

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301  
CP(IB) 104 of 2020

**Orders under Section 9 IBC**

**IN THE MATTER OF:**

M/s. Polyhose India Private Limited  
V/s  
Aadnath Trade Wings Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on: 18/02/2025**

**Coram:**

Mrs. Chitra Hankare, Hon'ble Member(J)  
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

**ORDER**

The case is fixed for pronouncement of order.


The order is pronounced in open Court, vide separate sheet.

SDI-

DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)

SDI-

CHITRA HANKARE  
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT NO.2**

**CP (IB)104(AHM)2020**

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

In the matter of:

Polyhouse India Private Limited  
No. 86 Polyhouse Tower,  
Mount Road, Guindy  
Chennai- 600032, Tamilnadu

....Operational Creditor

And

Aadnath Trade Wings Private  
Limited  
Registered office at: 37-Devyani  
Park, Timbavadi, Junagadh,  
Gujarat- 362001

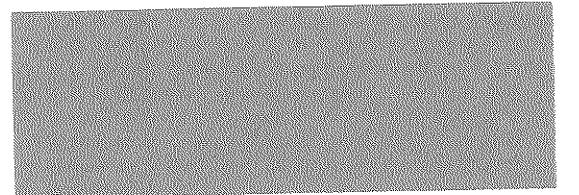
....Corporate Debtor

**Order pronounced on 18/02/2025**

**Coram:**

**MRS. CHITRA HANKARE,  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**





**Appearance:**

For the Applicant : Ld. Counsel Ms. Natasha Shah  
 For the Respondent : Ld. Counsel Ms. Priyal Parekh for  
 Ld. Mr. Harsh Parekh, Advocate

**J U D G M E N T**

1. The instant application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ( hereinafter referred to “as the code”) by the Operational Creditors/Petitioner for initiation of Corporate insolvency Resolution Process (hereinafter referred to as “CIRP”) against the Corporate Debtor i.e. Aadnath Trade Wings Private Limited for total amount in default for Rs. 3,07,09,933.56/- plus interest @ 18% of Rs. 1,75,06,751/-. The date of default as mentioned is 21<sup>st</sup> March, 2016. The present petition was filed on 15.01.2020

**Submission of the Operational Creditor**

2. The Operational Creditor entered into a business relationship with the Corporate Debtor wherein construction equipment, machines, graders and tools were to be supplied by the Operational Creditor to Corporate Debtor. Various purchase orders and Invoices were generated in view of the same, based upon the general trade practices and the mutual



understanding between the parties. The Corporate Debtor was an 'Authorized Dealer' for the Operational Creditor, and the Operational Creditor had to raise bills upon the Corporate Debtor. The delivery of the equipment was to be made at the address intimated by the Corporate Debtor. Few of the said purchase orders provided for the operation and repair maintenance contract and operator contract under which the Corporate Debtor was liable to make advance payment on quarterly and monthly basis. The said invoices were raised in the name of the Corporate Debtor and the name of the consignee at the behest of the Corporate Debtor was Larsen & Toubro Limited, construction "C/o. Aadnath Trade Wings" The purchase order No. ATW/OI/2016 dated 21.03.2016 is in reference to the said invoice nos. 91000761 and 91000762. The Operational Creditor made certain supplies of machinery on the basis of the credit facilities to the Corporate Debtor. Under the said facilities the Bank/NBFC was to finance only a percentage of the machinery's cost while the balance amount was to be paid by the Corporate Debtor towards 'margin cost' directly to the Operational Creditor as indicated in the invoices. Certain Invoices aggregating to Rs.

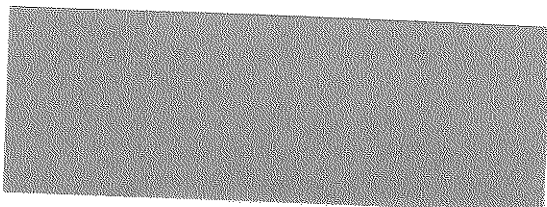


03,07,09,933.56/- raised have not been paid by the Corporate Debtor. As per the said Invoices, the amount has become due and payable. Though the Corporate Debtor has acknowledged an outstanding amount vide confirmation letter dated 19<sup>th</sup> September, 2017 failed to make payment. Despite multiple reminders by the Applicant, the Corporate Debtor has not paid the total outstanding amount due. The Corporate Debtor has never raised any dispute in relation to the quality and quantity of goods supplied. All the invoices were accepted. Therefore, Operational Creditor had issued demand notice dated 18<sup>th</sup> July, 2019 requesting to make outstanding dues. The Corporate Debtor's conduct became evasive.

3. The Operational Creditor on 12.08.2024 filed Record of Default under Form D issued by the NeSL stating the date of Default as 21.03.2016.

Reply of the Corporate Debtor

4. It is submitted that the present Petition is not maintainable and is liable to be dismissed in as much as there exists no cause of action on the part of the Operational Creditor to file the present Petition. As the 3 years have already lapsed from the date of invoices and as such the present Petition is barred





under law. It is also submitted that there has been no contract at between the parties for payment of interest @ 18% for the delay payment. The claimed interest is false and concocted. It is submitted that the Corporate Debtor was only a billing facilitator and not the actual purchaser of the machines supplied by the Operational Creditor. It is submitted that there is pre-existing dispute regarding working and operation of Motor Graders at Unnao and Jabalpur construction sites of L& T and therefore the contractor had not released payment as per LOI. The Operational Creditor agreed to take back 2 motor graders and the same were delivered for which also invoices have been included in the outstanding amount. The Operational Creditor suppressed material facts regarding return and hypothecation of some of its machines. Hence, the present application is devoid of any merit and deserves to be dismissed.

5. The Operational Creditor has filed its affidavit in rejoinder denying all the allegations levied by the Corporate Debtor and requested to consider the facts in the interest of justice.
6. This Tribunal vide order dated 07.11.2024 allowed the substitution of the Applicant in IA No. 1420 of 2024 and



necessary amendments were made. Vide order dated 03.01.2025 this Tribunal directed to file balance sheet, the same has been filed on 28.01.2025 (including (i) Financial statements of the Corporate Debtor for the F.Y. 2015-16 (ii) Financial statements of the Corporate Debtor F. Y. 2016-17 (iii) Master data of the Corporate Debtor as retrieved on 27.01.2025.

7. The Applicant relied upon following judgments :
  - i. Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited-2017 SCC online SC 1154
  - ii. Innoventive Industries Ltd. Vs. ICICI Bank (2018) I SCC 407
  - iii. Sesh Nath Singh & Anr Vs. Bhaidyabati Sheoraphuli Co-operative Bank Ltd. And Anr. 2021 SCC
8. We have heard the counsels from both sides and have perused the records.
9. According to the Operational Creditor total amount of 3,07,09,933.56/- with interest of Rs. 1,75,06,751/- is due as on 30.09.2019. In part-IV of the Application it is mentioned that the debt fell due on different dates commencing from 21st



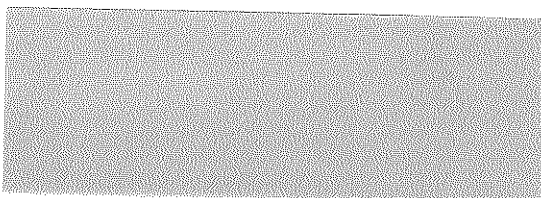
March, 2016. In the same paragraph the applicant also stated that the Corporate Debtor has acknowledged the outstanding dues of Rs. 3,17,89,512/- on 19th September, 2017 vide confirmation letter. The Operational Creditor has also sent demand notice on 22nd July, 2019 to the Corporate Debtor. The Operational Creditor annexed copies of Invoices from 2016 to 2017. The Respondent disputed amount of interest of Rs. 1,75,06,751/- according to it, there is no contract between the parties, therefore, the claim is not proper. After receiving the demand notice from the Applicant the Corporate Debtor has not raised any objection regarding interest or any other dispute regarding supply of materials but only by way of filing reply he has raised these objections. Thus, there is no pre-existing dispute.

10. The application is filed on 15.01.2020, however the Corporate Debtor has admitted its debt, therefore, a fresh limitation period commenced from the time the Corporate Debtor acknowledged its debt vide letter dated 19.09.2017. As per the Section 18 of the Limitation Act 1963 “ *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of*



*such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed".* Further, the respondent has filed affidavit on 27th January 2025 with copies balance sheet of 2015-16 and 2016-17 (which has been approved by the AGM on 30 Sept 2017), as per which it extends the limitation period and the application has been filed on 15<sup>th</sup> January, 2020. Acknowledgment in the balance sheet is sufficient proof of debt even if the relevant invoices were not produced as it shows as payables by the Corporate Debtor.

11. Hence, view of the above, the present application is complete and is defect free in terms of Section 9 of the Code. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted. We pass following order:





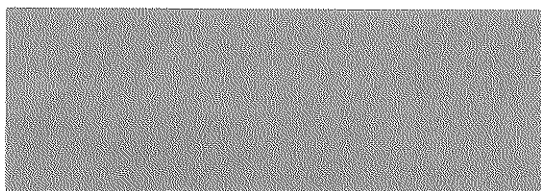
**ORDER**


(i) The Application bearing CP(IB)/ 104 / (AHM)/2020 filed by M/s. Polyhouse India Private Limited (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s. Aadnath Trade Wings Private Limited (Corporate Debtor) is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the Respondent/Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Respondent/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;




- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent/Corporate Debtor.
- (ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Respondent/Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.
- (iii) We hereby appoint Mr. Dhaval C Khamar having Registration No. IBBI/IPA-001/IP-P02574/2021-2022/13944 E-mail Id- ca.dhavalkhamar@gmail.com to act as an IRP under section 13(1) (c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.
- (iv) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to





extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (v) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- (vi) The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (vii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (viii) It is further directed that the supply of goods/services to the Corporate Debtor Company



if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- (x) The Operational Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.
- (xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of



Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- (xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Accordingly, CP(IB) 104 of 2020 is allowed and stands admitted.

SD/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

SD/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

vc