IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH,
PRAYAGRAJ

CP (IB) No.359/ALD/2019

An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

<u>IN THE MATTER OF:</u>

M/s Prayag Polytech Private Limited.

Having its registered office at

C-587, A-585, A-585(B), A-585 (C), Phase-I, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan-301019, through its Director Mr. Milan Aggarwal.

...Applicant/Operational Creditor

Versus

M/s Vinay Wire and Poly Products Private Limited

Having its registered office at 16/40 Civil Lines,

Kanpur, Uttar Pradesh 208001

...Respondent/Corporate Debtor

Order pronounced on 06.07.2023

CORAM:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

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PRESENT-

Sh. Vipul Ganda with Sh. Bhaskar Pandey & Ms. Priyanka Jindal, Advs. : For the Operational Creditor

Ms. Somya Tewari, holding brief of Sh. Vaibhav Dixit, Adv. : For the Corporate Debtor

ORDER

1. The instant application is filed on 05.09.2019 by Prayag Polytech Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "I & B Code, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "the Rules"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') in respect of M/S Vinay Wire and Poly Products Private Limited (hereinafter referred as 'Respondent'/'Corporate Debtor') due to default in payment of total outstanding amount of Rs.37,10,654/- (Rupees Thirty-seven Lakhs Ten Thousand Six Hundred and Fifty four only) plus interest @ 24% per annum till the actual date of realization, i.e. total amount of Rs.39,28,057/- However, after

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receiving demand notice dated 15.05.2019, the Corporate Debtor made payment of Rs.7,00,000 in three tranches and thus, the outstanding amount stands as Rs.32,64,655/- on 24.08.2019

2. Briefly stated facts of the present case as averred by the Applicant/Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that:-

i. The Applicant/Operational Creditor used to supply master batches since 1996.

ii. In 2018, the Applicant/Operational Creditor supplied goods to Corporate debtor and 3 invoices remain unpaid which are as follows:

Invoice no.	Invoice date	Amount (Rs.)
SAL09118191166	02.11.2018	8,09,480.00
SAL09/1819/174	28.01.2018	4,91,470.00
SAL08/1819/5486	06.12.2018	28,86,953.00
		41,87,903.00

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Less: Partly received amount for Invoice dated November 2, 2018	(4,77,249.00)
Total	37,10,654.00

iii. The Operational Creditor, with the intention of maintaining a positive business relationship with the Corporate Debtor, persisted in supplying master batches until December 6, 2018. Eventually, the Corporate Debtor would make payments for the invoices issued by the Operational Creditor, albeit with some delay. The most recent payment made by the Corporate Debtor was Rs. 2,00,000/- on May 9, 2019, after consistent efforts from the Operational Creditor to settle the accumulated outstanding balance.

iv. The Operational Creditor issued demand notice to Corporate Debtor on 15th May, 2019. While issuing the demand notice under Section 8 of the I & B Code, 2016 dated 15th May, 2019, the amount demanded is Rs.39,28,057/- i.e. default amount of Rs.37,10,654/- plus interest on default amount, which has been computed up to 30.04.2019

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v. On May 31, 2019, the Corporate Debtor responded to the demand notice by introducing a dispute regarding the quality of the goods for the first time. However, the applicant alleges that this dispute appears to be an afterthought and lacking merit. In its reply, the Corporate Debtor also contested the placement of purchase orders, which in view of the Applicant/Operational Creditor was done with malicious intent to avoid paying the legitimate dues to the Operational Creditor by raising a baseless dispute.

vi. Despite receiving the demand notice from the Operational Creditor, the Corporate Debtor made partial payments amounting to Rs. 7,00,000/- (Rupees seven lakhs only) in three installments. The first installment of Rs. 3,00,000/- (Rupees three lakhs only) was paid on June 04, 2019, followed by Rs. 2,00,000/- (Rupees two lakhs only) on July 22, 2019, and Rs. 2,00,000/- (Rupees two lakhs only) on August 24, 2019. Hence, the outstanding amount now stands at Rs.32,64,655/-

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vii. Interestingly, the Corporate Debtor had previously acknowledged making payments through various means of communication such as emails and WhatsApp messages, contradicting his current claims regarding purchase orders and product quality.

viii. It is important to note that the Corporate Debtor did not raise any disputes against the Operational Creditor before receiving the demand notice. Furthermore, the Corporate Debtor has failed to pay the outstanding amount as mentioned in the demand notice.

ix. With no other recourse, the Operational Creditor has filed the present application under section 9 of the Code, seeking the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

3. The Respondent/Corporate Debtor has submitted its reply dated 07.11.2019 stating that the present Insolvency and Bankruptcy (I.B.) Petition has been filed by M/s. Prayag Polytech (P) Ltd, falsely representing itself as an Operational Creditor of the Respondent in question. This petition is an abuse

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of the legal process and is not maintainable. The following contentions have been raised in the reply of the Respondent pleading for the dismissal of this petition:

i. There is an existing dispute regarding both the quality and quantity of the goods provided by the Petitioner/Operational Creditor.

ii. The goods supplied by the Operational Creditor, as mentioned in Invoice No. 5486 dated 06.12.2018, weighing 9986 Kgs and valued at INR 28,86,952/-, were provided despite no order being placed by the Respondent.

iii. The Respondent did not require the goods supplied by the Petitioner/Operational Creditor. However, the Petitioner/Operational Creditor insisted on the purchase, citing the closure of business activities for that fiscal period and emphasizing the longstanding business relationship between the parties.

iv. In January 2019, upon realization, the Respondent informed the Petitioner/Operational Creditor that the supplied goods were defective or substandard. These goods had been rejected by the Applicant's buyers.

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v. Respondent felt deceived and misled into purchasing substandard goods, suspecting that the Petitioner/Operational Creditor intended to clear their stock under the guise of a long-term business relationship.

vi. Consequently, the Respondent contacted the Petitioner/Operational Creditor to communicate the defective and substandard quality of the goods. The Petitioner/Operational Creditor never disputed the fact that the goods were provided without a previous order and were received in good faith in advance by the Respondent.

vii. The Petitioner/Operational Creditor also never disputed the fact that the goods were later discovered to be defective or substandard, as informed to them. Both parties reached a mutual understanding, driven by the desire to maintain a harmonious relationship. It was agreed that if the substandard goods were sold to third parties, payment would be made in proportion to the value at which they were sold.

viii. Subsequently, as contended by the Respondent, a meeting was held between the representatives of Petitioner and

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Respondent on 03.01.2019 wherein Mr. Avijeet Chaturvedi from M/s. Prayag Polytech (P) Ltd., Alwar (Operational Creditor) acknowledged the presence of an issue with the goods and admitted that they were faulty. Additionally, the parties came to a consensus that if any further problems arise during the usage of the goods, the representatives of the operational creditor will be held accountable. The copy of the minutes of the meeting dated 03.01.2019, which confirms the mutual settlement between the Petitioners and Respondents, has not been presented to the attention of the Hon'ble Tribunal by the Operational Creditor. A copy of this minutes of the meeting have been attached hereunder:-

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Minutes of Meetings

This meeting was held on dated 03/01/2019 between M/s Prayag Polytech Pvt ltd., Alwar (PPPL) & Vinay Wires & Poly Products Pvt ltd (VWPPPL) and below were the presence

Mr. Avijeet Chaturvedi (M/s Prayag Polytech Pvt ltd., Alwar)

Mr Ashish Kumar (M/s Vinay Wires & Poly Products Pvt Ltd.)

Mr. Ashok Pal (M/s Vinay Wires & Poly Products Pvt Ltd.)

During the meeting the following points were discussed and conclude

1. As it was observe that during the production of Film there are small particles & Black spots are coming in the film due to White Master Batch and VWPPPL had rejected the entire lot sullied under Inv. No. 5486 dated 06/12/2018 and ask to take Master Batch return Back
2. VWPPPL shown all the samples produce during the run of white master batch sullied by PPPL
3. After a long discussion Representative of PPPL accepted the problem and requested to use the material on Low percentage of mixing and also assure that by reducing the Percentage no Problem will accrued

Comments :

On the request of the representative of PPPL that VWPPPL will be use the Material on Low percentage and if any problem accured in future , PPPL will take care of the same.

{ ASHISH KUMAR} { ASHOK PAL } {AVIJEET CHATURVEDI}

Place : Kanpur

Date : 03/01/2019

Vinay Wires & Poly Products Pvt. Ltd.

Authorised Signatory

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ix. On 9th May, 2019, the Respondent made partial payments of INR 2,00,000/- as the goods were already determined to be sub-standard/defective during the previous meeting's minutes.

x. However, as pointed by the Respondent that it was taken aback when they received a demand notice dated 15th May, 2019, requesting payment of the entire amount of INR 39,28,057/- along with an incorrect calculation of interest at 24% per annum. The Respondent replied to the said demand notice on 31.05.2019 wherein he reiterated the above points.

xi. Pointing out about the agreement reached during the minutes of the meeting on 03/01/2019, the Respondent made payments of Rs. 3,00,000/- on 4th June, 2019, Rs. 2,00,000/- on 22nd July, 2019, and Rs. 2,00,000/- on 24th August, 2019. However, it further pointed out that payments were not an acknowledgment of any debt amounting to INR 39,28,057/-.

xii. The Respondent had raised the issue of an existing dispute regarding the nature of goods and the earlier settlement

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agreed upon by both parties and as per the Respondent, they were not denied by the Operational Creditor in their electronic mail conversations on 21.06.2019, 19.07.2019, and 07.09.2019.

xiii. Subsequently, the Respondent received the present Insolvency and Bankruptcy application dated 04.09.2019, wherein charges were alleged against them for defaulting on payments. It is important to note that the Petitioners have consistently demanded an interest rate of 24% per annum. However, there is no "purchase order/agreement for the sale of goods" that specifies the interest rate.

xiv. The respondent further avers that it did not initiate any legal proceedings despite getting sub-standard goods due to the assurances of the Operational Creditor and it seems that the Operational Creditor was planning to maliciously prosecute the Corporate Debtor as is evident from its email dated 12.06.2019

xv. It is also worth mentioning that in this case, the Operational Creditor has relied on a Whatsapp transcript as evidence

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under Annexure-8 of the IB Petition. However, it should be noted that such electronic evidence is not admissible unless the requirements specified under Section 65B of the Evidence Act, 1872, are fulfilled. The operational creditor alleges that the purported transcript of WhatsApp text messages is actually a computer-typed document, which appears to be an attempt to deceive the Hon'ble Tribunal by presenting false evidence that is otherwise inadmissible under Section 65B of the Evidence Act. He also alleges that the true copies of electronic mail provided are one-sided drafted letters from the Petitioners, lacking any admission from the Respondent

4. The operational creditor filed a rejoinder dated 21.01.2020 countering all the contentions raised in the reply filed by the Corporate debtor and made the following averments:

i. The Operational Creditor provided master batches to the Corporate Debtor during the period between 02.11.2018 and 06.12.2018. The Corporate Debtor was liable for paying a total amount of Rs. 4,187,903/-. However, it has only made a partial payment of Rs. 4,77,249/-. Therefore, there is a

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remaining balance of Rs. 37, 10,654/- that remains unpaid. This outstanding amount constitutes an operational debt owed by the Corporate Debtor to the Operational Creditor, as defined in Section 5 of the Insolvency and Bankruptcy Code, 2016 (IB Code).

ii. The Corporate Debtor has not enclosed any document in support of its averments which clearly establish the malicious intent of the Corporate Debtor to refrain from making the payment of legitimate dues to the Operational Creditor by raising frivolous disputes like the quality or quantity of goods supplied. The Corporate Debtor may be put to strict proof of the averments made in the reply.

iii. It is further stated that the Operational Creditor and the Corporate Debtor did not reach any understanding or agreement regarding the payment. On 13.06.2019, the Corporate Debtor informed the Operational Creditor that it would make the payments once it receives the same from its customers. Therefore, this cannot be considered a mutual understanding.

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iv. Furthermore, considering their longstanding business relationship and the assurances given by the Corporate Debtor, the Operational Creditor requested them to make payments of approximately 8-10 lakhs per month (2 lakhs per week). However, the Corporate Debtor failed to make these payments, clearly indicating a deliberate intention to avoid fulfilling their payment obligations.

v. The Petitioner/Operational Creditor categorically pointed out that it is crucial to mention that Mr. Avijeet Chaturvedi did not participate in the meeting that allegedly took place on 03.01.2019 and was not authorized to do so. The document claiming to be the minutes of the meeting held on that date is fabricated. The signature of Mr. Avijeet Chaturvedi on the said document has been forged and cannot be considered reliable. The Corporate Debtor must provide solid evidence to support its claims. An excerpt of the appointment letter of Mr. Avijit Chaturvedi bearing the original signature of Avijeet Chaturvedi is attached hereunder:-

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Page No.-3/4

Avijit Chaturvedi

10. Medical Fitness

This appointment is subject to your being and remaining, medically fit. Please confirm your acceptance of the appointment on the above terms and conditions by signing and returning this letter for records.

11. If you change your resident address & contact numbers. You inform the company in written within period of 7 Days from the change of address & contact numbers.

12. Transfer

Company have the right to transfer you anywhere in India. You should have no objection for that.

You're faithfully

For Prayag Polytech Pvt Ltd

For Prayag Polytech Pvt. Ltd.

Authorised Signatory

(Authorized Signature)

NOTARY ★ GOVT. OF INDIA ★ SHAHJAHAN DELHI Regn. No. 10698

I have read the terms and conditions of this letter of appointment and confirm my acceptance of the same.

(Signature and Date)

For Prayag Polytech Pvt. Ltd.

Authorised Signatory

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vi. It is also stated that the Corporate Debtor has indeed made payments subsequent to issuance of demand notice and the same can be seen in the records of Information Utility appended as Annexure to the main petition. This shows that earlier corporate debtor was maliciously avoiding payment.

vii. The Respondent kept assuring the petitioner that he would make payment and the same has been appended as Annexure 2 to rejoinder on page 17. However, when he didn't do so, the Petitioner had no other choice but to file a demand notice.

viii. The petitioner further avers that the calculation has been accurately determined based on the specified interest rate of 24% per annum, which is also mentioned in the invoices. The Corporate Debtor has never raised any objections or disputes regarding the interest rate stated in the invoices.

ix. As regards to the admissibility of electronic evidence produced by the operational creditor, the petitioner has appended a copy of the certificate under section 65B of the Evidence Act, 1872 as Annexure 3 to this rejoinder which is reproduced below:-

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ANNEXURE-3

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL AT ALLAHABAD 20

C.P. (IB) NO.359 OF 2019

IN THE MATTER OF:

Prayag Polytech Private Limited

- OPERATIONAL CREDITOR

VERSUS

Vinay Wire & Poly Products Pvt. Ltd.

- CORPORATE DEBTOR

CERTIFICATE

(Under

I, Milan Aggarwal, son of Sh. Ravinder Kumar Aggarwal, aged about 43 years, resident of B 74, South City-1, Gurgaon, presently at New Delhi, hereby solemnly affirm and state as under:

1. That, I am the authorized representative of Operational Creditor in the above-mentioned petition and as such am well conversant with facts and circumstances of the present case and hence, I am competent to depose the present affidavit.

2. I state that I have produced the printouts of emails and electronics documents submitted with the Petition.

3. The printouts and other digital documents taken from the computer and other devices are owned, maintained, managed and operated by me.

For Prayag Polytech Pvt. Ltd.

Authorised Signatory

Milan Aggarwal

13 JAN 2020

Date: August 30, 2019

Place: New Delhi

ATTESTED

NOTARY DELHI

13 JAN 2020

GOVT. OF INDIA NOTARY SHAHJAHAN DELHI Regd. No. 10698 DL. EXP. 23/01/2024

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5. We have considered the submissions made by the Ld. Counsels for the parties and perused the records.

6. On perusal of the record, we find that in the whatsapp chat, when the director of the Operational Creditor requested for release of outstanding amounts due from the Corporate Debtor on supply of goods, it has been clearly stated by the director of Corporate Debtor that his company is NPA and has a lot of bank liability. Therefore, he wished to pay the outstanding amount in parts. These whatsapp messages are authenticated by the Operational Creditor by filing an affidavit in Rejoinder dated 21.01.2020 meeting the requirement of Section 65B of the Indian Evidence Act, 1872.

7. The issue of goods being sub-standard has been raised by the corporate debtor only after issuance of the demand notice under Section 8 of the I & B Code, 2016. The demand notice was issued on 15.05.2019 and the issue of sub-standard goods was first mentioned in the reply to demand notice dated 31.05.2019 and then in a subsequent email dated 13.06.2019.

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8. Even the issue of the operational creditor providing goods without any order of corporate debtor was first raised in the email dated 13.06.2019. The emails prior to issuance of demand notice only talk about the supply of goods to corporate debtor and issue of non-payment of dues by corporate debtor. In none of the previous communications, the Corporate Debtor has raised any dispute as regards the payment of outstanding amounts or any objection regarding the quality of the goods supplied. All these communications were made before the issuance of notice under Section 8 of the I & B Code, 2016.

9. The Corporate Debtor made payment of Rs.7,00,000/- after issuance of demand notice which shows his implied admission of acknowledging the default amount due. Thus, the unpaid operational debt is now at rs. 32,64,655/-

10. The Corporate Debtor did not raise any such quality issue prior to demand notice. Therefore, the Operational Creditor has been found justified in its plea for submitting the application under Section 9 of I & B Code 2016 seeking starting of CIRP against the Corporate Debtor.

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11. Further, the Corporate Debtor could not produce any documentary evidence before us showing that the material supplied by the Operational Creditor is bad in quality and has been returned by its customers due to any defect. Therefore, we find that the Ld. Counsel of the Operational Creditor has failed to demonstrate about any pre-existing dispute on payment of outstanding debt demanded by the Operational Creditor or to substantiate his claim of the material supplied by the Operational Creditor being bad in quality. Even no notice of dispute has been issued by the Corporate Debtor.

"In Jord Engineers India Ltd. Vs. Valia & Co. [2018] ibclaw.in 17 NCLAT*, the goods supplied was of inferior quality, but no such dispute was raised by the Appellant prior to issuance of notice under Section 8(1). The question of quality was raised by the Appellant only when reply under Section 8(2) was filed by the Corporate Debtor. Therefore, that cannot be taken into consideration to annul the initiation of CIRP."*

In the present case, the Corporate Debtor has not raised the question of quality of the goods supplied prior to demand notice under Section 8(1) and such plea was taken subsequent to the demand notice only in the emails, replies to demand notice and

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the instant application and that too without any supporting evidence and hence, such plea of dispute cannot be admitted at this stage.

> ***"In Rajeev K Aggarwal Vs. Panipat Texo Fabs Pvt. Ltd. [2018] ibclaw.in 97 NCLAT**, raising of dispute in regard to quality of goods being inferior/ substandard or defective for the first time in reply to demand notice or in response served by the Adjudicating Authority would not constitute a prior and pre-existing dispute contemplated under law as a defence to the initiation of Corporate Insolvency Resolution Process, more so when the contemporary record in regard to transactions between the Corporate Debtor and the Operational Creditor at the time of delivery of goods or immediately thereafter does not demonstrate raising of any dispute with respect to quality of goods supplied by the Operational Creditor."*

In the present case also, no contemporary record exist with regard to dispute raised by the Corporate Debtor in respect of quality of good supplied by the Operational Creditor.

> ***NCLAT in K.K. Capital Services Limited Vs. Sristi Hospitality Private Limited [2020] ibclaw.in 164 NCLAT,** held that disputes raised by the Corporate Debtor in the reply to the notice, not supported by any documentary evidence, are spurious, hypothetical and illusory.*

In the present case, as it is already discussed above that the Ld. Counsel of the Corporate Debtor could not produce any

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documentary evidence with regards to the dispute in quality of good supplied by the Operational Creditor and hence, his plea of raising dispute regarding quality of good supplied on telephone is nothing but spurious, hypothetical and illusory and cannot be taken as pre-existing dispute.

12. Similarly, the Corporate Debtor couldn't produce any documentary evidence as to show that the Operational Creditor provided goods to the corporate debtor without any order of the same. The corporate debtor has in fact used these goods in its business but has failed to pay for the same.

13. The only reference on the issue of quality of material supplied by the Operational Creditor is in minutes of meeting dated 03.01.2019 that has been produced before us in the reply dated 07.11.2019 filed by the Corporate Debtor. Against this alleged minutes of meeting held on 03.01.2019, the Operational Creditor in his rejoinder has stated that Mr. Avijeet Chaturvedi (who has been shown as representative of the Corporate Debtor and claimed to have signed the minutes), was neither authorized nor did he attend any such meeting. During

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arguments, the Ld. Counsel for the Operational Creditor stated that the said minutes of meeting as produced by Corporate Debtor is a fabricated document and Mr. Avijeet Chaturvedi's signature have been forged. It has been shown that the signature of Mr. Avijeet Chaturvedi on his appointment letter accepting the offer of employment from Operational Creditor (Page No.16 of this order) is totally different from the signature that exists on alleged minutes of meeting (Page No.10 of the order). The Ld. Counsel for Corporate Debtor could not counter this evidence produced before us. After perusing the scanned copy of alleged minutes of meeting (as available on page no.10 of this order), it seems to be a false document since it is incomplete and also the alleged signature of Mr. Avijeet Chaturvedi on it, doesn't match with the signature of Mr. Avijeet Chaturvedi in the scanned copy of his appointment letter produced by operational creditor before us. Thus, it is not a reliable document. It is also pertinent to note that a perusal of the alleged minutes of meeting dated 03.01.2019, shows that both parties made a compromise wherein it was agreed that

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material supplied by the Operational Creditor would be used by the Corporate Debtor and if any problem occurred in future, Operational Creditor will take care of the same. There is no evidence of raising of any matter by the Corporate Debtor regarding problem with material supplied by the Operational Creditor on subsequent date till demand notice was issued. Considering these facts as discussed above, it is clear that the alleged agreement though found to be not a reliable document, it in no way shows any pre-existing dispute between the two parties.

14. As regards the plea of the interest being excessive or wrongly calculated, the invoices mentioned the rate of interest and the same has never been disputed by the Corporate Debtor prior to replying to this instant petition, which shows that this objection by the Corporate Debtor lacks merit.

15. With regard to the admissibility of the electronic evidence, the Operational Creditor has appended a copy of the certificate under section 65B of the Evidence Act, 1872 as Annexure 3 to its rejoinder and scanned copy of the same is on Page No.18 of this order.

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16. Taking into account provisions of Section 9 of the I & B Code, 2016, we find that the application made under sub-section (1) of Section 9 alongwith documents and fees as mentioned in its sub-section (2) is complete, no payment of the unpaid operational debt of Rs.32,64,655/- has been made which is well above the threshold limit of Rs. 1 lakh . Further, no notice of dispute has been given by the Corporate Debtor to the Operational Creditor and also, there is no record of dispute in the information utility as envisaged in sub-Section (2) of section 8 thus, fulfilling all conditions as provided under clause (i) of sub-section (5) of Section 9. The date of default as per demand notice has been found to be 30.04.2019 and petition u/s 9 is filed on 05.09.2019 and hence, petition is found to be filed well within the limitation period. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, has been fulfilled and the Ld. Counsel of the Corporate Debtor has failed to demonstrate before us anything about there being any preexisting dispute as regards the payment of the operational

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debt, we find this application fit for admitting under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor.

17. The Operational Creditor has not proposed the name of the IRP in the present application. Hence, this adjudicated Authority appoints Mr. Avneesh Srivastava as the IRP in the present case. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Aditi Kharbanda, and it is found that there is no proceeding pending against the proposed IRP. Hence, we hereby appoint Mr. Avneesh Srivastava having Registration No. IBBI/IPA-001/IP-P-01845/2019 - 2020/12869, R/o of 310, 3rd Floor, Plaza Kalpana, Birhana Road, ,Kanpur ,Kanpur Nagar, Uttar Pradesh ,208001, Email: caavneesh11@gmail.com as the IRP.

18. Accordingly, this application is admitted u/s 9(5) of I & B Code, 2016 under the following terms and conditions.

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency

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Resolution Process against the Corporate Debtor i.e. M/s Vinay Wire & Poly Products Private Limited is hereby admitted.

ii) We hereby declare a moratorium u/s 14 and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) This Adjudicating Authority hereby appoints Mr. Avneesh Srivastava having Registration No. IBBI/IPA-001/IP-P-01845/2019 -2020/12869, R/o of 310, 3rd Floor, Plaza Kalpana, Birhana Road, ,Kanpur ,Kanpur Nagar,Uttar Pradesh ,208001, Email: caavneesh11@gmail.com to act as the IRP under Section13(1)(c) of the Code. The consent affidavit under Form 2 is at page 171 of the present petition and the Law Research Associate of this Tribunal, Aditi Kharbanda, has checked the credentials of Mr. Avneesh Srivastava and there is nothing adverse against him.

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iv) The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause

(b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -

a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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b) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor 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);

c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

vi) The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vii) The provisions of sub-section (1) of Section 14 of I & B Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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viii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.

ix) Provided that where at any time during the Corporate Insolvency Resolution Process period if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant in accordance with I & B Code, 2016 read with the relevant rules & regulation framed thereunder.

x) The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- (One Lakh Only) with the IRP

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appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.

xi) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.

xii) List the matter on 07.08.2023 for filing of the progress report.

xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Aditi Kharbanda
(LRA)