

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-3458/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/S JAYASWAL NECO INDUSTRIES LIMITED

...Operational Creditor/Applicant

Versus

M/s ALPHA PECIFIC ENGINEERS PRIVATE LIMITED

...Corporate Debtor/Respondent

Delivered on 07.01.2022

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Appearances:

Operational Creditor: Mr. Rahul Pandey, Mr. Devendra Ranade, Mr.
Shakul Ghatole, Mr. Amit Keswani (Advocates)

Corporate Debtor: Ms. Kusha Charan Swain (Advocate)

ORDER

Per: Bachu Venkat Balaram Das, Member (Technical)

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 M/s Jayaswal Neco Industries Limited (for brevity 'Operational creditor') with a prayer to initiate the Corporate Insolvency process against M/S Alpha Pacific Engineers Private Limited (for brevity 'Corporate Debtor').

1. The operational creditor submits that the corporate debtor had placed purchase order dated 17.09.2013 for the supply of materials for its work site at Greater Noida, to which the operational creditor duly supplied the materials and had accordingly raised tax-invoices. The corporate debtor had accepted the receipt of materials at sites without any protest or objection. The details of tax invoices are:

	Tax Invoice No.	Date	Amount
1.	123	22.10.2013	Rs. 4,65,965/-
2.	DEL/TSL/16/2014-15	14.04.2014	Rs. 2,73,909/-
3.	125	22.10.2013	Rs. 12,61,812/-
Total			Rs. 20,01,686/-

2. The operational creditor submits that the corporate debtor in part of discharge had issued two cheques of Rs. 6,97,695/- and Rs. 10,57,098/- which got dishonored upon presentation vide bank memo dated 14.01.2015 and 10.01.2015 respectively for the reason 'funds insufficient'. Therefore, the operational creditor issued legal notice dated 08.02.2015 calling upon the corporate debtor to make the payment within 15 days from the date of receipt of notice, but the corporate debtor failed to make payment. Despite issuance of reminders, the corporate debtor failed to make the payments. The operational creditor further initiated proceedings under section 138 read with section 142 of the Negotiable Instruments Act, which is pending therein. In pursuance to the abovesaid proceedings, the corporate debtor released some part payment of Rs. 4,15,579/- on 22.10.2013.

3. The operational creditor intimated the corporate debtor that amount of Rs. 15,86,107/- is due and further requested the corporate debtor to verify and confirm the said outstanding amount. It is submitted that the outstanding liability was duly acknowledged by the corporate debtor by duly putting the signature and stamp on the confirmation of balance letter dated 06.12.2016. The said letter has duly been annexed as Annexure-V.

4. The operational creditor issued section 8 demand notice dated 07.10.2019 under the provisions of the I & B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the



corporate debtor to pay the operational debt of Rs. 32,16,152.50/-. The corporate debtor had replied to the demand notice denying the contentions raised by the operational creditor and has failed to appreciate that all the balances as demanded in the notice were duly confirmed by the corporate debtor in past.

5. The operational creditor filed present application on 06.12.2019 under section 9 of IBC, 2016 to which the Respondent/Corporate Debtor has filed its reply by asserting that the corporate debtor always informed to the operational creditor that the material had many defects but the operational creditor was not taking any attention regarding the same and due to this the corporate debtor had faced many problems and losses. The corporate debtor further asserts that he is ready to pay the pending amount of Rs. 15,86,107,00/- and he is ready to deposit in the account of operational creditor Rs. 2,00,000/- on 20.02.2020 through demand draft and balance of Rs. 13,86,107.00/- on equally installments of Rs. 1,15,509/- per month. The corporate debtor further asserts that he had no knowledge regarding the matter under section 138 read with section 142 of the Negotiable Instrument Act nor any notice was served to the corporate debtor.

6. Heard both the parties and perused the documents on record, it is concluded that the corporate debtor in its reply has failed to produce any document or communication exchanged between the parties showing any pre-existing dispute with respect to the defect in the quality of the material shortage with respect to quantity of material supplied by the operational creditor. Further, the corporate



debtor has for the first time raised its dispute in the reply to the application. The corporate debtor had duly acknowledged its outstanding balance in the letter dated 06.12.2016 wherein the corporate debtor has put its company's stamp and signature. Therefore, the present case is fit for admission.

7. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. 32,16,152.50/-. The date of default is 06.12.2016 and the present application was filed on 06.12.2019. Hence the debt is not time barred and the application is filed within the period of limitation.

8. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

9. In the given facts and circumstances, the present application is complete and the operational creditor is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

10. Since the operational creditor has not proposed the name of the IRP, the Tribunal hereby appoints Mr Atul Jagnani, with registration number IBBI/IPA-001/IP-P01117/2019-2020/12508, email: (atuljagnani@gmail.com) who is and hereby appointed as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India

(Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

11. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Atul Jagnani, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

12. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor and following shall remain prohibited during the moratorium:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 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 in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

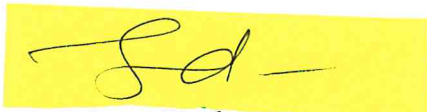


d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

However, during the pendency of the moratorium period, the provisions of Section 14(2) to 14(4) of the Code shall come in force.

13. A copy of this order shall be communicated to the operational creditor, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Operational creditor is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

14. The order is pronounced by this Adjudicating Authority in virtual Hearing.



(Bachu Venkat Balaram Das)
Member (Judicial)



(Narender Kumar Bhola)
Member (Technical)