



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
C.P. (IB)/122(AHM)2024

Order under Section 9 IBC

IN THE MATTER OF:

Valiant Organics Limited

V/s

Nilkanth Organics Private Limited

.....Applicant

.....Respondent

Order delivered on: 29/07/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-SD-

CHITRA HANKARE
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 122 of 2024

(Filed under Section 9 of the IBC, 2016 r.w Rule 6 of the
Insolvency and Bankruptcy (Application to AA) Rules, 2016)

IN THE MATTER OF:

M/s. Valiant Organics Limited
Having address at
109, Udyog Kshetra, 1st Floor,
Mulund Goregaon Link Road,
Mulund West,
Mumbai-400080

... Applicant

V/s

M/s. Nilkanth Organics Pvt. Ltd.
Having registered office at
Plot No.158/1, GIDC Estate,
Ankleshwar,
Gujarat-393002

.. Respondent

Order pronounced on 29.07.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)
MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Arjun Sheth, Adv. a.w Mr. Rajiv
Chawla, Adv.
For the Respondent : Mr. Bhaumik R Dholaria, Adv.



JUDGEMENT

1. Under consideration, is an application filed by the Operational Creditor viz. M/s. Valiant Organics Limited under Section 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. M/S. Nilkanth Organics Pvt. Ltd. seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.
2. In Part II of the application it is stated that the corporate debtor was incorporated on 12.04.1990 with the Authorised Capital of Rs.11,00,00,000/- (Rupees Eleven Crores only) and the paid up capital of Rs.4,84,58,610/- (Rupees Four Crores Eighty Four Lakhs Fifty Eight Thousands Six Hundred and Ten only). In Part III of the Application the Operational Creditor does not proposed the name of Interim Resolution Professional and it is left discretion of Tribunal.. In Part IV of the application the default amount is stated to be 1,50,76,914/- as on 15.02.2024. In Part-IV, it is mentioned that respective date of default are set out in the table of computation which is mentioned as 90 days from



the date of issue of the invoice stated to be due on the dates 13.07.2022, 28.07.2022 and 11.08.2022.

3. The applicant submitted that it is engaged in the business of manufacturing, marketing, distribution and sale speciality chemicals and has been supplying goods to the Corporate Debtor. As per the purchase orders dated 14.03.2022 and 15.04.2022, they have supplied goods to Corporate Debtor. After receiving the goods, operational creditor raised invoices but those were remained unpaid. No complaint regarding goods were raised within 7 days as per terms and conditions of the invoices. Due to non-payment, Operational Creditor issued notice dated 13.10.2023 which was replied by Corporate Debtor and Operational Creditor send rejoinder to it.
4. It is further stated that Corporate Debtor filed pre-institution mediation bearing Case No.198 of 2023 before District Legal Service Authority, District Court, Bharuch under section 12A of Chapter IIIA of Commercial Courts Act, 2015. Further, an advance copy of the plaint likely to be filed by the corporate debtor before Hon'ble Commercial



Court, Bharuch was handed over by the mediator to the Operational Creditor during the mediation proceedings.

5. The operational creditor issued demand notices under Form 3 and Form 4 dated 30.01.2024 which was replied by the corporate debtor on 08.02.2024. The operational creditor vide rejoinder letter dated 15.02.2024 dealt with the said reply of the operational creditor. As the corporate debtor failed to make the payments of the said invoices, applicant filed the present application.
6. Corporate Debtor denied all the allegations and contended that there is pre-existing dispute between the parties. It is submitted that the first notice of dispute was issued by them on 10.11.2023 and instituted commercial suit with pre-institution medication process. Thereafter Demand Notice was issued on 30.01.2024 by the Operational Creditor. As per mandatory provisions, commercial suit was referred to DLSA for mediation. Notice was issued to participate in mediation to Operational Creditor on 12.01.2024. However, mediation failed and commercial suit No.8 of 2024 was registered. Immediately on the next date of reply, applicant filed this application with ulterior motive.



7. The respondent further submitted that raw-materials previously supplied by the applicant from 01.10.2021 to 25.03.2022 were of inferior and poor quality. Therefore, finished goods prepared from the goods supplied by the applicant were rejected by the other company. As per instructions of respondent, further delivery of purchase orders stopped. It is submitted that respondent suffered loss of Rs.1,95,69,948/-. Respondent stated that as there is dispute between the parties, respondent has not paid the amount of subject invoices as they claim set off of said amount. It is submitted that the applicant is liable to pay amount of Rs.77,54,208/- with interest to the respondent as claimed in commercial suit and the dispute is pending before Commercial Court at Bharuch. Respondent submitted that there was no agreement between the parties for payment of interest. The respondent further submitted that application is defective as applicant has failed to produce record of default registered with Information Utility. The applicant wrongly clubbed different invoices together having different cause of action.



8. The respondent further submitted that it cannot be declared as insolvent as having share capital of 11 crores and paid up share capital is more than 4 crores and also have commercial orders for Rs. 25 crores. Respondent submitted that it also contributes considerably to the public exchequer and gives employment to number of persons. If any CIRP is initiated, it will go to the prejudice and irreparable harm to the respondent, hence, prayed for rejection of the applicant.
9. Heard Learned Counsel for the applicant and respondent and also perused the records.
10. Our Observations are as follows:
 - a) The main contention raised by the respondent was that applicant had supplied inferior quality which was rejected and returned by their overseas buyer. Due to losses incurred the respondent sought to amicably resolve the issue and were still open for a settlement. The applicant replied to this letter on 12 January 2024 denying the allegations of inferior quality as the respondent had also manufactured its product using other raw materials and they were not responsible for any non-receipt of payment from their clients from



abroad and they had duly fulfilled their obligations under the supply terms and conditions. The applicant also issued a notice in Form 3 seeking payment on the unpaid invoices, which was replied on 8 February 2024 by the respondent stating the same reasons. The applicant issued a letter under Form 3 and Form 4 again on 15 Feb 2024 with detailed reply which questioned the stand of the respondent who failed to intimate any inferior quality in goods within 7 days, which expired on 21.4.2022, 6.5.2022 and 19.5.2022 respectively and no dispute was raised then. He also stated that the Operational Creditor is not concerned with the finished products made by corporate debtor and sold onwards to its customers. The applicant also stated that pre-institution mediation raised has no concern with the invoices which are the subject matter of the insolvency notice.

- b) It is evident from the documents that the commercial transactions have taken place on firm purchase orders dated 14.3.2022 and 15.4.2022 and respective invoices clearly defined the period within which dispute or



defects are to be conveyed. The respondent at later stage cannot contend that the quality of goods were defective, when he had processed with other material and converted them into finished goods and supplied to his customers. A loss on account of such end product not derive fully out of the supply cannot be a reason for non-payment of debt.

11. In our view the application is complete in terms of Section 9 of the Code as the Applicant/Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the IBC, 2016 for initiation of CIRP against the Respondent/Corporate Debtor deserves to be admitted.

12. Hence we pass the following order:

ORDER

- I. The CP(IB) 122 of 2024 is allowed.



- II. The Respondent/Corporate Debtor M/s. Nilkanth Organics Pvt. Ltd. is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- III. The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- IV. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- V. As the Applicant/Operational Creditor has not suggested the name of the IRP in the application, we hereby appoint Mr. Samir Ganeshbhai Marathe, Registered Insolvency Professional having registration number as IBBI/IPA-001/IP-P00830/2017-2018/11415 from our panel list, under section 13



(1)(c) of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the IBC, 2016 r.w. Regulations made thereunder.

- VI. The IRP so appointed shall make a public announcement of the initiation of CIRP and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- VII. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



- VIII. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- X. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- XI. We direct the Operational Creditor to pay IRP a sum of Rs.2,00,000/- (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.



XII. The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

XIII. The commencement of the CIRP shall be effective from the date of this order.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

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