



KIRLOSKAR ELECTRIC COMPANY LTD.,

Sect./13/2024-25/2
May 23, 2024

To,
The Manager,
Corporate Relationship Department,
BSE Limited,
2nd Floor, New Trading Ring,
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai – 400 001.

The Manager,
The Listing Department,
National Stock Exchange of India Limited,
C-1, Block 'G', 5th Floor, Exchange Plaza,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051.

Dear Sirs,

Sub: Disclosure under Regulation 30(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with Clause 16 of Para A of Part A of Schedule III thereof- Disposal of case filed under IBC, 2016.

Ref: Our previous communication vide Sect./78/2023-24 dated November 27, 2023

Date and time of occurrence of information : May 23, 2024 at 3:05 PM

Pursuant to Regulation under subject and in furtherance to our letter under reference, we hereby inform that, a case filed by M/s Laburnum Chemicals Private Limited ("Laburnum") vide C.P. (IB) No.86/BB/2024 against Kirloskar Electric Company Limited (the Company) to initiate Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before the National Company Law Tribunal, Bengaluru has been dismissed vide order dated 20th May 2024. However the order copy has been received by the Company via email on 23rd May 2024 and the same is enclosed hereto.

Kindly take the said letter on your files and records.

This is for your information.

Thanking You

Yours faithfully
For Kirloskar Electric Company Limited

Mahabaleshwar Bhat
Company Secretary & Compliance Officer

Encl: a/a

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CIN: L31100KA1946PLC000415

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
(Through Physical Hearing / VC Mode (Hybrid))

ITEM No.07
C.P. (IB) No.86/BB/2024

IN THE MATTER OF:

M/s. Laburnam Chemicals Pvt. Ltd., ... Petitioner
Vs.
M/s. Kirloskar Electric Company Ltd., ... Respondent

Order under Section 7 of IBC, 2016

Order delivered on 20.05.2024

CORAM:

SHRI K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SHRI MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor : Ms. Aishwarya Reddy

ORDER

1. The present petition is filed on 06.12.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/ Code**'), read with Rule 4 of the I & B (Application to Adjudicating Authority) Rules, 2016, by M/s. **Laburnam Chemicals Private Limited** (for brevity 'Financial Creditor/Petitioner') *inter alia* seeking Corporate Insolvency Resolution Process against **M/s. Kirloskar Electric Company Limited** (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs.9,94,96,650/- as on 31.03.2023.
2. It is mentioned in the synopsis that the Financial Creditor agreed and granted financial assistance in form of Inter-Corporate Debt (ICD) at various occasions to the Corporate Debtor from 2013 to 2020. The Corporate Debtor has given a balance confirmation letter stating that INR 9,94,96,650/- is the debt due and repayable by them to the Financial Creditor.

3. However, from Part-IV of the Form-1 filed with the application, it is noticed that the date of default is stated as 01.10.2020 which falls within the exclusion period mentioned under Section 10A of the IBC 2016. Additionally, the Petitioner has also attached the record of default in Form-D issued by the Information Utility i.e., NeSL at Annexure-G from Page 74-79 of the petition which also categorically mentioned the same date of default i.e., 01.10.2020.
4. For considering the maintainability of the present petition, it is relevant to refer to Section 10A of the I & B Code, 2016:

“Section 10A: *Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

5. Accordingly, under Section 10A of the IBC, 2016 no application /petition under Section 7, 9 & 10 of the IBC, 2016 for initiation of the CIRP of the Corporate Debtor can be filed if the default occurs during the period between 25.03.2020 to 24.03.2021.
6. During the course of hearing the Petitioner’s Counsel was asked to explain the same, on which she responded that the date of default does not fall under the period mentioned under Section 10A of the IBC. However, considering the declaration made by the Petitioner’s Counsel in Form-1 as well as in the record of default filed by the Information Utility in which the date of default has been mentioned as 01.10.2020, the Petitioner’s Counsel contention is not found to be tenable.
7. The Form-1 to be filed with the Applicant under Section 7 is a mandatory requirement in accordance with the provisions of Section 7 (2) of the code r/w Regulation 4 (1) of the IBBI (Application to Adjudicating Authority) Rules, 2016. In Part-IV of the Form-1 there is a specific column wherein the ‘Amount claimed to be in default and the date on which the default occurred’ have to be clearly mentioned in Item No.2. Thus, the Form-1 is a statutory form and the declarations made in the columns are the most relevant and the starting point for the initiation of the CIRP. The Hon’ble Apex Court in the case of *Ramesh Kymal vs. Siemens Gamesa Renewable Power Private*

Limited (2021) 3 SCC 224 dated 09.02.2021 has underlined the significance of the declaration in the statutory notice under Section 8 (1) regarding the specific date of default for a petition under Section 9 of the IBC. It was held that once the Appellant has specified the date of default in the demand notice under Section 8 (1) of the IBC, 2016, it cannot be allowed to be changed subsequently, as was argued in that particular case. It was further held as under:

“This attempt to set back the date of default to either 21 January 2020 or 23 March 2020 is plainly untenable for the reason that it is contrary to the disclosure made by the Appellant in the demand notice which has been issued in pursuance of the provisions of Section 8 (1) and Section 9 of the IBC. The demand notice triggers further actions which are adopted towards the initiation of the insolvency resolution process”.

8. Therefore, considering that in Part-IV of Form-1 there is a specific mention of the date of default as 01.10.2020, it is held that the default occurred within the period which has been categorically excluded under the provisions of Section 10A of the IBC, 2016. Though the judgement of the Hon’ble Apex Court was delivered in context of the petition under Section 9 of the IBC, the same principle will be equally applicable for the petition filed under Section 7 of the IBC 2016 by the Financial Creditor for initiation of the CIRP.
9. Consequently, following the judgement of the Hon’ble Apex Court, it is held that the declaration made in the Statutory Form No.1 which is prescribed for filing the application under Section 7 of the IBC, 2016 is the trigger or the starting point on the basis of which the application for initiation of the CIRP shall proceed. Additionally, the Information Utility in the record of default issued in Form-D has also stated the date of default to be the same i.e., 01.10.2020.
10. Accordingly, we are of considered opinion that the present petition is not a fit case for admission since the date of default (i.e., 01.10.2020) falls within the suspension period of 10A of the IBC 2016. Therefore, the instant petition **CP (IB) No.86/BB/2024** is hereby dismissed.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K. BISWAL)
MEMBER (JUDICIAL)