



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

C.P. (IB) No. 172/MB/2024

*[Under Section 9 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of

Maheshwari Fuelchem Private Limited

(CIN: U51101MH2012PTC230973)

...Operational Creditor

V/s.

New Bombay Paper Mills Private Limited

(CIN: U21010MH1998PTC117231)

...Corporate Debtor

Pronounced: **02.04.2025**

CORAM:

ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR

HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For Applicant : Adv. Naira Jeejebhoy a/w. Adv. Aditi
Shrivastava

For Corporate Debtor : Adv. Agam H. Maloo

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ORDER

1. BACKGROUND

1.1 This Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) on 16.02.2024, by Maheshwari Fuel Chem Private Limited, the Operational Creditor (OC), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of New Bombay Paper Mills Private Limited, the Corporate Debtor (CD), for alleged default of Rs.3,02,31,477/- (Three Crore Two Lakh Thirty-One Thousand Four Hundred Seventy-Seven Rupees), in addition to interest @15% p.a. accruing w.e.f. 08.08.2023.

1.2 The OC has filed an Additional Affidavit dated 29.01.2025, clarifying that the date of default is to be taken as 10.07.2023, wherever the same is referred to in the Application, instead of 08.08. 2023.

2. CONTENTIONS OF OC

2.1. The OC submits that it entered into a long-standing arrangement with the CD during the period between 01.04.2023 to 08.07.2023 for the sale and purchase of coal, whereby the CD would purchase coal from the former on a 60-90 days credit basis. A running account had been maintained by both parties and the same was shared by each of them/reconciled on several occasions wherein the CD would provide the OC with its Ledger/ Books of Account for FY 2023-24 entries/ books of account containing amounts payable by the CD to the OC for the said purchases.

2.2. The CD's own Ledger/ Books of Account for FY 2023-24 relates to the entry of the OC revealing that during the period between 01.04.2023 to 08.08.2023, the CD had purchased coal from the OC for a sum of Rs. 5,00,81,997/- (Considering Opening balance Payable of Rs.3,04,32,674/-) out of which the CD had already made payment of



Rs.1,98,50,520/- (which, *inter-alia*, factors in a sum of Rs.25,00,000/- paid by Lupin Gases Pvt Ltd (an associate company of the CD) to the OC for and on behalf of the CD, and a Debit Note for a sum of Rs.40,00,520/- issued by the OC on 10.05.2023). Accordingly, the CD's own Ledger/ Books of Account for FY 2023-24 reveals that there is an outstanding balance of Rs.3,02,31,477/- which is to be paid by the CD to the OC.

2.3. The OC submits that it received an E-mail from the CD on 08.07.2023, which indicated a sum of Rs.3,02,31,477/- payable by the latter to the former, and that the same constitutes an admitted liability.

2.4. Pursuant to the above, the OC sent seven reminders to the CD for payment during the period of August, 2023 and September, 2023. Although the CD had initially raised objections as regards the high pricing of the coal supplied by the OC, the CD informed the OC that it was in an acute financial crisis and sought ex-gratia reduction in the claimed amount vide E-mail dated 09.09.2023.

2.5. The OC was therefore constrained to issue a formal Demand Notice in Form-3 on 29.09.2023, thereby calling upon the CD to make a payment of Rs.3,02,31,477/- within a period of 10 days, failing which the OC would commence insolvency proceedings against the CD. Despite the same, the CD has failed to repay the former or respond to the said Demand Notice within the said period. However, the Advocate for the CD sought to dispute the liability by taking a spurious, hypothetical, and illusory defense for the first time on 23.10.2023.

2.6. The OC, therefore, prays that CIRP may be ordered in respect of the CD.

3. CONTENTIONS OF CD

The records reflect that the CD has not filed Reply in the matter, despite having been granted multiple opportunities. However, during the course of the hearing



on 26.03.2025, the Ld. Counsel for the CD submitted that the CD admits its liability for the debt in question and is in default. Hence, we proceed with the matter, based on the admission of debt and liability and default by the CD.

4. ANALYSIS AND FINDINGS

We have perused the available records and heard both the Ld. Counsel for the OC and the CD.

4.1 Upon perusal of the documents, it is seen that on account of non-payment of money, the OC issued multiple payment reminders to the CD from August, 2023 to September, 2023. Despite receipt of the payment reminders, the CD did not make any payment except the Email dated 09.09.2023 raising certain objections relating to over-pricing and its inability to make the payments as also requesting for ex-gratia reduction in the amount, without disputing the veracity of the debt. This resulted in the OC issuing statutory Demand Notice dated 29.09.2023, containing particulars of the unpaid operational debt, requesting the CD to settle the same. The above has not been disputed by the CD.

4.2 Further, although 08.08.2023 was mentioned as the date of default in Part-IV of the Application, the OC, vide Additional affidavit dated 29.01.2025, submitted that 10.07.2023 as the date on which the CD committed default. Since, the CD does not propose to challenge the debt and default and also the date of default, the Application is to be decided solely on the averments/submissions made by the OC. The application was filed on 16.02.2024, and hence, it is observed that it was filed within the period of limitation under law. Hence, we hold that the debt and default committed by the CD towards its liability to pay the OC has been proved in the matter.

4.3 Since, 'operational debt' in terms of Section 5(21) of IBC for Rs. 3,02,31,477/- and 'default' in payment thereof under Section 5(12) of IBC are proved, and that there is no pre-existing dispute, this is a fit matter to be admitted. The Application is complete in all aspects.



ORDER

5 It is accordingly hereby ordered as follows:

5.1. The C.P. No. (IB) 172/MB/2024 is hereby **Admitted** and initiation of the Corporate Insolvency Resolution Process is ordered against New Bombay Paper Mills Private Limited, viz. the CD herein.

5.2. We further declare moratorium under Section 14 of IBC with consequential directions as mentioned below: We prohibit :-

- I. the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- II. transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;
- III. any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)
- IV. the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

5.3. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

5.4. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.



- 5.5. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- 5.6. That this Bench hereby appoints **Mr. Shashank Dinesh Posture**, a registered Insolvency Professional having Registration No **IBBI/IPA-001/IP-P-02921/2024-2025/14480** and with Email ID: **shashankposture123@gmail.com**, having valid Authorisation for Assignment up to **31.12.2025**, as the Interim Resolution Professional (IRP) of the CD to carry out the functions as mentioned under IBC, 2016. The fee payable to the IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- 5.7. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- 5.8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.
- 5.9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the OC is directed to deposit a sum of Rs. 5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds becoming available with



IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

- 5.10.** A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the CD.
- 5.11.** A copy of the Order shall also be forwarded to the IBBI for record; dissemination on their website; and for maintaining data.
- 5.12.** The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.
- 5.13. Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)
