

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 1975/MB/2018

Under Section 8 & 9 of the IBC,
2016

In the matter of

The State Trading Corporation of
India

(A Govt. of India Enterprise), Unit
No. 1, 2, & 3, A Wing, Classic
Centre Premises Co-operative
Society Ltd., 26, Mahal Industrial
Estate, Off. Mahakali Caves Road,
Paper Box Road, Andheri (east),
Mumbai- 400093

.... Petitioner

v/s.

Ganesh Benzoplast Limited

Dina Building, 1st Floor, M. K. Road,
Marine Lines (east), Mumbai-
400002

.... Corporate Debtor

Order Delivered on: 13.02.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Balagopal, Adv. Pradeep Sancheti, Adv. Pulkit
Sharma, Adv. Aniruddha Lad, Adv. Pallavi Kamath
For the Corporate Debtor: Adv. Ami Jain, Mr. S. R. Jariwala, C.A., Mr.
Amar Kabra, C.A.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by The State Trading Corporation of India (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Ganesh

Benzoplast Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹24,26,44,490/- along with applicable interest, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. On 20.03.2018, the Petitioner issued demand notice under Section 8 of the Code demanding a sum of ₹24,26,44,490/- to the Corporate Debtor and the details of which are given below:
 - a) ₹17,00,05,876/- along with interest at the rate of 14.35% p.a. on the alleged principal sum of ₹9,45,98,545/- in respect of foreign transactions;
 - b) ₹3,68,62,534/- along with interest at the rate of 12.85% p.a. on the principal amount of ₹2,47,16,179/- in respect of domestic transactions; and
 - c) ₹3,57,76,080.01/- along with interest at the rate of 15.80% pro-rata charges on the total invoice amount of ₹5,78,66,313.87/- towards non-submission of 'C' Forms against domestic trade from the date of the default if non-submission till payment and/ or realization thereof.
3. Since no payment was forthcoming, the Petitioner filed this Petition under Section 9 of the Code.
4. The Corporate Debtor filed reply to the Petition, inter alia among other things, denied liability and the following were the contentions of the Corporate Debtor:
 - a. The Corporate Debtor does not owe any debt to the Petitioner and in fact the Petitioner is liable to pay to the Corporate Debtor.
 - b. The debt is barred by limitation.
 - c. Without prejudice to the above contentions, it is submitted that the Corporate Debtor was declared as a sick industrial company by the erstwhile Board for Industrial and Financial

Reconstruction under the provisions of Sick Industrial Companies Act, 1985 in Case No. 42 of 2009 and a revival scheme was approved by the BIFR on 18.04.2013. In terms of the scheme, the Petitioner was shown under the head list of contingent liabilities. Since, these liabilities are contingent liabilities and the same is disputed, there is nothing due and payable to the Petitioner and hence, there is no question of default.

- d. Even if any amount is payable on crystallization of liability, the same shall be governed by the schemes sanctioned by the BIFR which continues to remain operative and valid and also binds the Petitioner herein as per Section 5 (1) (d) of the SICA Repeal Act, 2003 which saves the orders sanctioning the scheme.
5. The Petitioner filed rejoinder wherein it was stated that according to the scheme sanctioned for the Corporate Debtor by the BIFR, the Petitioner is entitled to receive 25% of the principal dues in 5 equal instalments treating the Petitioner as an unsecured creditor. It was further submitted that since the Corporate debtor failed to issue the 'C' Forms, the Corporate Debtor is liable to make payment to the extent of non-issue of 'C' Forms. It is further submitted that the claim is not barred by limitation.
6. During the hearing of the Petition on different occasions, the Petitioner raised the issue regarding non-receipt of C Forms from the Corporate Debtor. On 30.01.2020, the Professional representing the Corporate Debtor handed over the C Forms to the Petitioner side, and the same settled the issue in respect of C Forms.
7. Previously, on 04.10.2019, the Corporate Debtor sent a letter to the Petitioner and the same is extracted below:

Dear Sir,

Sub: Offer of compromise / settlement

Ref: Our meeting of 18th September, 2019 as well as CP No.1975/2018 before Hon'ble National Company Law Tribunal (NCLT), Mumbai and our previous letter dated 30.09.2019 addressed to The Director Finance.

At the outset we would like to thank you for the kind courtesy extended to us during our meeting with you in your office on 18th September, 2019.

As you are well aware that M/s Ganesh Benzplast Ltd (GBL) is a SICK Company and under rehabilitation period as per the sanctioned scheme passed by Hon'ble Delhi High Court vide their order No W.P.(C) 9320/2015 dated 04th December, 2015.

The dispute and claim between STC and GBL was on account of various lapses and mistakes from STC side, but still we would like to mutually settle the issue pending since decade.

As per the sanctioned scheme of BIFR in clause No 11.11 page (22) all the unsecured creditors to be paid off as under

"11.11 Unsecured Liabilities

Unsecured creditors would be paid at 25% of the principal dues in five equal annual installments with an option not to accept the scaled down value of their dues and wait till the scheme of rehabilitation of the company has worked itself out / seven years. M/s Pennar Paterson also will be treated at par with other unsecured creditors. Unsecured creditors also include contingent liabilities if crystallized."

Also please refer to the deliberations that took place at the hearing held on 20th September, 2019 in the captioned petition, at the conclusion whereof both the parties had proposed before the Hon'ble NCLT to explore the possibility of reaching an amicable settlement to resolve the very long pending disputed claim of your company. The Hon'ble NCLT has granted the time upto 15th October, 2019 for the purpose and hence, this letter of offer for settlement for your kind consideration.

Please note that this communication has been addressed to you for the above purpose only and the same ought not to be construed or inferred as acceptance of any or all of your claims as per your captioned petition by our company but disputed by us.

Without prejudice to our all contentions / submissions opposing the maintainability of your captioned petition as also our denial of your all claims disputed by us, we note that you have claimed in your above petition the principal amounts of Rs.9,66,96,564/- as recoverable from our company as per details shown hereunder:-

| Particulars | (Amount In Rupees) | |
|---|----------------------|--------------------|
| On account of Foreign transactions | 7,54,07,331/- | |
| On account of Domestic transactions | 1,21,46,355/- | |
| On account of non availability of C Forms | 91,42,878/- | |
| | <hr/> | |
| Total..... | 9,66,96,564/- | |
| Computation of settlement amount | | |
| Discount factor | absolute installment | NPV of installment |
| 0.892857 | 4834828 | 4316811 |
| 0.797194 | 4834828 | 3854295 |
| 0.71178 | 4834828 | 3441335 |
| 0.635518 | 4834828 | 3072621 |
| 0.567427 | 4834828 | 2743411 |
| Total | 2,41,74,140 | 1,74,28,474 |

It is submitted that our company has paid undisputed claims of other unsecured creditors to the extent of 25% of the principal dues in five equal annual installments carrying no interest in future. The net present value of the claim amount on the said basis works out to Rs.1,74,28,474/- taking discount factor @ 12% p.a. being more than prime leading rate of the banks. Keeping the same in view, we offer the amount of Rs.175.00 lakhs as and by way of compromise amount in full and final settlement of all your claims.

We trust that you will find the above offer as most fair and reasonable as

1. the same is in line with the settlement made by other unsecured creditors;

2. our company has also significant loss sustained on account of your holding back H forms;
3. yours is disputed cum contingent liability as against confirmed undisputed liability of other settled unsecured creditors; and
4. Your claims cannot be accepted as crystallized dues through due process of law

We look forward to your positive confirmation of the above offer and we may execute necessary documentation including settlement memo to be filed with Hon'ble NCLT on receiving your acceptance of above offer

Thanking you.

For Ganesh Benzoplast Ltd.

8. Ongoing through the letter cited above, this Bench is of the view that the proposal given by the Corporate Debtor is reasonable and in view of the fact that the Petitioner being an unsecured creditor of the Corporate Debtor is bound by the scheme sanctioned by the BIFR. When this observation of this Bench is put to the learned Senior Counsel representing the Petitioner, he insisted for the admission of the Petition but we are of the considered view that the settlement offer which is in terms of sanctioned BIFR scheme is applicable to the Petitioner herein also. We are of the considered view that when the Petitioner gets 25% of principal due as offered by the Corporate Debtor, the same will meet the ends of justice.
9. The Corporate Debtor consented to make the payment of ₹2,41,74,140/- minus 25% of 'C' Forms (i.e. ₹22,85,720/-) handed over to the Petitioner, which works out to ₹2,18,88,421/-. Since the original claim includes claim towards 'C' Forms not issued by the Corporate Debtor and now the 'C' Forms were issued, this is also in order.
10. This Bench doth order as follows:
 - a. That the Corporate Debtor is directed to make the payment of ₹2,18,88,421/-.
 - b. That the payment shall be made within a period of 30 days from the date of receipt of this order.
11. With the above terms, this Petition is disposed off.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)