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

CP (IB) 3546/MB/C-II/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Ardex Endura (India) Private Limited
[CIN: U24233KA1997PTC022383]
406 & 407, Brigade Rubix No. 20, HMT Campus, Yeswanthpur Hobli, Banglore-560013

... Operational Creditor/Applicant

Versus

Meta Arch Private Limited
[CIN: U20299PN1998PTC012673]
110, Pride Silicon Plaza, S.B Road, Model Colony, Pune, Maharashtra-411016

...Corporate Debtor/Respondent

Order Delivered on 08.10.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor	:	Ms. Rita Yadav, Advocate.
For the Corporate Debtor	:	Mr. Avinash R Khanolkar, Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is a Company Petition filed under section 9 ("**the Petition**") of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Ardex Endura (India) Private limited ("the Operational Creditor")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Meta Arch Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor was incorporated 09.07.1998 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is **U20299PN1998PTC012673**. Its registered office is at 110, Pride Silicon Plaza, S.B Road, Model Colony, Pune, Maharashtra-411016.

Brief Facts of the case:

3. The Applicant submits that the Debt occurred on 4th July 2016 and the amount of Debt is Rs. 15,74,692/- including the Principal amount of Rs. 11,69,310/- and Interest @18% amounting to Rs.4,05,382/-.

4. The Corporate Debtor has Authorised Share Capital of Rs. 20,00,000/- and the Paid Up Share Capital is valued at 1,42,000/-.

5. The Applicant is involved in the business of tile fixing adhesives, grouts, flooring, water proofing, tile care, concrete repair, solution and allied products for which, the applicant came into contract with the respondent Corporate Debtor for supply of raw materials to the Applicant.

6. The materials supplied by the Corporate Debtor are namely:

   WPM 265 5L, Sealing Tape 120/70 Article No 27010, Flex Liquid 5L, Flex Powder Grey 7.50 Kg, WPM 124 20 Kg, P 51 5 Kg, WPM White 5L, SU 10 600ml, B 30 25 Kg, EP GT A Grey 1 Kg and allied products.

7. On event of non-payment, a Demand Notice was issued by the Operational creditor in respect of unpaid operational Debts due from the Corporate Debtor under Section 8 of the Code dated 23rd June 2018 along with acknowledgement. Copy of the same is Annexed as **"Annexure-I"** of the Petition.

8. The Applicants submits the Following list of Invoices issued to Meta Arch:

Date	Invoices	Amount
24-07-2015	9402203534	2,15,438
30-07-2015	9402302579	92,025
31-08-2015	9402302671	24,964
31-08-2015	9402302673	7,40,317
29-09-2015	9402203882	25,815
30-09-2015	9402203884	3,762
01-10-2015	9402203898	1,60,940
07-10-2015	9402302791	68,175
Total		**13,31,436**

Reply Submitted by the Respondent Corporate Debtor

9. The Respondent submits that it is a company dealing in Interior Turnkey Projects and Designing and has come across the Applicant

for supply of tile fixing adhesives, grouts, flooring, water proofing, tile care and allied products.

10. The respondent submits that the petitioner was supposed to deliver the goods only when 100% of payment for the same is been done by the Respondent Company to Petitioner. Despite being aware of this fact, the Corporate Debtor has supplied the goods before even receiving any advance money from the Respondent, which is one of the terms as per the sample purchase order. Annexed as **"Annexure-3"** of the reply.

11. The Respondent submits that they had an oral agreement with the applicants to visit the site wherein, the Respondent Company undertakes the work and then that person only decided the required quantity of material for that particular site.

12. The respondent submits that somewhere in October 2016, the Respondent realised that the applicant has supplied more than the required amount of the supplies and it has been done with the intent to fulfil the sales target of the Applicant.

13. The Respondent also submits that since October 2016, there exists a dispute in between the Respondent and the Applicant, of which, the Applicant is completely aware. **Thus, under the purview of Section 9 (5) (ii) (d) of the code, this.**

14. The Respondent submits that the Applicant was, very well made aware of the fact that excess material is lying at the site, and the

same shall be removed as these products comes with a expiry period, but the petitioner has not done so till date.

15. The Respondent submits that upon the balance confirmation given by the Corporate Debtor, they have made note on it that the excess material should be taken back, and amount is to be adjusted.

16. The Respondent submits that the provisions of Section 8 & 9 does not provides for combined/ joint petition by one or more Operational Creditors unlike the provisions of Section 7 for the Financial Creditors.

17. Moreover, the Respondent Submits that the present petition falls incomplete as under the provisions of Section (9) (3) (b) of the Code, "an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a Dispute of the unpaid operational Debt is to be furnished along with the application for Initiation of CIRP by a Operational Creditor, but the same is not been done my the Applicant.

Submissions by way of Rejoinder

18. The Applicant submits that the Respondent has admitted that they used to issue various purchase order to the Applicant for supply of Epoxy Grout.

19. The Operational Creditor submits that the Corporate Debtor has never raised any dispute in respect of supplied of excess quantity

material until the demand for payment raised by the Operational Creditor after a year.

20. The Corporate Debtor has duly received and accepted the said material without any dispute of defect in quality and quantity. The material supplied y the Operational Creditor had stipulated expiry dates and the Operational Creditors has never supplied any excess stock as alleged therein. the material supplied by the Operational Creditor are as per demand of the Corporate Debtor. The Corporate Debtor has utilized all the products supplied by them and have never complained of excess material until the demand of payment made by the Operational creditor on or after Year. The last bill issued on 7th October 2015 and alleged complaints of supply of excess material made on 1st November 2016 and i.e. also after balance confirmation issue. The materials were also supplied by the Operational creditor as per Corporate Debtor's demand made through email. E-mail dated 7th August 2015, the Corporate Debtor has agreed to release balance payment and further requested to supply materials as required. Annexed as **"Annexure-1"** of the Rejoinder.

<u>Finding</u>

21. We have heard the submissions of Applicant as well as the Respondent and perused the records.

22. The Applicant i.e. the Operational Creditor as per Purchase Order supplied material and stand taken by the Corporate debtor that there was understanding that material should be supplied only 100% advanced payment, but the Corporate Debtor has never raised any dispute in respect of supplied of excess quantity material until the demand for payment raised by the Operational Creditor after a year. The last bill issued on 7th October 2015 and alleged complaints of supply of excess material made on 1st November 2016 and i.e. also after balance confirmation issue. Further Vide email dated 7th August 2015, the Corporate Debtor has agreed to release balance payment and further requested to supply materials as required.

23. The Corporate Debtor contended that as per section 9(3)(b) of the I&B Code, there is dispute among parties, but that contention is after thought as until demand for payment raised by the Operational Creditor, the Corporate debtor accepted material supplied and enjoyed the same.

24. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

25. The petition bearing **CP (IB) 3546/MB/C-II/2018** filed by **Ardex Endura (India) Private limited,** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Meta Arch Private Limited [CIN:U20299PN1998PTC012673],** the Corporate Debtor, is **admitted**.

26. There shall be a moratorium under section 14 of the IBC, in regard to the following:

    i. 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;

    ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

    iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

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

27. Notwithstanding the above, during the period of moratorium: -

i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

28. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

29. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

30. **Mr. Nitin Om Kothari**, Registration No. IBBI/IPA-001/IP-P02310/2020-21/13477, Email Id: cakotharico@gmail.com, is

hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

31. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

32. The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

33. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

34. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

35. Ordered accordingly.

Dated 8^{th} October, 2021

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**ASHOK KUMAR BORAH**
Member (Technical)	**Member (Judicial)**

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