

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II**

C.P.(IB)-549(MB)/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Bharat Gala

(sole Proprietor of Raj Print 'N' Pack)

Address for Correspondence: Ground Floor,
Mani Bhavan, Truel Pakhadi Road, Malad
(West), Mumbai-4000064.

.....Operational Creditor/Applicant

Vs

PIK Resource India Private Limited

(Formerly known as PIK Studios Pvt. Ltd.)

Having Registered Office at: F 99, North
Bombay CHS LTD, Juhu Tara Road, Juhu,
Ville Parle (West), Mumbai-400049.

.....Corporate Debtor/Respondent

Order delivered on: 06.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Manoj Mishra, Adcocate

For the Corporate Debtor : Mr. Nithish Bangera, Advocate

ORDER

Per- Shyam Babu Gautam, Member Technical

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by ***Bharat Gala***, sole Proprietor of ***Raj Print 'N' Pack*** (for brevity 'Operational Creditor') for initiating Corporate Insolvency Resolution Process (CIRP) against ***PIK Resourse India Private Limited*** (for brevity 'Corporate Debtor') for default in repaying an amount of **₹14,24,771** together with interest at the rate of 18% p.a. from the due date of respective invoices till payment and/or realization.
2. On reading the application and other material placed before this Bench, on pursuant to the request and purchase orders issued by the Corporate Debtor, the Operational Creditor has sold, supplied and delivered several boxes of several varieties

("the Goods") to the Corporate Debtor at its factory situated at Umbergaon at Gujarat. All the Goods were delivered by transport and after receipt of the said Goods, the Corporate Debtor has duly acknowledged the receipt of the said Goods on the copy of the lorry receipts/consignment note thereby acknowledging the receipt of Goods. Further, upon the receipt of the said Goods, the Operational Creditors has prepared their *invoices* as per the Goods sold, supplied and delivered to the Corporate Debtor and forwarded the invoices to the Corporate Debtor for payment and requested the Corporate Debtor for payment against the invoices towards the Goods. As against the said request, the Corporate Debtor has made certain payment as against the Invoices. The last payment which the Corporate Debtor has paid to the Operational Creditor is of Rs.2,00,000/- on 07.02.2018.

After the receipt of the last payment from the Corporate Debtor, a total sum of Rs.14,24,771/- remains outstanding due and payable to the Operational Creditor. Further, the Corporate Debtor has failed to pay the outstanding amount even after several requests and reminders. In such situation the Advocates for Operational Creditors issued a demand notice dated 13.11.2019 upon the Corporate Debtor under the provision of Insolvency and Bankruptcy Code, 2016. Despite receipt of Demand Notice, the Corporate Debtor has neither paid the outstanding amount, nor responded to the Demand Notice. Further, the Operational Creditor has filed the present Application before this Tribunal.

3. In response to this, the Corporate Debtor has filed a reply affidavit and has taken the defense that the Operational Creditor has not enclosed any evidence reflecting that the demand notice and the copy of petition was delivered to Corporate Debtor. The Corporate Debtor has submitted that the demand notice and petition was never sent to the Corporate Debtor and the petition is liable to be dismissed with compensatory as non-maintainable. The Corporate Debtor has further submitted that as per the provision of section 8 of IBC, 2016, which reads as follows **“An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor, copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed”**.

The Operational Creditor has mentioned 16 invoices in the tabular sheet however only 15 invoices are enclosed. Copy of invoice no. 46 amounting to Rs. 76,370/- and delivery challans evidencing delivery of goods are not enclosed. The Corporate Debtor has further submitted that the Operational Creditor has not enclosed any of the following documents:

- a. *Purchase order.*
- b. *Sales invoice (179, 183, 190, 192, 14, 22, 25, 39, and 57) does not contain acknowledgement of Corporate Debtor.*
- c. *Out of 16 invoices 9 invoices are not acknowledged by Corporate Debtor and 1 invoice is not enclosed.*

- d. Sales invoice (Invoice no. 46 missing).
- e. Proof of Delivery of goods not enclosed.
- f. Copy of Banks statement reflecting payment of Rs. 2,00,000/- made by the Corporate Debtor to the Operational Creditor.
- g. Acknowledgment of delivery of demand notice.
- h. Acknowledgment of delivery of petition.

Moreover, the Corporate Debtor relied on **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.**, wherein the Hon'ble Supreme Court has held that **“For any application under IBC should be filed before NCLT along with supporting documents”**.

4. The Corporate has further taken a contention that the Operational Creditor has charged an interest @ 18% p.a. but nowhere in the invoices was there commitment for payment of interest. The Operational Creditor has charged interest without any supporting documents. Therefore, the petition itself is vague, void and defective and is liable to be dismissed. The Corporate Debtor made default under section 9(3)(b) IBC 2016 by not enclosing Affidavit stating no Dispute. As per the order passed by Hon'ble Supreme Court in the matter of **Mobilox Innovations (P) Ltd. Vs. Kirusa Software (P) Ltd.**, **“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section**

9(5)(ii)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility'. Hence, prayed that petition may be dismissed.

5. In response to this, the Operational Creditor also filed the rejoinder to the reply of the Corporate Debtor and denied all the contentions raised in reply and further submitted that as per my instruction, my Advocate has duly served the Demand Notice under section 8 of the IBC, 2016. The said Demand Notice was sent to the Corporate Debtor through postal department by registered post AD and the said Demand Notice was duly received by the Corporate Debtor, who in-turn has acknowledged the receipt of the said Demand Notice on the AD card as a proof of receipt. Thereafter, the postal department has returned the said original AD card having acknowledgement of the Corporate Debtor to my Advocate. However, despite receipt of the Demand Notice, false and misleading representation and allegation has been made that no Demand Notice has been served upon the Corporate Debtor by the Operation Creditor. In relation to invoice No.46 for Rs.76,370/-, the Operational Creditor has submitted that it was enclosed as a proof of demand, however, inadvertently the said invoice was not annexed to the Petition. Copy of the said Invoice No.46 for Rs.76,370/- is annexed with the Rejoinder.

Further, in relation to the contention of purchase order, the Operational Creditor has submitted that the relation between the Operational Creditor and the director of the Corporate Debtor was cordial so there was no such formal purchase order was ever issued by the Corporate Debtor upon the Operational Creditor. Further submitted that all the requirement of the purchase was made orally on telephonic conversation and accordingly the Operational Creditor has sold, supplied and delivered the Goods to the Corporate Debtor and raised invoices for the same.

6. Further, in relation to the objection that some of the Sales Invoices does not contain acknowledgment of Corporate Debtor, the Operational Creditor has submitted that many times the invoices were sent to the Corporate Debtor with office boy who has just delivered the said invoices at the office of the Corporate Debtor. Accordingly, some of the invoices does not has an acknowledgement, however, the same has been sent to the Corporate Debtor. The goods have been sold and delivered upon the Corporate Debtor and delivery was through transport agency and thereafter the said invoices were raised and sent to the Corporate Debtor. The Transport agency has duly delivered all the goods and obtain acknowledgment of the Corporate Debtor for receipt of goods. Accordingly, all the goods have been duly received by the Corporate Debtor. Copy of the said lorry receipt prepared by the transport agency and having acknowledgement

of Corporate Debtor for receipt of goods are annexed with the rejoinder filed by the Operational Creditor. Moreover, the Corporate Debtor has submitted that after filing of the present petition, same was duly served upon the Corporate Debtor by email as well as by RPAD. Moreover, the Affidavit verifying the Petition in which it has been categorically stated that the Operational creditor has served demand notice and no reply has been received from Corporate Debtor in response to the said demand notice.

7. Heard the submissions made by the Learned Counsel for both the parties and perused the material on record, we are of the view that the postal department has returned the said original AD card having acknowledgement of the Corporate Debtor and on the perusal of the same, it clearly appears that the Corporate Debtor has duly received the Demand Notice. Further, the Purchase order is not the only document to justify his case or to prove debt and default. The Corporate Debtor has filed its Affidavit in Reply only after receipt of the Section 9 petition and therefore now it cannot say that the Corporate Debtor has not received copy of the petition. Moreover, the Corporate Debtor has filed a copy of email as well as letter with postal remark that petition has been served upon the Corporate Debtor. Further, on the perusal of the ledger account of the Corporate Debtor for year 2016-2017 and 2017-2019, it is evident that a sum of Rs. 14,24,771/- is due and payable by the

Corporate Debtor to the Operational Creditor. Hence the Petitioner has proved the 'existence of debt' and 'default' on the part of the Corporate Debtor. The Petitioner has filed the present Petition before this Tribunal on 05.02.2020 and as such the Notification effected in increasing the threshold limit from Rupees One Lakh to Rupees One Crore as on and from 24.03.2020 does not apply to the present case. Under the said circumstances, since the debt and default on the part of the Corporate Debtor being proved and also by looking at the consent given by an Insolvency Professional, we hereby admit this petition by appointing **Mr. Manish Sukhani** (Insolvency Professional) as IRP with a direction to the IRP to compute this claim by deducting the payments made by the Corporate Debtor during the pendency of this Company Petition, if any. The Petitioner shall pay the remuneration of the IRP as well as initial costs to the IRP until constitution of the Committee of Creditors, Accordingly this petition is **admitted** with the direction as follows:-

a. The above Company Petition (IB) 549(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s PIK Resource India Private Limited.**

b. This Bench hereby appoints Mr. Manish Sukhani, having Registration No: IBBI/IPA-001/IP-P00668/2017-2018/11137; email: ca.m.sukhani@gmail.com; Ph. No.:

9320089513, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs. 2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

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

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

8. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)