

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 23/9/JPR/2020

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

IN THE MATTER OF:

MANOJ JAIN,
PROPRIETOR OF MAXWELL INDIA

**...OPERATIONAL CREDITOR/
APPLICANT**

VERSUS

ROMESH POWER PRODUCTS PRIVATE LIMITED

**...CORPORATE DEBTOR/
RESPONDENT**

MEMO OF PARTIES

Manoj Jain Prop. of Maxwell India
Office Address: - F-946(D), Road No. 14,
V.K.I.A., Jaipur, Rajasthan-302013

Sd-

Sd

...Operational Creditor/Applicant

VERSUS

Romesh Power Products Private Limited
Registered Office At: -203,
Tikkar Mal Lane, Kishanpole Bazar,
Jaipur, Rajasthan-302001

...Corporate Debtor/Respondent

For the Applicant: Nikhil Yadav, Adv.
Anand Sharma, Adv.

For the Respondent: None Appeared

Order Pronounced On: 21.12.2021

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Mr. Manoj Jain Prop. of Maxwell India ('Applicant' / 'Operational Creditor') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against Romesh Power Products Private Limited ('Respondent' / 'Corporate Debtor').

2. The Applicant is a sole proprietorship with its office at F-946(D), Road no. 14, V.K.I.A, Jaipur-302013 (Rajasthan). It is stated that the Applicant is engaged in manufacturing and distribution of electricity meters, transformers, medical devices, etc.
3. The Respondent is a Private Limited Company incorporated under the provisions of the Companies Act, 1956, duly registered with the Registrar of Companies, Jaipur bearing CIN: U31300RJ1987PTC004113 and the Registered Office of the Respondent is located at 203, Tikkar Mal Lane, Kishanpole Bazar, Jaipur-302001 (Rajasthan). As per the Master Data, the Nominal Capital of the Respondent Company is Rs. 4,25,00,000/- (Four Crore Twenty Five Lakhs Only) and the paid-up capital is Rs. 4,25,00,000/- (Four Crore Twenty Five Lakhs Only).
4. It is stated that a purchase order dated 20.05.2017 was placed with the Applicant for the supply of 1 Phase Energy Meters and as per the terms of the purchase order, the payment was required to be made within 45 days from the date of delivery. In furtherance of the purchase order, a total number of 10,000 meters were dispatched and an invoice dated 27.06.2017 was raised for Rs. 48,00,000/- wherein CST was charged at 2% in place of providing C-form. The consignment was delivered on 08.07.2017 to the project site mentioned under the purchase order and a

Sd-

Sd

receipt acknowledgement was obtained on the delivery challan with the seal and signature of the Respondent.

5. Subsequently, the Applicant served demand notice dated 05.11.2019 upon the Respondent demanding payment of an unpaid operational debt, in Form 3 under Section 8 of the Code, which was duly received by the Corporate Debtor on 09.11.2019. The Applicant has neither received any payment towards the outstanding amount nor received any reply to the said demand notice.
6. As a consequence of non-payment of the due amount and interest, this application was filed. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 82,27,392/- as an outstanding amount, as mentioned in Part IV of Form 5:

PART IV

Sr. No.	Particulars of Operational Debt	
1.	The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Rs. 82,27,392/- (Eighty-Two Lakhs Twenty Seven Thousand Three Hundred and Ninety-Two only)

Sd-

Sd-

2.	Amount claimed to be in default and the date on which the default occurred	The total amount of debt claimed to be in default is Rs. 82,27,392/- Date of default: 22.08.2017
----	--	---

7. The Applicant has filed written submissions reiterating the pleadings as mentioned in the Application.
8. A perusal of the records of the proceeding before this Adjudicating Authority shows that despite service of notices, there is no representation on behalf of the Respondent / Corporate Debtor.
9. This Adjudicating Authority perused all the relevant papers and found them to be in order. The Registered Office of the Respondent is situated in Jaipur and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. Also, the matter is within the purview of Law of Limitation as the date of default is stated to be 22.08.2017 and the Application was filed on 13.01.2020.
10. The first issue for consideration is whether the demand notice in Form No. 3 dated 05.11.2019 was properly served. The demand notice dated 05.11.2019 was sent through a registered post at the registered office of the Respondent. The postal receipt and tracking report are found to be attached on Page 251 of the Application.

Sd-

Sd

11. The next issue for consideration is whether the operational debt was disputed by the Respondent. The Respondent Corporate Debtor has not filed a reply to the Demand Notice nor the instant Application. Moreover, despite service, there is no representation for the Respondent. Thus, there is no dispute as to the liability of the Respondent Corporate Debtor towards the Applicant Operational Creditor.

12. We have gone through the contents of the Application filed in Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 82,27,392/- (Eighty-Two Lakhs Twenty Seven Thousand Three Hundred and Ninety-Two only). The Applicant/ Operational Creditor has annexed the invoice dated 27.06.2017 as Annexure 4. Applicant Operational Creditor had issued demand notice in Form-3 dated 05.11.2019 (Annexure- 8) which was duly received by the Respondent Corporate Debtor. The Applicant has filed an affidavit under Section 9(3)(b) of the Code to the effect that there is no notice given by the Respondent relating to the dispute of the unpaid operational debt (page 256-257). This Adjudicating Authority has held above that the demand notice in Form No. 3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

13. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount as mentioned in the statutory notice to date. It is

Sd-

Sd-

also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to initiate CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

14. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed the name of IRP. Thus, this Adjudicating Authority appoints Mr. Rajendra Singh Sunda with registration no. IBBI/IPA-002/IP-N00951/2019-2020/12989, email: rssunda@gmail.com as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

15. Consequences of initiation of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Rajendra Singh Sunda, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issuance of the publication in widely circulated Newspapers as contemplated under the provisions of

Sd-

Sd

the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same.

- (ii) Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defraying his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

Sd-

Sd-

(iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

16. Accordingly, CP No. (IB)-23/9/JPR/2020 is admitted.

Sd -

(Raghu Nayyar)
Technical Member

Sd

(Deep Chandra Joshi)
Judicial Member