

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

CP No. 1782/IBC/NCLT/MB/MAH/2017

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016se

In the matter of

J.J. Plastalloy Private Limited  
..... Operational Creditor  
v.

Jaihind Automation Private Limited  
..... Corporate Debtor

Heard on : 24.10.2018  
Order delivered on : 02.11.2018

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

**For the Petitioner :**

Advocate Prateek Pai a/w Shashwat Rai.

**For the Respondent :**

None Present.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. J.J. Plastalloy Private Limited (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 22.12.2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as Jaihind Automation Private Limited (hereinafter as **Corporate Debtor**) having registered address at Plot No. 31, Goodwill Co-operative Housing Society, S. No. 126/1, Aundh, Pune-411007.
3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹22,41,497/- along with interest @24% which works out to ₹29,70,954/-, payable as on 15.12.2017.

**Submissions by the Operational Creditor :**

4. The Learned Advocate for the Operational Creditor has submitted that the Operational Creditor is engaged in the business of manufacturing and supply of plastic granules and master batches to its customers. The Corporate Debtor is a Company engaged in the business of auto parts. The Operational Creditor has made supplies of plastic compounds to the Corporate Debtor pursuant to oral purchase orders placed on it from time to time and has raised invoices for the same.
5. It is further submitted that the Corporate Debtor has at no point of time whatsoever raised any issues with respect to the quality or quantity of the aforesaid supplies. Accordingly, the Corporate Debtor has unequivocally accepted its liability to the Operational Creditor against the goods delivered to and accepted by the Corporate Debtor.
6. The Operational Creditor raised 53 invoices amounting to ₹1,26,11,223/- upon the Corporate Debtor which were received, acknowledged and accepted by the Corporate Debtor. The petitioner states that a notice dated 25.01.2013 was sent to the Corporate Debtor demanding a sum of ₹40,91,497/- which was then due. However, no response whatsoever forthcoming from the Corporate Debtor. Henceforth, the Director of the Petitioner Company instituted a complaint under sections 406 and 420 of the Indian Penal Code, 1860 against Mr. Sugathan Vellaudhan, the Director of the Respondent Company. Thereafter, a sum of ₹18,50,000/- was paid by the Corporate Debtor in multiple tranches towards the outstanding dues.
7. The Corporate Debtor has remitted amount aggregating to ₹1,03,69,726/- to the Operational Creditor and the last receipt was of ₹1,00,000/- on 29.09.2015. The amount which is still outstanding aggregates to ₹22,41,497/-. It is further stated that none of the cheques received from the Corporate Debtor bore an amount specific to a particular invoice or a set of invoices. Therefore, the Operational Creditor adjusted the payment received towards the total amount due.
8. A cheque of ₹1,00,000/- was issued as further part payment of the total amount due. However it was dishonoured on 20.10.2015. Thereafter, the payment has not been made despite multiple reminders by the operational Creditor and repeated assurances by the Corporate Debtor. A summary of the outstanding amount is shown in the table given below:

Total Outstanding	₹1,26,11,223/-
Less: Received	₹1,03,69,726/-
Balance	₹22,41,497/-

9. The Petitioner has sent legal demand notice dated 27.09.2016 to the Corporate Debtor, to which the Corporate Debtor has not replied. However, the Corporate

Debtor has never disputed its liability for the payment of the said unpaid amount of ₹22,41,497/-. Instead, the Corporate Debtor repeatedly asked for extensions of time and accommodation, citing adverse market conditions. Further, it repeatedly held out assurances that it would make payments on resolution of its liquidity crunch and credit facility issues it was facing with its banks.

10. Hence, on 02.01.2017 the Operational Creditor has issued a 'Demand Notice' U/s. 8 of the Code and the said notice is duly served upon the Debtor. But even after service of this Notice the Debtor has neither paid the Demanded Amount nor raised a dispute regards to the 'Debt' within the stipulated time of 10 days. The Operational Creditor has annexed the affidavit u/s 9(3)(b) of IBC stating that no notice of dispute has been received from the Corporate Debtor.

11. Hence, the Operational Creditor has filed this Petition/Application to initiate CIRP over the Debtor. It is stated that, as the Debtor has neither paid the amount nor contesting the Debt, this Petition/Application may be Admitted for Commencement of CIRP.

#### **No Submissions by the Corporate Debtor :**

12. The Learned Advocate for the Debtor has appeared on some hearings and almost admitted the liability by not filing a reply to the Demand Notice u/s 8 as well as to the Petition. On hearing dated 09.03.2018, it was indicated to the Bench that there is a possibility of settlement and hence both the parties sought time to settle the matter. On hearing dated 07.05.2018, it was indicated to the Bench that a payment of ₹3,00,000/- has been made and the substantial amount is still outstanding. Thereafter, no further payment was made as the settlement talks failed.

#### **Findings :**

13. I have gone through the submissions of both the parties and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that he had sold, supplied and delivered the Plastic Items to the Corporate Debtor for which an amount of ₹22,41,497/- is due and a default of non payment had also occurred. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an '**Operational Debt**' as defined under section 5 (21) of the Definitions under The Code. There is a "**Default**" as defined under section 3 (12) of The Code on the part of the Debtor.

14. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that, the Debtor has received the same but has not paid the amount of unpaid outstanding due. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt. Further, the fact that the Corporate

Debtor wanted to settle the matter and hence paid an amount of ₹3,00,000/- in view of settlement clearly reveals that the amount defaulted is payable and the liability has been admitted by the Corporate Debtor.

15. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant, it is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.
16. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Manoj Jain**, having registration no. as IBBI/IPA-001/IP-P00535/2017-18/10960, as Interim Resolution Professional for initiation of CIRP.
17. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
18. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
19. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
20. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

**Dated : 02.11.2018**

SD/-  
**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**