



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI ATUL CHATURVEDI,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 39/9/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:**

**M/S VASUNDHARA INDUSTRIES**

...Operational Creditor/Applicant

**Versus**

**M/S DEEJAY DYNAMIX EXPLOSIVES PRIVATE LIMITED**

...Corporate Debtor/Respondent

**MEMO OF PARTIES**

**M/S VASUNDHARA INDUSTRIES**

Saraogian Street, Beawar  
Rajasthan-305901.

...Applicant

**VERSUS**

**M/S DEEJAY DYNAMIX EXPLOSIVES PRIVATE LIMITED**

**CIN: U24292RJ1987PTC003882**

R/o Office No. C2-A-13, Bapu Nagar,  
Opp. P.N.T. Colony, Bhilwara-Rajasthan-311001

...Respondent

**For the Applicant** : Rohan Agarwal, Adv.

**For the Respondent** : Prabhansh Sharma, Adv.



**Order Pronounced On: 12.05.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present application has been filed by M/s Vasundhara Industries through its authorised signatory Suman Kumar Jain ('Operational Creditor'/ 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Deejay Dynamix Explosives Private Limited ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Vasundhara Industries, is a partnership firm engaged in the business of manufacturing of Guar Gum Powder and various chemicals. The principal place of business is at 11, Pinaran Marg, Saraogian Street, Beawar, Ajmer, Rajasthan, 305901. The alleged default by the Corporate Debtor for the non-payment of operational dues amounts to Rs. 6,78,750/- (Rupees Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only).
3. The Corporate Debtor, M/s Deejay Dynamix Explosives Private Limited, is a private company incorporated under the Companies Act, 1956, on 09.03.1987, having CIN: U24292RJ1987PTC003882. The Respondent has its registered office at – Office No. 2-A-13, Babu Nagar, Opp. P.N.T.



Colony, Bhilwara, Rajasthan-311001; and has an Authorised Share Capital of Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only) and Paid-Up Share Capital of Rs. 17,07,260/- (Rupees Seventeen Lakh Seven Thousand Two Hundred and Sixty Only).

4. The details of the transactions leading to the filing of this application averred by the Applicant *vide* Diary No. 187/2020 dated 28.01.2020 are as follows:
  - a. The Corporate Debtor issued a purchase order to the Applicant in order to purchase Guar Gum Powder. Subsequently, the Applicant supplied the said goods to the Corporate Debtor, which has been duly acknowledged by Corporate Debtor.
  - b. It is pertinent to note that in lieu of the aforesaid transaction, invoices have been raised by the Applicant. Copy of invoices/bills raised by the Applicant annexed as Annexure-3 of the Petition.
  - c. The Applicant issued a Demand Notice under Section 8 of the Code on 30.08.2019 through the registered post and e-mail for demanding the payment of Rs. 6,78,750/- (Rupees Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only).
  - d. The aforementioned details, as reflected in Part IV of the Application, are as follows:

#### **Part IV**

#### **Particulars of Operational Debt**



1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	<b>Total Amount of Debt:</b> Total Amount of Debt Rs. 6,78,750/- (Rupees Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 6,78,750/- (Rupees Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only)  Date from which Debt fell Due: 14.12.2018

5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply *vide* Dairy No. 658/2023 dated 15.03.2023, stating as follows:

- a. The Respondent stated that the Petition filed by the Applicant is not maintainable as the Demand Notice which is served by the Applicant has no date of default and does not have any legal sanctity in the eyes of law.
- b. Further the Corporate Debtor submitted that the Petition does not meet the minimum threshold limit as prescribed under the IBC for initiation of CIRP and therefore, is liable to be dismissed. It was further stated that as per the notification dated 24.03.2020, the minimum threshold limit under Section 4 of IBC has been fixed as Rs. 1,00,00,000/- (Rupees One Crore) for initiation of CIRP.



- c. The Corporate Debtor submits that the Demand Notice was not duly served as per Section 8 of the IBC, 2016 and the date of the default is not specifically mentioned in the Demand Notice.
6. In the instant case, the Applicant sent a Demand Notice *via* a registered post and e-mail on 30.08.2019 to the Respondent in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, wherein the aggregate amount of Rs. 6,78,750/- (Rupees Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only) has been claimed.
7. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, and all the documents enclosed with the Application.
8. This Adjudicating Authority having perused all the relevant papers and finding them in the order notes that the Registered Office of the Respondent is situated in the state of Rajasthan, and therefore Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the debt fell due on 14.12.2018 and the Application has been filed before this Adjudicating Authority on 28.01.2020, hence the period of three years after the default occurred not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.



9. Before we come to the facts of the present case, the statutory scheme with regard to the Application under Section 9 needs to be recapitulated. Section 8 of the Code requires the Operational Creditor on the occurrence of default to deliver a Demand Notice on unpaid Operational Debt. Section 8(2) provides that Corporate Debtor within a period of 10 days of the receipt of the Demand Notice bring to the notice of the Operational Creditor existence of dispute if any. Section 8 of the Code is as follows:

*“Section 8: Insolvency resolution by operational creditor. - (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or 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.*

*(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in subsection (1) bring to the notice of the operational creditor—*

*(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*

*(b) the [payment] of unpaid operational debt—*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate*



*debtor demanding 2[payment] of the operational debt in respect of which the default has occurred.”*

10. Under Section 9(1), Operational Creditor if does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code. Section 9(1) is as follows:

*“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”*

11. Section 9(5)(ii) is as follows:

*“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—*

*(i).....*

*(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*

*(a) the application made under sub-section (2) is incomplete;*

*(b) there has been [payment] of the unpaid operational debt;*

*(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*

*(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*



*(e) any disciplinary proceeding is pending against any proposed resolution professional:*

*Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”*

12. Now in the present case, the first issue for consideration is whether the Demand Notice under Section 8 of the IBC, 2016 has been served to the Corporate Debtor. The Applicant in Form – 3 has served the Demand Notice to the Corporate Debtor on 30.08.2019 through the registered post as well as e-mail.

13. The next issue for consideration is whether there is an “operational debt” as the minimum threshold limit under Section 4 of IBC has been fixed as Rs. 1,00,00,000/- (Rupees One Crore) for initiation of CIRP as per the notification dated 24.03.2020. The Applicant has filed the present Petition on 28.01.2020 claiming the default of Rs. 6,78,750/- (Rs. Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only).

14. It is necessary to refer Section 4 of the IBC which reads as follows:

*“4. Application of this Part – (1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees. Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”*



15. As stated above the present petition is filed on 28.01.2020 which is prior to the said notification. The revised threshold limit will be applicable for Applications filed under section 9 of the Code on or after 24.03.2020. Since the present petition under section 9 was filed much prior to 24.03.2020, therefore the threshold limit of Rs. 1 crore of debt will not be applicable in the present case. The Hon'ble NCLAT has further clarified in the judgment of *Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd., Company Appeal (AT) (Ins.) No. 813 of 2021* that the threshold limit will be applicable for an application filed u/s 7 or 9 on or after 24.03.2020 even if the debt is of a date earlier than 24.03.2020.
16. The final issue for consideration is whether there is a dispute regarding the quality of the goods supplied by the Applicant to the Corporate Debtor. The Respondent / Corporate Debtor has raised no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.
17. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. We have gone through the contents of the Application filed in Form No. 5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in Default) of Rs. 6,78,750/- (Rs. Six Lakh Seventy-Eight Thousand Seven Hundred Fifty Only)). It is observed that the Operational Creditor has



issued invoices/bills (Annexure 3 (Colly) on page no. 45-75 of the Application) for goods supplied to the Respondent/ Corporate Debtor. Applicant/ Operational Creditor has given Demand Notice in Form No. 3 dated 30.08.2019, duly served on the Respondent/ Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.

18. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the IBC stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
19. 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 any person to be appointed as IRP. Hence, this bench will appoint the IRP from the pool of RPs empanelled with the IBBI. Therefore, the bench is appointing Mr. Kamal Kumar Jain, bearing Registration No. IBBI/IPA-001/IP-P00092/2017-18/10192 with the e-mail address [cakamljain07@gmail.com](mailto:cakamljain07@gmail.com) and phone number +91-9829058442 as the IRP in the present matter. The said IRP is



directed to file the written consent to act as an interim resolution professional in Form – 2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

20. In this matter, the Interim Resolution Professional appointed herein Mr. Kamal Kumar Jain, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.
21. 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.
22. Consequences of initiation of CIRP shall be inter-alia as follows: -
  - a. The IRP appointed by the Adjudicating Authority, Mr. Kamal Kumar Jain, 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 the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
  - b. Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning 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 concerning the Corporate Debtor.

- c. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Sections 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.
- d. 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.



- e. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Interim Resolution Professional by all modes for information.
- f. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the IRP nominated herein on his e-mail id.
23. Accordingly, CP No. (IB)-39/9/JPR/2020 is admitted. Let the copy of the Order be served to the parties and IBBI.

***-Sd-***

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

***-Sd-***

**ATUL CHATURVEDI,  
TECHNICAL MEMBER**