

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 10/KB/2024**

***An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.***

**IN THE MATTER OF:**

**M/s. Shivani Petrochem**

**... Applicant/ Operational Creditor.**

***Versus***

**M/s. Narayani Sons India Private Limited**

**... Respondent/ Corporate Debtor.**

**Date of Pronouncement: June 05, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

**For Applicant: Mr. Amir Bavani, Adv.**

**For Respondent: Mr. Raj Singhania, FCA.**

**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***

- 1.** This Court congregated through a hybrid mode.
- 2.** Heard the Learned Counsels for both parties.
- 3.** The instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" by the **M/s. Shivani Petrochem**, hereinafter referred to as the **"Applicant"/ "Operational Creditor"** against **M/s. Narayani Sons India Private Limited**, hereinafter referred to as **"Respondent" /**

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**“Corporate Debtor”** seeking direction from this Adjudicating Authority to initiate the Corporate Insolvency Resolution Process, (for brevity “CIRP”) in respect of the Corporate Debtor.

4. The total amount claimed to be in debt is **Rs. 3,76,67,746/-** as on **20.11.2023** which is due and payable by the Corporate Debtor.

***Factual Matrix:***

5. The Operational Creditor had supplied certain goods i.e., inter alia Mixed Hydrocarbon Oil and Avyol WT12 to the Corporate Debtor.
6. Pursuant to such supply from the side of the Applicant, eighteen invoices were raised by the Applicant amounting to Rs. 5,93,19,554/-.
7. That the Corporate Debtor has made part-payment of Rs. 2,35,66,552/- till 20.10.2023.
8. That a balance principal amount of Rs. 3,57,05,758/- and an interest amount of Rs. 44,61,988/- calculated @18% p.a., totalling to an amount of Rs. 4,01,67,746/- remains due and payable as on 23.10.2023.
9. That the Corporate Debtor has failed to repay the due amount that arose through the invoices for the goods so supplied by the Applicant.

**10. Submissions made by the Applicant:**

**10.1.** The Learned for the applicant would submit that the outstanding dues have been brought to the notice of the Corporate Debtor several times by the Applicant, however, the

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Corporate Debtor has never disputed the quality and/or quality of the material so supplied.

**10.2.** Further, the Learned Counsel would submit that the Corporate Debtor sent a confirmation of the outstanding balance payable to the Operational Creditor which depicted an outstanding liability of Rs. 2,14,91,705/-.

**10.3.** That, on 03.10.2023 the Corporate Debtor sent yet another confirmation of outstanding balance to the Operational Creditor depicting a sum of Rs. 4,32,05,758/- on 08.09.2023 as the total outstanding payable by the Corporate Debtor to the Operational Creditor herein.

**10.4.** It is asserted that the Operational Creditor issued a Demand Notice under Section 8 of the Code on 26.10.2023 which was duly delivered to the Corporate Debtor.

**10.5.** Further, it is submitted that pursuant to the issuance of Demand Notice dated 25.10.2023 under section 8 of the Code, the Corporate Debtor has made further part-payment of Rs. 25,00,000/- on 20.11.2023 which strengthens the factum of outstanding liability on part of the Corporate Debtor towards the Operational Creditor.

**10.6.** It is contended that post the part-payment, the Corporate Debtor finally owes an amount of Rs. 3,76,67,746/- on 20.11.2023 which is due and payable by the Corporate Debtor.

**11.** We have noted that on 18.01.2024, we directed to issue notice to the Corporate Debtor by way of speed post and by email and place the

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tracking information on record. The notice was issued on 25.01.2024 and duly delivered on 03.02.2024 through speed post and on 25.01.2024 through email.

- 12.** We have recorded that, on 27.02.2024, the authorised representative for the Corporate Debtor appeared and sought time to file a Reply Affidavit which was granted to file the same within a week.
- 13.** Further, on 10.04.2024, the authorised representative of the Corporate Debtor submitted that talks of settlements are going on. However, the Learned Counsel for the Operational Creditor submitted that he does not have instructions in this regard. We directed the Respondent to place either the Report of Settlement or the Reply Affidavit on the next occasion.
- 14.** On the next occasion, i.e., on 21.05.2024, we have noted that neither any settlement report nor any reply has been filed. Hence, we proceed to consider the matter on the face of its merits.

***Analysis and Findings:***

- 15.** In terms of Section 8 of the Code, once the Operational Creditor delivers the demand notice for the unpaid operational debt, the Corporate Debtor shall bring to the notice of the Operational Creditor any payment of the unpaid operational debt in terms of Section 8(2)(b) or existence of a dispute between the parties as per Section 8(2)(a) within a period of 10 days of the receipt of notice or copy of the invoice.

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- 16.** The dictum laid down in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** has also been followed by Hon'ble NCLAT in a catena of judgments wherein it is clearly held that the existence of the dispute must be pre-existing i.e., it must exist before the receipt of the demand notice or invoice. In the absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice, the application cannot be rejected under section 9 and is required to be admitted.
- 17.** In the present case, we have noted that the Corporate Debtor has neither given the reply to the Section 8 Demand notice nor filed any Reply Affidavit to this Section 9 Application. However, it was brought to our notice that after the issuance of the Section 8 Demand Notice, the Corporate Debtor has made a part-payment of Rs. 25 Lakh and after filing this application, another part payment of Rs. 90 Lakh has been made. We find that after considering the part payment made by the Corporate Debtor, the amount claimed to be in default is in excess of the prescribed financial threshold limit as per Section 4 of the Code.
- 18.** It is trite, axiomatic and settled law that if it comes to the notice of the Adjudicating Authority that the 'operational debt' exceeds the threshold financial limit and the application reflects that the "debt" is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed prior to the receipt of the demand notice of the unpaid 'operational debt', the application under Section 9 cannot be rejected and is required to be admitted.

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***(Ahluwalia Contracts (India) Limited v. Raheja Developers Limited* reported at **2019 SCC OnLine NCLAT 942**)**

19. Further, in ***Innoventive Industries Ltd. v. ICICI Bank*** reported in **(2018) 1 SCC 407**, the Hon'ble Apex Court while explaining the provisions of Sections 7 or 9 of the I&B Code observed and held:

*“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. **For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).** The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.*

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*29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), **the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor.** The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”*

**(Emphasis added)**

- 20.** Further, it is evident that the Corporate Debtor sent a confirmation of the outstanding balance payable to the Operational Creditor which depicted an outstanding liability of Rs. 2,14,91,705/- on 31.03.2023 and 08.09.2023, **annexed A6 (Colly)** at pages 91-92 and 93-94 respectively to the Application.
- 21.** Having regard to the conspectus of facts of the present case and the judgements cited (supra), we are of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant, which has also been acknowledged by the Respondent and thus, the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied.
- 22.** In the light of the enumerations supra, the application bearing **C.P. (IB) No. 10/KB/2024**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under

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**Section 9 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **Shivani Petrochem (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Narayani Sons India Pvt. Ltd. (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
  - 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 asset 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 (54 of 2002);*

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**d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

*[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has not proposed any name as the “IRP”. Hence, we appoint **Mr. Anand Kumar Jain**, Registration No. IBBI/IPA-001/IP-P-02819/2023-2024/14323, Email ID: [akj0608@gmail.com](mailto:akj0608@gmail.com) as the **Interim Resolution Professional (“IRP”)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the

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RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby

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directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.

- x.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Operational Creditor shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), to whom the companies are registered with by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a

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compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
  - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
  - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 23.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
- 24.** Post the matter on **18/07/2024** for filing the Periodical Progress Report by the IRP/RP.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 05<sup>th</sup> Day of June, 2024.**

Tiwari, V. [LRA]/ Bose, R. K. [LRA]