLC010585 (hereinafter referred to as 'Corporate Debtor'/ 'Company'). The registered Office of the Corporate Debtor is at Unit-3, Plot-30 & 31, Kinfra Park, Nalukettu Road, Koratty, Thrissur, Kerala – 680 308, and the matter falls within the territorial jurisdiction of this Tribunal.

2. The Operational Creditor has filed application in Form No. 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules) furnishing necessary particulars. In the requisite Form, under the head "Particulars of Operational Debt" the total amount of Debt is stated to be ₹8,18,514/- (Rupees Eight Lakhs Eighteen Thousand Five Hundred and Fourteen Only) plus interest @ 24% per annum till the date of actual realization.

Submissions by the Operational Creditor:

3. The learned counsel for the Operational Creditor submitted that the Operational Creditor is a private limited company under the provisions of the Companies Act, 1956 and engaged in the business of supply of masterbatches since 1996. Masterbatches is an additive for plastic used for colouring.
4. The learned counsel for the Operational Creditor further submitted that, in the year 2018, the Operation Creditor supplied the masterbatches to the Corporate Debtor to the tune of ₹11,35,309/- (Rupees Eleven Lakhs Thirty- Five Thousand Three Hundred and Nine Only), for which the Operational Creditor had raised invoices accordingly.
5. The operational creditor further stated that out of the total amount of ₹11,35,309/- (Rupees Eleven Lakhs Thirty-Five Thousand Three Hundred and Nine Only), the Operational Creditor had received a sum of ₹3,16,795/- (Rupees Three Lakhs Sixteen



Thousand Seven Hundred and Ninety- Five Only) and balance of ₹8,18,514/- (Rupees Eight Lakhs Eighteen Thousand Five Hundred and Fourteen Only) still stands due and payable by the Corporate Debtor. The last payment to the tune of ₹1,30,000/- (Rupees One Lakh Thirty Thousand Only) was received on 24. 05. 2018.

6. The Operational Creditor further submitted that for the amount of ₹9,61,155/- (Rupees Nine Lakhs Sixty-One Thousand One Hundred and Fifty-Five Only) the Operational Creditor sent a demand notice dated 25.03.2019 by speed post to the registered address of the Corporate Debtor, the said demand notice was not delivered at the registered address of the company and was returned with the observation "closed and left". Since the demand notice was not delivered at the registered address of the Corporate Debtor, as a matter of abundant caution, one more demand notice dated 15. 04. 2019 was issued by speed post including therein the residential addresses of two directors of the Corporate Debtor. But it was delivered to one of the director's residential address at Mumbai on 20.04.2019. The demand notice was also sent under cover of email dated 26.03.2019 at the email address in the master data of the Corporate Debtor as reflected on the website of Ministry of Corporate Affairs is annexed with the application.
7. The counsel for the Operational Creditor stated that the Corporate Debtor responded to the Demand Notice vide letter dated 14.05.2019 beyond the statutory prescribed period of 10 days, raising a false and frivolous quality issue. The fact that the purported issue relating to the quality of the goods provided by the Operational Creditor is an afterthought to avoid payments due to the Operational Creditor becomes amply clear from the fact that the Corporate Debtor, since the receipt of the



goods way back in 2018, had previously never raised such an issue. An affidavit in compliance with Section 9(3)(b) of the Code, is annexed with the application

8. The counsel for the Operational Creditor further stated that till date the Corporate Debtor has not paid ₹9,61,155/- (Rupees Nine Lakhs Sixty-One Thousand One Hundred and Fifty- Five Only),) being aggregate of the total amount of ₹8,18,514/- (Rupees Eight Lakhs Eighteen Thousand Five Hundred and Fourteen Only) and interest thereon at the rate of 24% per annum as on 28. 02 2019. It is further stated that the outstanding debt in relation to the goods/ material supplied to the Corporate Debtor, duly falls under the definition of Operational Debt as defined under Section 5(21) of the Code and, accordingly, the applicant being the Operational Creditor is eligible to file the present application under Section 9 of the Code, 2016.
9. Under these circumstances, amount claimed to be in default is Rs.10,76,332/- (Rupees Ten Lakhs Seventy Six Thousand Three Hundred and Thirty Two Only) being aggregate of the total amount of ₹8,18,514/- (Rupees Eight Lakhs Eighteen Thousand Five Hundred and Fourteen Only), and interest thereon at the rate of 24% per annum as on 30.09.2019 is due from the Corporate Debtor and the Corporate Debtor is unable to pay its debt. Therefore, the present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 9 of Insolvency and Bankruptcy Code, 2016.

Submissions by the Corporate Debtor:

10. The learned counsel for the Corporate Debtor submitted that the amounts alleged to be due are with respect to the invoices raised by the Operational Creditor, on supply of materials by them, which were of inferior quality. The Masterbatches supplied by the Operational Creditor herein, with respect to which the disputed claim is based on



were defective as the films manufactured using them had fisheyes on it and as such when those films are used for packaging edible oils etc, heavy leakage of oil was observed. This is resulted in rejection of the products by the Corporate Debtor's customers. Moreover, this poor material had to be flushed out causing huge damage in the factory of the Corporate Debtor.

11. The learned counsel for the Corporate Debtor stated that the issues were being informed to the Operational Creditor, from time to time. It is further submitted that this matter was specifically informed to the Operational Creditor, and had raised a dispute as well. Hence, the demand for the amounts allegedly due in respect of the invoices raised on the supply of defective materials is a matter to be adjudicated upon by this bench.
12. The alleged balance claimed to be due to the applicant is exorbitant and the interest demanded is excessive and unreasonable. Unilateral demand made by the Operational Creditor is not binding on the Corporate Debtor. Therefore, the application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 is only liable to be dismissed with costs.

Findings:

13. We have heard learned counsel for both the parties and perused the whole case records including documents and photocopies appended with the case records.
14. We have gone through the evidences on record. The Operational Creditor has established that he had supplied and delivered the Masterbatches to the Corporate Debtor for which an amount of ₹11,35,309/- (Rupees Eleven Lakhs Thirty-Five Thousand Three Hundred and Nine Only, the Operational Creditor had received a sum of ₹3,16,795/- (Rupees Three Lakhs Sixteen Thousand Seven Hundred and Ninety-Five

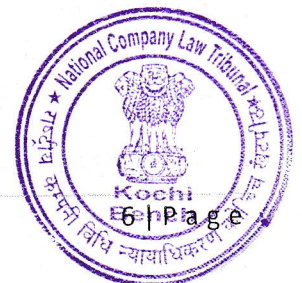


Only) and the balance of ₹8,18,514/- (Rupees Eight Lakhs Eighteen Thousand Five Hundred and Fourteen Only) is due and a default of non-payment had occurred. The claim of the Corporate Debtor that the materials supplied are of inferior quality and could not be used by Corporate Debtor was not supported by any documentary evidence. The Corporate Debtor was not able to produce any evidence to show that there is a "pre-existing dispute" in the instant case. Considering these facts and circumstances, in our opinion the nature of the Debt is an 'Operational Debt' as defined under Section 5 (21) of the Definitions under the Code. There is a "Default" as defined under Section 3 (12) of the Code on the part of the Corporate Debtor.

15. The Operational Creditor has not proposed the name of any resolution professional to be appointed as Interim Resolution Professional.
16. The application made by the Operational Creditor is complete in all respects as required by law, and it clearly shows that the operational debt has not been paid by the Corporate Debtor.

ORDER

17. In the given facts and circumstances, we are of the view that the present application is complete and the Operational Creditor is entitled to claim its dues, which remain unpaid by the Corporate Debtor. In the light of above facts and records the present application is to be admitted for initiation of CIRP.
18. As a consequence, the Application No. IBA/52/KOB/2019 is admitted in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following,



- 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 off 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.
19. It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.
- a) The order of moratorium shall have effect from the date of this order 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.

b) That the public pronouncement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

20. This Bench hereby appoints Mr.George Varkey having registration No.IBBI/IPA-001/IP-P00433/2017-18/10756 (Email geovaktm@gmail.com (address-Building No. 110, Ground Floor, Surabhi Nagar, Kakkanad, Kochi - 682030 Kerala) who is in the empanelled list of Insolvency Professionals notified by IBBI valid from 1. 01. 2020 to 30. 06. 2020 as Interim Resolution Professional to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/ Directions issued in this regard. The proposed IRP is directed to submit his consent along with copy of AFA issued to him in the prescribed format within 2 days from the date of receipt of this order.
21. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional to meet out the initial expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.



22. The registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 14th day of February, 2020.

Sd/-
(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

True Copy.

Certified to be True Copy-
[Signature]
Deputy Registrar 17/02/2020
National Company Law Tribunal
Kochi Bench

No.IBA/53/KOB/2019/.....184

Date: 17/2/2020

To

1. M/s Menon & Pai, Advocates, I.S.Press Road, Cochin-682018 (**Counsel for the applicant/OC**)
2. Mr.Madhu N. Namboodiripad, 31/34, C, Ambelipadam Road, Vytilla, Kochi-682019. (**Counsel for the respondent/CD**)
3. ✓ Mr,George Varkey, Building No.110, Ground Floor, Surabhi Nagar, Kakkanad, Kochi-682030,Kerala. (**Interim Resolution Professional**).

