

## Allahabad Bench

CP NO (IB) 422/ALD/2018

ATTENDANCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.02.2019

NAME OF THE COMPANY: Vikas Tiwari V/s M/s Jain MFG India Pvt Ltd

SECTION OF I &amp; B CODE: 9 IBC

| <u>Sl. NO.</u> | <u>Name</u> | <u>Designation</u> | <u>Representation</u> | <u>Signature</u> |
|----------------|-------------|--------------------|-----------------------|------------------|
| 1.             |             |                    |                       |                  |
| 2.             |             |                    |                       |                  |

**CP NO. (IB) 422/ALD/2018.**

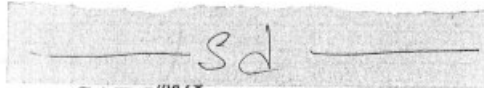
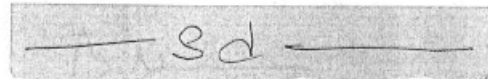
Order pronounced in open Court (Vide separate order).

Petition is admitted.

IRP appointed.

Moratorium imposed.

Dated: 22.02.2019

**SAROJ RAJWARE,  
MEMBER (T)****BIKKI RAVEENDRA BABU  
MEMBER (J)**Typed by:  
Vidit Kumar Pandey  
(P.S.)

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

Company Petition No.(IB)422/ALD/2018  
(Under Section 9 of Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy (Application to  
Adjudicating Authority) Rule, 2016)

IN THE MATTER OF:

Vikas Tiwari, S/o Sh. Raj Narayan Tiwari  
Resident of 749/50 Nai Basti Arra, Naubasta, Kanpur

.....OPERATIONAL CREDITOR/ PETITIONER

*VERSUS*

M/s Jain Manufacturing India Private Limited,  
having its registered office at 111/168 Harsh Nagar, Kanpur, (U.P)

.....CORPORATE DEBTOR/ RESPONDENT

JUDGMENT/ORDER DELIVERED ON 22.02.2019

CORAM : Hon'ble Mr. Bikki Raveendra Babu, Hon'ble Member  
(Judicial)  
:Hon'ble Ms. Saroj Rajware, Hon'ble Member (Technical)

For the Petitioner : Sh. Arnab Banerji, Adv.  
For the Respondent : Sh. Santosh Kumar Mishra, Adv.

PER SE : Hon. Mr. Bikki Raveendra Babu, Hon'ble Member  
(Judicial).

ORDER/JUDGMENT

1. Vikas Tiwari styling himself as Operational Creditor filed this petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules,

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- 2016) seeking Corporate Insolvency Resolution Process in respect of M/s Jain Manufacturing India Pvt. Ltd. sailing it as Corporate Debtor.
2. M/s M/s Jain Manufacturing India Pvt. Ltd./Respondent and Sh. Vikas Tiwari/Petitioner entered into an agreement dated 01.08.2017. As per the terms of the said agreement Sh. Vikas Tiwari will arrange for supply of Cosmetic goods manufactured by M/s Jain Manufacturing India Pvt. Ltd. on commission basis in whole of Uttar Pradesh.
  3. It is an agreement between the parties that Vikas Tiwari will book orders for supply, arrange for dispatch and also collect payments on behalf of M/s Jain Manufacturing India Pvt. Ltd. in form of Cash/Cheque/Demand Draft/NEFT/RTGS. It was also agreed that M/s Jain Manufacturing India Pvt. Ltd. shall pay rupees One Hundred Thirty per case as commission to Sh. Vikas Tiwari.
  4. Vikas Tiwari shall raise invoices in favour of M/s Jain Manufacturing India Pvt. Ltd. and the Firm shall make the payment of the Commission Invoices within 30 days of the receipt of the invoices through Bank.
  5. It is also agreed in case of late payment Vikas Tiwari is entitled for interest @ 15 % for the delay period.
  6. According to the petitioner Vikas Tiwari an amount of Rs.4,27,960/-(Rupees Four Lakhs Twenty Seven Thousands Nine Hundred Sixty) is due to him from the Respondent. Further according to the petitioner the date of default commenced from 01.04.2017 and the last date of invoices is 30.09.2018.
  7. The particulars of the Operational Debt are as follows:-

| Details of Transaction on account of which debt fell due. | Date from which such debt fell due |
|---|------------------------------------|
| Unpaid Bills<br>Amount Rs.12,740.00/-                     | 02.09.2017                         |
| Amount Rs.26,520.00/-                                     | 01.10.2017                         |

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|                       |            |
|-----------------------|------------|
| Amount Rs.37,050.00/- | 30.10.2017 |
| Amount Rs.30,810.00/- | 30.11.2017 |
| Amount Rs.41,730.00/- | 31.12.2017 |
| Amount Rs.33,540.00/- | 31.01.2018 |
| Amount Rs.47,710.00/- | 28.02.2018 |
| Amount Rs.18,330.00/- | 31.03.2018 |
| Amount Rs.37,050.00/- | 30.04.2018 |
| Amount Rs.29,205.00/- | 31.05.2018 |
| Amount Rs.50,180.00/- | 30.06.2018 |
| Amount Rs.6,630.00/-  | 31.07.2018 |
| Amount Rs.38,870.00/- | 31.08.2018 |
| Amount Rs.17,550.00/- | 30.09.2018 |

8. Petitioner issued demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency Rules in respect of unpaid Operational Debt due to him on 22.10.2018 by speed post and it was received by the Respondent on 25.10.2018. Respondent issued reply notice dated 20.11.2018 stating that provided some reasonable time may be given for payment and he has unable to payment right now. Respondent requested not to initiate proceeding under Section 8 of the I&B Code.
9. Petitioner alongwith this petition filed the copies of the Commission Bills copy of the agreement dated 01.08.2017 detailed statement of account from August, 2017 to September, 2018 and declaration dated 29.11.2018.
10. Petitioner also filed copy of the demand notice dated 22.10.2018 and reply notice issued by the respondent on 20.11.2018. Petitioner also filed affidavit in support of petition.
11. Petitioner proposed the name of the Insolvency Professional who is willing to function as IRP. Petitioner also filed Form 2 issued by the proposed IRP.
12. Respondent is a company registered under the Companies Act. The registered office of the company is situated in Kanpur, Uttar Pradesh.

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13. The Authorised Share Capital of the Respondent company is Rs. 10,00,000/- (Rupees Ten Lakhs) divided into Rs. 1,00,000/- (rupees One Lakh) equity shares of Rs. 10/- each.
14. Petitioner dispatched the copy of the petition to the Respondent.
15. This Authority also directed the petitioner to issue notice informing the date of hearing to the Respondent. This Authority also directed the Registry to issue notice to the Respondent informing the date of hearing. Respondent counsel appeared and reported that Respondent is admitting the claim and Respondent also agreed for CIRP process period.
16. The amount claimed by the petitioner represents the commission due to him for the services rendered by him in supplying and arranging for dispatch of the products manufactured by the Respondent.
17. Therefore, the amount claimed is within the meaning of Operational Debt. Petitioner filed copies of invoices in proof of Operational Debt due to him. Petitioner also filed Ledger Extract. Moreover, respondent also admitted that Operational Debt remain unpaid.
18. Petition is completed in all respects. Even in the reply notice respondent did not raise any dispute in relation to unpaid Operational Debt claimed by the Petitioner.
19. Hence, this petition deserves to be admitted and it is accordingly admitted.
20. This Authority hereby appoint **Mr. Manoj Kumar Singh, MARS & Associates, Cost Accountant, 203, 2<sup>nd</sup> Floor, 10 Sikka Complex Community Centre, Preet Vihar New Delhi- 110092 Registration No. IBBI/IPA-003/IP-N00050/2017-18/10443, Email address:**

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**gst.marsdelhi@gmail.com** Insolvency Professional to act as Interim Resolution Professional.

21. This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the I & B Code prohibiting the following as referred to in section 14 of the Code:

(a) The institution of suits or continuation of pending suits or proceedings against the company/corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration Panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the company/corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the company/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);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the company/corporate debtor.

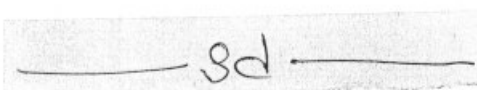
(i) There shall not be any interruption, suspension or termination of supply of essential goods or services to the corporate debtor during the moratorium period.

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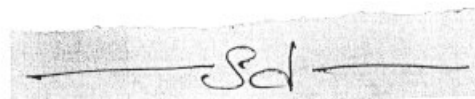
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- (ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.
- (iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the proviso under sub-section (4) of Section 14.
8. IRP is directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.
9. Registry is directed to communicate this order to Operational Creditor, Corporate Debtor and to the IRP.
10. List the matter on 02.04.2019 for report of IRP.

**Dated: 22.02.2019**



**(SAROJ RAJWARE)**  
**MEMBER (TECHNICAL)**



**(BIKKI RAVEENDRA BABU)**  
**MEMBER (JUDICIAL)**

*Typed by:*  
*Shubham kr. Singh*  
*(P.S)*