



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1014/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

Mukesh Jain Proprietor of P.R. Jewels
(PAN NO: AMBTJ5624L)

...Operational Creditor

v/s.

Indileo Exports Private Limited
[CIN: U74999MH2017PTC289601]

...Corporate Debtor

Order Delivered on:24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Ajit Anekar a/w Mr. Prithvi
Aringale i/b Auris Legal, Ld Counsel.

For the Corporate Debtor:

Mr. Praveen Tiwari, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mr. Mukesh Jain, Proprietor of P.R Jewels seeking



initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Indileo Exports Private Limited, (“the Corporate Debtor”).

1.1. The Company Petition is filed on 21.09.2021 claiming an amount of Rs.1,16,32,165/- in default. The Part IV of Form 1 specify the date of default as *“The total amount of debt is Rs.1,16,32,165/- along with interest at 18% per annum from May 2019 until realization”*.

2. In the regular course of business, the Corporate Debtor approached the Operational Creditor for purchase of different types of polished diamonds and sought 60 days credit to pay the consideration thereof, which the Operational Creditor agreed. Upon the same, Corporate Debtor placed 4 (four) Purchase Orders whereby the Corporate Debtor sought different types of diamonds, cut and polished.

2.1. That the Operational Creditor supplied different types of cut and polished diamonds as per the purchase orders of the Corporate Debtor. The Corporate Debtor had accepted the delivery of goods under the said orders as per its satisfaction. The Operational Creditor has not attached the purchased orders in the Company Petition. The Operational Creditor further submits that, 4 invoices were raised from 12.02.2019 to 25.02.2019 aggregating to Rs. 1,16,32,165/- and these invoices were received by the Corporate Debtor.

2.2. Upon expiry of 60 days period, the Operational Creditor approached the Corporate Debtor on various occasions for payment of the above mentioned 4 invoices totalling to Rs. 1,16,32,165. However, the Corporate Debtor failed to make payment of the aforesaid amount and sought time on some or the other pretext. In anticipation of the payment of the above 4 invoices, the Operational Creditor diligently paid the GST thereon as applicable.



- 2.3. After expiry of 6 months and failure to make any payment of the aforementioned four invoices, the Operational Creditor sent an intimation/reminder letter dated 24.12.2019, to the Corporate Debtor calling upon them to pay the amounts due under the said 4 invoices.
- 2.4. Upon receipt of the letter of the Operational Creditor, the Corporate Debtor responded to the same with frivolous and untenable allegations and, thus, failed to make the said payments which was due and payable. The Operational Creditor was therefore, constrained to issue a legal notice dated 30.05.2021 to the Corporate Debtor.
- 2.5. Despite receipt of the letter dated 30.5.2021 the Corporate Debtor failed to respond to same which forced the Operational Creditor to issue a Demand Notice dated 08.07.2021 u/s.8 of the Insolvency & Bankruptcy Code, 2016 ("IBC") making a demand of Rs 1,16,32,165/-, being the amount of debt due and payable, vide e-mail dated 8th July 2021 at 02.16 p.m. as well as through speed post duly delivered to Corporate Debtor on 12.07.2021.
3. The demand notice dated 08.07.2021 was duly received by the Corporate Debtor and was responded vide communication dated 16.07.2021 stating that a sum of Rs 1,16,32,165/- is not due and payable, as a sum of Rs 22,00,000/- in cash was handed over to one Mr. Arvind Goyal (purportedly the person who introduced the parties hereto). The Operational Creditor state that no amount in cash as alleged has been made to Mr. Amit Jain (purportedly partner of the Operational Creditor), though the operational creditor has not brought on record any evidence disputing the receipt of this mail communication and refuting the contents of such mail communication. Instead, the Operational Creditor states that the stand of the Corporate Debtor is to mislead the Hon'ble Tribunal, Mr. Arvind Goyal has no concern with the aforesaid transaction.



Thus, the Corporate Debtor has acknowledged the aforesaid Demand Notice and not disputed the amount payable.

4. The Corporate Debtor in the reply dated 25.02.2022 stated that, the amount of Debt claimed in Form 5 which is Rs. 1.16.32.165/- is incorrect. Mr. Arvind Goyal, the person who introduced the Petitioner to us and under our instruction paid Rs. 22,00,000/- to the partner associate of the petitioner (Mr. Amit Jain) and this fact has been suppressed by the Operational Creditors in their Demand Notice and Form 5 both. To this effect, the corporate debtor has relied upon an email communication dated 12th January, 2020 sent at Operational Creditor's mail ID mukesh@prjewels.co.in. Though, the Operational Creditor state that no amount in cash as alleged has been paid to Mr. Amit Jain (purportedly partner of the Operational Creditor), though the operational creditor has not brought on record any evidence disputing the receipt of this mail communication and refuting the contents of such mail communication. Accordingly, it has been submitted that the actual amount payable to the Petitioner is Rs. 94,32,165/- and not Rs. 1.16,32,165/-.
5. We have heard both the Counsel and perused the material on record. The Operational Creditor has stated that as per Part IV the total outstanding amount is 1,16,32,165, but the actual undisputed amount payable by the Corporate Debtor to Operational Creditor is 94,32,165/- after taking into consideration payment of Rs. 22.00 lacs in cash as evidenced by the e-mail communication dated 12.01.2020 at Operational Creditor's mail ID mukesh@prjewels.co.in on 12th January, 2020. Even if, this fact is disputed, it requires adjudication as to whether a sum of Rs. 22.00 lacs was actually paid to the Operational Creditor or not? In view of these facts, only a sum of Rs 94,32,165/- is due undisputedly and payable. In so far as a sum of Rs. 22.00 lacs is concerned, there exists a prior dispute and without commenting on the merits of the claim of corporate debtor in this regard, we are not inclined to consider this amount of debt into



consideration for the purpose of adjudication of present petition in terms of section 9 of the Code.

5.1. As per the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs “*claim under IBC should be minimum 1 crore, any petition for a claim below 1 crore cannot be dealt with by NCLT*”. The claim amount is below the threshold limit. Thus, the Operational Creditor failed to qualify the terms and conditions as stated in the notification. Therefore, this Petition is liable to be rejected.

ORDER

- a. The petition bearing CP(IB) 1014/MB-IV/2021 filed by Mukesh Jain Proprietor of P.R. Jewels (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Indileo Exports Private Limited (“the Corporate Debtor”), is **Dismissed**.
- b. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law, in view of insertion of Sec 10A of IBC 2016.

Sd/-

PRABHAT KUMAR
Member (Technical)
24.02.2023

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)