

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

CP(IB) No.2092 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Gokul Fuelchem Private Limited

...Operational Creditor/ Applicant

v/s

Calchem Industries (India) Limited

...Corporate Debtor/Respondent

Order Dated 25th September 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh

Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Aneesa Cheema

For the Respondent: Adv. Hemanshu Tandel

Per Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being CP 2092/2018 filed by **Gokul Fuelchem Private Limited** Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Calchem Industries (India) Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming a default of ₹19,19,166/- (Rupees Nineteen Lakh Nineteen Thousand One Hundred and Sixty Six Only) including interest at 24% p.a for repayment of the amounts due on account of supply of Indonesian Coal by the Applicant.
2. Mr Nikhil Killa files this application, Director of the Operational Creditor, authorized by Board Resolution dated 13.04.2018. Copy of the Board Resolution dated 13.04.2018 is annexed to the Application.
3. The Operational Creditor supplied Indonesian Coal for the period 15.11.2016 to 10.06.2017 based on the purchase orders dated 10.11.2016, 13.12.2016 and 05.06.2017. Several invoices

amounting to a sum of ₹16,92,659/- were raised from 15.11.2016 to 10.06.2017. Copies of the purchase orders and the invoices are annexed to the Application.

4. The Corporate Debtor defaulted in making payments, although there was a credit period of 90 days from the date of invoices. The Corporate Debtor defaulted in making payments on 15.02.2017 on the invoice dated 15.11.2016 and thereafter defaulted in making payment on every invoice raised.
5. The Corporate Debtor has acknowledged that the default and admitted to its liability to repay a sum of ₹16,92,659/- (Rupees Sixteen Lakh Ninety Two Thousand Six Hundred and Fifty Nine Only) as on 30.09.2017 vide its Balance confirmation Letter dated 09.10.2017. Copy of the Balance Confirmation Letter is annexed to the Application.
6. The Applicant has annexed its Statement of Bank Account for the period from 01.10.2016 till 31.05.2018 to show that the Applicant has not received the due amounts in the said period.
7. The Applicant had issued Demand Notice dated 02.04.2018 and the same has been duly served on the Corporate Debtor on 03.04.2018. Copy of the Demand Notice with proof of delivery is annexed to the Application.
8. The Applicant has filed an affidavit in compliance of section 9(3)(b) dated 08.06.2018 of the I & B Code, 2016 stating that the Corporate Debtor has failed to raise any dispute by the provisions of the Code. Copy of the said affidavit is annexed to the Application.
9. We have heard the parties and perused the record.
10. On perusal of the purchase orders raised by the Corporate Debtor, invoices raised by the Applicant and the Balance Confirmation Letter issued by the Corporate Debtor, the existence of operational debt and its default has been established. Further, the Balance Confirmation Letter dated 09.10.2017 establishes that the Corporate Debtor has admitted its liability to make a payment of ₹16,92,659/- (Rupees Sixteen Lakh Ninety Two Thousand Six Hundred and Fifty Nine Only) as on 30.09.2017. Admittedly it is a default above Rupees One Lakh.

11. The Corporate Debtor, despite service of demand notice U/S 8 of IBC, has failed to pay or raise a dispute in respect of the goods supplied by the operational creditor. The application has been filed well within limitation. The application is complete and deserves to be admitted.
12. The Applicant has proposed the name of **Mr Ritesh Prakash Adatiya**, a registered insolvency resolution professional bearing Registration No. **[IBBI/IPA-001/IP-P01334/2018-19/12013]** to act as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.
13. The Application under section Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees one lakh against the corporate debt and its default is also proved. Accordingly, the petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, filed by **Gokul Fuelchem Private Limited**, against **Calchem Industries (India) Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity 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 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 the moratorium period.
 - III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
 - V. That the public announcement under section 13 of the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
 - VI. That this Bench at this moment appoints **Mr Ritesh Prakash Adatiya**, a registered insolvency professional having Registration Number **[IBBI/IPA-001/IP-P01334/2018-19/12013]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor, and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted immediately.**

Sd/
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

25th September 2019