Registered Post

NATIONAL COMPANY LAW TRIBUNAL

Corporate Bhawan
Residency Area, Civil Line,
Jaipur
20.01.2020

Sr. No. 12 /2020
CP (IB)- 42/9/JPR/2019
To
Mr. Vishnu Upadhyay, A-44, Bhaskar Enclave-2,
Jaipur, Rajasthan near Harbinger Heights,
Contact No. 9818218505 VT Mansrover, Jaipur.

Subject: - Order Dated 17.01.2020 in the matter of M/s Dinesh Aggarwal, Sole Proprietor of M/s Kamal Auto Industries V/s Vignesh Alutech India Pvt. Ltd. CP (IB)- 42/9/JPR/2019.

Sir/Madam,

The certified copy of aforesaid order is enclosed herewith this letter for your reference.

Yours Faithfully,

Court Officer
Assistant Registrar
National Company Law Tribunal
Jaipur

Encl:- Certified copy of order Dated 17.01.2020.

IP REG. NO. IBBI/IPA ... 53
V. Sharma

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR (COURT NO. I)

CORAM: DR. P.S.N PRASAD
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 42/9/JPR/2019

(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:

DINESH AGGARWAL,
SOLE PROPRIETOR OF M/s KAMAL AUTO INDUSTRIES

...Operational Creditor/Applicant

VERSUS

M/s VIGNESH ALUTECH INDIA PVT. LTD.

...Corporate Debtor/Respondent

For the Applicant: **Nikhil Yadav, Adv.**

For the Respondent: **None-Appeared**

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Dinesh Aggarwal
Vs.
M/s Vignesh Alutech India Pvt. Ltd.

National Company Law Tribunal Jaipur Branch

20.01.2020
Assistant Registrar
National Company Law Tribunal
Jaipur

MEMO OF PARTIES

DINESH AGGARWAL,
SOLE PROPRIETOR OF M/s KAMAL AUTO INDUSTRIES
Office At: - B-60, Sector-8, Noida, Uttar Pradesh-201301

...Operational Creditor/Applicant

VERSUS

M/s VIGNESH ALUTECH INDIA PVT. LTD.
Registered Office at: 613, North Avenue,
6th Floor Opp. Anaj Mandi Road,
No. 9 A, Main Sikar Road, Jaipur-302013(Rajasthan)

...Corporate Debtor/Respondent

Order Pronounced on: 17.01.2020

Per: Shri P.S.N. Prasad, Technical Member

ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule-6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Dinesh Aggarwal, Sole Proprietor of M/s Kamal Auto Industries ('Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process against M/s Vignesh Alutech India Pvt. Ltd. ('Corporate Debtor').

Certified Copy Order
Dinesh Aggarwal
Vs.
M/s Vignesh Alutech India Pvt. Ltd.

Free Copy

Assistant Registrar
National Company Law Tribunal
Jaipur

20.01.2020

9.84

2. The Applicant is the Sole Proprietor of M/s Kamal Auto Industries having its office at B-60, Sector-8, Noida, Uttar Pradesh-201301. The Applicant is engaged in the business of manufacturing, marketing sale and supply of hardware for UPVC Doors & Windows including espag rods, strikers, hinges, handles, rollers, etc.

3. The Corporate Debtor is a Private Limited Company incorporated under the provisions of Companies Act, 1956 on 16.11.2013, duly registered with Registrar of Companies, Jaipur bearing CIN: U27203RJ2013PTC044300 and Registered Office is located at 613, North Avenue, 6th Floor Opp. Anaj Mandi Road, No. 9 A, Main Sikar Road, Jaipur-302013 (Rajasthan).

4. It is the case of the Applicant that the Applicant has supplied goods to the Corporate Debtor on concessional tax rates subject to issuance of 'C –Form' and raised invoices from 27.08.2014 to 15.02.2016 for a total amount of Rs. 8,53,883.50/- (Rupees Eight Lakh Fifty-Three Thousand Eight Hundred and Eighty-Three and Pasia Fifty Only) plus differential tax amount against C-Form and interest thereon of Rs. 1,58,606/- (One Lakh Fifty-Eight Thousand and Six Hundred and Six Only). Copy of invoices are annexed as Annexure-B with the Application. The Corporate Debtor has made a total payment of Rs. 8,43,388.50/- (Rupees Eight Lakh Forty-Three Thousand Three Hundred Eighty-Eight Point Fifty Paisa Only) and the last payment was received by

the Applicant on 12.02.2016 of Rs. 11,743/- (Rupees Elven Thousand Seven Hundred Forty-Three Only) through NEFT. Copy of Ledger account and proof of part payment is annexed as Annexure- C and D with the Application. Thereafter, the Corporate Debtor had not made any payment against the pending invoices and also not issued any C-Form to the Applicant.

5. The Applicant has sent several reminders for payment of outstanding amount of Rs. 1,69,101/- to the Corporate Debtor and to issue the requisite C-Forms but all in vain. Consequently, the Sales Tax Authority has levied penalty on the Applicant for non-payment of tax on the invoices raised against the C-Form to the Corporate Debtor. Thus, the Applicant has sent Notice dated 31.01.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 for an amount of Rs. 1,69,101/- (Rupees One Lac Sixty-Nine Thousand One Hundred and One) on the Corporate Debtor at its registered address through post which was returned with the remark "Not Delivered Addressee Moved". Thereafter the applicant has sent the aforesaid demand notice through email (vigneshalutech2013@gmail.com and m.suthar@vigneshalutech.com) on 01.02.2019 which has not bounced back but the Corporate Debtor has neither replied to the Demand Notice nor raised any dispute of the unpaid Operational Debt. Thus, the applicant filed the present application under section 9 of Insolvency and Bankruptcy Code, 2016.

Dinesh Aggarwal
Vs.
M/s Vignesh Alutech India Pvt. Ltd.

20.1.2020

6. The total amount claimed by the applicant as mentioned in Part IV is a sum of Rs. 1,69,101/- which is due and payable by the corporate debtor as described below:

Part III

Sr. No.	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.	Total Amount of Debt is Rs. **1,69,101** [Rupees One Lac Sixty-Nine Thousand One Hundred and One] @ 15% per annum till realization.
2.	Amount Claimed to be in Default and the date on which the default occurred	Total Amount of Debt is Rs. **1,69,101** [Rupees One Lac Sixty-Nine Thousand One Hundred and One] @ 15% per annum till realization. detailed as under: (a) Rs. 10,495/- [Rupees Ten Thousand Four Hundred and Ninety-Five] towards outstanding invoices; and (b) Rs. 1,00,842/- [Rupees One Lac Eight Hundred and Forty-Two] towards liability equivalent to pending C-forms; and (c) Rs.57,764/- [Rupees Fifty-Seven Thousand Seven Hundred and Sixty-Four] towards interest @15% per annum on the amount claimed above at para (b) with effect from relevant due dates till the filing of present Notice.

20.01.2020
Assistant Registrar
National Company Law Tribunal
Jaipur

Dinesh Aggarwal
Vs.
M/s Vignesh Alutech India Pvt. Ltd.

		Date of Default is 15.02.2016, date on which last invoice raised.

While the amount due towards invoices is Rs. 10,495/-, the balance amount payable on account of differential tax arose upon demand by the Sales Tax Authority in this regard vide letter dated 27.11.2018.

7. It is clear from the records that an Additional Affidavit vide Diary No. 1398/2019 dated 29/07/2019 had been filed by the Applicant in compliance of order dated 11.07.2019 to bring on record the recovery of tax notice by Commercial Tax Department, Uttar -Pradesh under Section 33 (11) read with Section 33 (12) of Uttar Pradesh Value Added Tax Act, 2008 demanding Principal Amount and Interest of Rs. 57,764/- which is calculated @15% p.a. on the outstanding amount of tax.

8. The Applicant in its written submission has referred the judgment passed by the Hon'ble NCLAT, New Delhi in the matter of Principal Director General of Income Tax (Admn. & TPS) Versus Synergies Dooray Automotive Ltd., CA (AT) (Insolvency) No. 205 of 2017, and 309,559,671 & 759 of 2018, delivered on March 20, 2019, wherein it was held that :

> *"29. 'Operational Debt' in normal course means a debt arising during the operation of the Company ('Corporate Debtor'). The 'goods' and 'services' including employment are required to keep*

the Company ('Corporate Debtor') operational as a going concern. If the Company ('Corporate Debtor') is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the 'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'."

9. Perusal of the records of the proceeding before this Tribunal shows that despite service of notice upon the Corporate Debtor as brought out by the order dated 19.08.2019 and in view of non-appearance, this Tribunal was constrained to proceed ex-parte against the respondent and the submissions of learned counsel for the Applicant were heard on 07.11.2019 and order was reserved.

10. This Tribunal perused all the relevant papers and found them to be in order. The Registered Office of Corporate Debtor is situated in Jaipur and therefore this Tribunal has jurisdiction to entertain and try this Application. The matter is within the purview of Law of Limitation, as stated hereinafter.

9,082

11. It is apparent from the record that the payment of claim amount has been defaulted by the Corporate Debtor but an amount of Rs. 10,495/- towards outstanding invoices stands barred by the law of Limitation since the petition / application was filed after elapse of three years from the date of the last invoice. However, the claim of an amount of Rs. 1,58,606/- (Rs. 1,00,842/- liability towards the pending C-forms + Rs.57,764/- interest thereon) in the application is within Limitation in view of the letter dated 27.11.2018 of Commercial Taxes Department, Uttar Pradesh filed by the Applicant. In these circumstances the claim to the extent of Rs. 1,58,606/- stands established and there is default in payment of the aforesaid amount due to Operational Creditor and no dispute is in existence. Hence, this Tribunal is inclined to initiate the proceedings namely, Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the Provisions of IBC, 2016.

12. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Tribunal appoints Mr. Vishnu Upadhyay having Registration No. IBBI/IPA-003/IP-N000153/2018-19/11843 and email address ipvishnu.upadhyay@gmail.com and contact number 9818218505, as the IRP of the Respondent. 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.

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Dinesh Aggarwal
Vs.
M/s Vignesh Alutech India Pvt. Ltd.

Assistant Registrar
National Company Law Tribunal

20.01.2020

13. The consequences of initiation of CIRP shall be inter alia, as follows: -

(i) The Resolution Professional Mr. Vishnu Upadhyay, having Registration No. IBBI/IPA-003/IP-N000153/2018-19/11843 is hereby appointed as the Interim Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the Provisions of IBC, 2016, including issue of publication in widely circulated newspapers as contemplated under the Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.

(ii) Further as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out is Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.

(iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will 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.

(iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

In the circumstances this Application stands admitted.

Sd/-

SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)

Sd/-

DR. P.S.N PRASAD
MEMBER (JUDICIAL)

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20.01.2020
Assistant Registrar
National Company Law Tribunal
Jaipur

Dinesh Aggarwal
Vs.
M/s Vignesh Alutech India Pvt. Ltd.

d.82