

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P.(IB) No. 1117(MB)/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule) 2016

In the matter of

**AJS Impex Private Limited
Through its Resolution Professional
Hemant Kumar Shah**

Having registered office at: 211, 2nd Floor,
Hubtown Solaris, Saiwadi, N. S. Phadake
Road, Near Hotel Regency, Andheri (E),
Mumbai – 400069.

..... Applicant/Operational Creditor

V/s

Palak Agency Private Limited
Having Registered address at: 533, Nav
Vyapar Bhavan, 49, P D'Mello Road,
Carnac Bunder, Mumbai-400009.

..... Corporate Debtor

Order delivered on: - 16.01.2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Operational Creditor : Adv. Aniruth Purusothaman
For the Corporate Debtor : Adv. Manmohan Rao

ORDER

Per: - Ani Raj Chellan, Member (Technical)

1. The instant application is filed by AJS Impex Private Limited through its Resolution Professional Shri Hemant Kumar Shah (hereinafter 'Applicant' or 'Operational Creditor') u/s 9 of the Insolvency and Bankruptcy Code ('the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for initiation of Corporate Insolvency Resolution Process ('CIRP') against Palak Agency Private Limited (the 'Corporate Debtor') for making default in payment of outstanding principal amount of Rs. 9,46,36,222/- (Rupees Nine Crores Forty-Six Lakhs Thirty-Six Thousand Two Hundred and Twenty-Two Only) and interest amount of Rs. 7,36,15,716/- (Rupees Seven Crore Thirty-Six Lakhs Fifteen Thousand Seven Hundred and Sixteen Only) as on 29.07.2023.
2. The Operational Creditor/ Applicant is a company incorporated under the Companies Act, 1956 which was admitted into CIRP wherein Shri Hemant Kumar Shah has been appointed as Resolution Professional by an order of this Tribunal dated 09.03.2023.
3. The Corporate Debtor i.e. Palak Agency Private Limited was incorporated as a company on 19.06.1998 with its registered office

in Mumbai and this Tribunal has jurisdiction to deal with this application.

4. Briefly the facts of the case as mentioned in the application and submitted by the learned counsel for the Operational Creditor are summarized here under:

- (a) The Operational Creditor is involved in the business of trading of iron and steel products and it supplied goods to the Corporate Debtor under invoices dated 31.01.2020 and 03.02.2020. The total amount payable under the aforesaid invoices amounts to Rs.10,41,36,222/-. The Operational Creditor states that it has received a payment of Rs. 95 Lakh from the Corporate Debtor and the balance amount of Rs.9,46,36,222/- is due and payable by the Corporate Debtor.
- (b) The Applicant stated in the Application the principle amount of Rs.9,46,36,222/- together with interest of Rs.7,36,15,716/- aggregating Rs.16,82,51,938/- is payable by the Corporate Debtor. In support of the same, the Applicant submitted a copy of the Interest Ledger of Corporate Debtor in the books of the Applicant together with a confirmation of accounts dated 27.11.2020 sent by the Applicant are attached with the Petition. The amount outstanding as above is confirmed by the Corporate Debtor vide its confirmation of account for the period 01.04.2020 to 31.08.2020 which is annexed as Exhibit-G to the Petition.
- (c) The Applicant submitted that the Corporate Debtor in spite of committing default on 27.11.2020 and receiving various

correspondences, failed to pay the dues to the Operational Creditor.

- (d) The Applicant made a demand in Form 3 on 14.12.2020 to pay the defaulted amount within ten days of the receipt of the above demand. The same was delivered on the Corporate Debtor. However, the Corporate Debtor continued to default in making payment to the Operational Creditor. The Applicant has also submitted a copy of the Bank statement and the record of financial information in Form-C filed with the NeSL, the Information Utility.
5. The Corporate Debtor has not filed its reply to the averments made by the Applicant.

Analysis and findings

6. We have heard the learned counsels for both the parties and have perused the materials on record.
7. The Applicant stated in the Application that a principal amount of Rs.73615716/- is outstanding in respect of four invoices dated 31.01.2020 and 03.02.2020, and annexed a copy each thereof with the Application. During the hearing, the learned counsel for the Corporate Debtor also unequivocally admitted the debt and submitted that the Corporate Debtor, on account of its financial position is unable to pay the dues to the Operational Creditor and stated that the Application may be admitted.
8. It is, however, observed from the invoices annexed to the application that the amount under the relevant invoices is payable

within 90 days from the date of invoice, thus the due date of payment is 01.05.2020 and 04.05.2020. In part IV of the Application also, the Applicant stated that the date of default is 27.11.2020 though no document or evidence has been produced to support the date of default.

9. When we look at the dates of default 01.05.2020 and 04.05.2020 as per the invoices or even 27.11.2020 as per the Application, we observe that all the dates of default fall within the period specified in Section 10A of the Code (from 25.03.2020 to 25.03.2021) which provides that no application under Section 7,9 and 10 shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.
10. Therefore, relying on the provisions of Section 10A of the Code, the date of default falls within the excluded period and hence, the application is liable to be dismissed on this point alone.
11. The Company Petition **CP. No. 1117 of 2023 is dismissed** accordingly being barred under Section 10A of the Code.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)