

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

CP (IB) 413/MB/C-1/2020

Under section 9 of the Insolvency and Bankruptcy
Code, 2016

Kamal Engineers And Contractors Pvt Ltd

[CIN: U45201RJ1983PTC002692]

Reg. Office: D-36, Subhash Marg ,

C- Scheme, Jaipur, Rajasthan - 302001

...Operational Creditor/Petitioner

Versus

NVM Plastic Private Limited

[CIN: U74900PN2010PTC137999]

Reg. Office- Off No 103, Sr. No. 348A-1/3-2,

Suyog Fusion Aptt. Dhole Patil Rd.,

Pune - 411001 MH

... Corporate Debtor/Respondent

Order Delivered on 06.01.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

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

Appearances:

For the Operational Creditor : Mr. Prateek Gupta, Counsel

For the Corporate Debtor : Mr. Aniket Malu, Counsel

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 9 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Kamal Engineers And Contractors Pvt Ltd ("the Operational Creditor")**, seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against **NVM Plastic Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor is a company incorporated under the Companies Act, 1956 and has its registered office at Off No. 103, Sr. No. 348A-1/3-2, Suyog Fusion Aptt., Dhole Patil Road, Pune - 411001. Its Company Identification Number (CIN) is **U74900PN2010PTC137999**. Therefore, this Bench has the jurisdiction to entertain this Petition.
3. The total amount of debt claimed is Rs.21,17,882/- (Rupees Twenty One Lakh Seventeen Thousand Eight Hundred and Eighty Two Only), out of which Rs.7,33,310/-(Rupees Seven Lakh Thirty Three Thousand Three Hundred and Ten Only) is the principal amount and Rs.13,84,572/- (Thirteen Lakh Eighty Four Thousand Five Hundred and Seventy Two Only) is the interest @16% p.a. The date of default is 05.11.2019.

Submissions made by Operational Creditor:

4. The Operational Creditor is a supplier of material "Bottle Grade PET/PET Chips" to the Corporate Debtor.
5. The Operational Creditor Kamal Engineers And Contractors Pvt. Ltd., started supplying the material "Bottle Grade PET / PET Chips" ("the Material") to the Corporate Debtor NVM Plastics Private Limited, in August 2017 on the verbal Purchase Orders placed by the Corporate Debtor from time to time. It was categorically agreed and understood

between the parties that terms of payment shall be within 15/30 days from the date of receipt of the material and in case of any delay in making payment beyond the due date, the interest @16% per annum shall be charged on the overdue payments. The Corporate Debtor accepted all the terms and conditions without any protest and demurrer. With the aforesaid understanding, the Operational Creditor supplied the materials to the Corporate Debtor from 12.08.2017 till 22.05.2019 and raised Invoices on every supply from August 2017 till May 2019. Copy of those Invoices are annexed as *Annexure – A-4 (pages 28-66)* to the Petition. Initially, the Corporate Debtor made the payments against the receipt of materials on time as agreed; however, later, the Corporate Debtor started making payments in piece-meal basis and albeit delay. Due to delay in making payments by the Corporate Debtor, the Operational Creditor was constrained to levy interest on the Corporate Debtor. The total value of the material supplied by the Operational Creditor to the Corporate Debtor from 12.08.2017 till 22.05.2019 is Rupees 8,66,91,945/-. Against the aforesaid supply of the material, the Corporate Debtor had made total payment of only Rs.8,22,57,639/-. Besides the above, the Operational Creditor had also issued the Credit Notes pertaining to Discounts and Price Protection to the tune of Rupees 36,07,872/-, thereby leaving a balance of Rupees 7,33,310/- after TDS received. Copies of Credit Notes are annexed as *Annexure – A-5 (pages 67-86)* to the Petition.

6. Due to delay in making payments by the Corporate Debtor, the Operational Creditor had also issued the Debit Notes to the tune of Rs.13,84,572/- with respect to the interest levied on the delayed payments. These Debit Notes were duly received by the Corporate Debtor and same were never objected by them. Copies of the Debit Notes are annexed as *Annexure – A-6 (colly) (pages 87-97)* to the Petition.

7. Below table depicts the details of the debt in default:

Total Supply (in Rs.)	8,66,91,945.00
Receipt	8,22,57,639.00
Balance	44,34,306.00
Credit Notes (Less)	36,07,872.00
TDS Receivables (Less)	93,124.00
Amount of Debt	7,33,310.00
Debit Notes Interest (Add)	13,84,572.00
Total Amount of Debt	21,17,882.00

8. The Operational Creditor has maintained the statement of accounts of the Corporate Debtor in daily course of business. Copies of the statement of accounts are annexed as *Annexure – A-7 (pages 98-100)* to the Petition.

9. The Operational Creditor vide its several emails including emails dated 26.10.2019, 16.11.2019 and 17.11.2019 requested the Corporate Debtor to make the payment of outstanding amount. In response to the said emails of the Operational Creditor, the Corporate Debtor vide its email

dated 21.11.2019 while assuring release of outstanding payment by 22.11.2019, made some wrongful deductions in the due amount on account of alleged quality issue raised by the Corporate Debtor. The Operational Creditor also submits that the alleged quality issue raised by the Corporate Debtor was already resolved on 29.05.2019 when the representative from the manufacture company visited the factory of the Corporate Debtor and found no issues/quality issue in the materials supplied by the Operational Creditor. The Corporate Debtor also acknowledged the same by signing the minutes of the meeting / record of discussion. Copies of the emails mentioned above are annexed as *Annexure A-8 (Colly) (pages 101-105)* and Minutes of the Meeting dated 29.05.2019 are annexed as *Annexure – A-9 (pages 106)* to the Petition. The Operational Creditor has annexed Affidavit under Sec.65-B of the Indian Evidence Act, 1892 (pages 22-24).

10. It is further submitted that the Operational Creditor vide its detailed email dated 02.12.2019 and 07.12.2019 demanded the outstanding sum of Rs.21,17,882/- (which includes interest and overdue payments) and clarified that the material supplied is neither defective nor any such defect was appeared on 22.05.2019 when the material was tested by the representative of the manufacturer company. Copies of the said emails dated 02.12.2019 and 07.12.2019 are annexed as *Annexure – A-10 (pages 107-108)* to the Petition. The Operational Creditor in good earnest also

gave an option of return of material in which the Corporate Debtor had alleged quality issue; however, neither the Corporate Debtor replied to the emails of the Operational Creditor nor returned the material in which the allegedly quality issues were raised by the Corporate Debtor. Since the Corporate Debtor miserably failed to make the payment of Operational Debt, the Operational Creditor through its Counsel issued a Demand Notice dated 21.12.2019 in Form 3, as per Rule 5 of the Insolvency and Bankruptcy Code (Application to Adjudicatory) Rules, 2016 read with Section 8 of the Insolvency and Bankruptcy Code, 2016 thereby demanding the payment of Operational Debt. Despite receipt of the Demand Notice dated 21.12.2019, the Corporate Debtor neither made any payment nor disputed the amount of the Operational Debt due to the Operational Creditor. Copy of Demand Notice dated 21.12.2019 is annexed as *Annexure – A-11 (pages 109-130)* to the Petition. The Operational Creditor has also annexed its Bank Statement as *Annexure – A-12 (pages 131-198)*.

11. After receipt of the Demand Notice dated 21.12.2019, the Operational Creditor contacted the Corporate Debtor and requested to make the payment, however the Corporate Debtor did not have any concrete, definite and satisfactory response.

Submissions made by the Counsel for Corporate Debtor by the way of Affidavit in

Reply:

12. The Learned Counsel for the Corporate Debtor has filed the Affidavit-in-reply on behalf of the Corporate Debtor on 30.09.2021 and submitted that the Petition is not maintainable either on facts or in law as narrated hereunder hence deserves to be dismissed with cost.
13. The Corporate Debtor submits that the Petition is defective because of non-compliance of mandatory requirement under Sec.9(3)(b) of the IB Code.
14. The Corporate Debtor states that as per Section 9(3)(b) the Operational Creditor is required to furnish an Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of unpaid Operational Debt. The Operational Creditor has submitted a misleading Affidavit merely stating that there has not been any reply to the Demand Notice issued by the Operational Creditor. The Corporate Debtor submits that there is pre-existing dispute relating to defective material supplied by the Operational Creditor which has been admitted by the Operational Creditor in Para 7 and 8 of Part IV of the Petition filed under Sec.9 of the IBC.

15. The Corporate Debtor further states that the pre-existing dispute between Operational Creditor and Corporate Debtor with respect to existence of debt and quality of the materials supplied by the Operational Creditor to the Corporate Debtor. The said dispute is in existence much prior to the issuance of Demand Notice dated 21.12.2019 and is recorded and admitted by the Petitioner itself in para 7 and 8 of Part-IV of the Petition and recorded by Operational Creditor's own admission in emails dated 02.12.2019 and 07.12.2019, which categorically records defects and quality issue with respect to the materials supplied by the Operational Creditor to the Corporate Debtor, much prior to the issuance of Demand Notice.

16. The Corporate Debtor states that in order to resolve any issue or dispute, the Corporate Debtor made a payment of Rs.7,33,310/- (Rupees Seven lakhs Thirty-three thousand three hundred and ten only) to the Operational Creditor on 24.09.2021 which amount is an identical amount what has been claimed by the Petitioner in Part-IV of Petition under sec.9(3)(b) of IBC. The Corporate Debtor states that under protest the principal amount of Rs.7,33,310/- (Rupees Seven lakhs Thirty-three thousand Three hundred and ten only) has been paid as claimed by the Operational Creditor. Transaction details of the payment of Rs.7,33,310/- is annexed as Exhibit – A to this Affidavit-in-reply.

17. The Corporate Debtor further states that the Operational Creditor has claimed an interest amount of Rs.13,84,572/- purportedly at the rate of 16% per annum. The Corporate Debtor submits that there is no basis or any contractual agreement or understanding between the parties with respect to payment of any interest. The Petitioner has failed to bring on record any agreement or contractual arrangement between the parties to claim any interest. The Corporate Debtor submits that the alleged claim of the Operational Creditor towards interest has no basis and cannot qualify as debt under sec.3(11), more particularly Operational Debt under Sec.5(21) of IBC. In view thereof, it deserves to be dismissed with costs.
18. It is submitted that in view of the payment of the principal amount as claimed by the Operational Creditor, the claim for entitlement of any interest is not maintainable and initiation of Corporate Insolvency Resolution Process (CIRP) cannot be encouraged under Section 9 of the IBC.
19. The Corporate Debtor has relied upon the Judgement of NCLAT in *Krishna Enterprises vs. Gammon India Ltd.*, Company Appeal (AT) (Insolvency) No.144 of 2018 have dealt with and identical issue and have dismissed the Appeal arising out of rejection of Petition under Sec.9 of the IBC on the basis of payment of principal amount. Copy of the said Judgement is hereto annexed as *Exhibit – B* to the Affidavit-in-reply.

Rejoinder Affidavit on behalf of the Operational Creditor to the reply filed by the

Corporate Debtor

20. The Operational Creditor has filed the Rejoinder Affidavit to the reply filed by the Corporate Debtor. The Operational Creditor in its preliminary submissions stated that the Applicant being an Operational Creditor filed the Petition in January 2020 to initiate a Corporate Insolvency Resolution Process of the Corporate Debtor under Sec.9 of the Code as the Corporate Debtor had defaulted in making payment of Rs.21,17,882/-. Out of the aforesaid, Rs.7,33,310/- is Principal and Rs.13,84,572/- is interest levied on the delayed payment by issuing Debit Notes to the Corporate Debtor. During the pendency of the present application, the Corporate Debtor had recently made payment of Rs.7,33,310/- (Rupees Seven lakhs Thirty-three thousand three hundred and ten only) on 24.09.2021 and filed the Affidavit in reply.

21. It is further submitted that even after the aforesaid payment of Rs.7,33,310/- there is an existence of operational debt amounting to Rs.13,84,572/- (Rupees Thirteen lakhs Eighty-Four thousand Five hundred seventy two only) as on the date of filing the present rejoinder-affidavit which had become due on non-payment of interest on delayed payments. The said interest is claimed by the Applicant by way of issuing Debit Notes to the Corporate Debtor from 13.02.2019 to 30.09.2010.

Copies of the Debit Notes annexed to the Company Petition (pages 94 to 104) and the Debit Notes issued on delayed payments were also admitted and accepted by the Corporate Debtor without any objection and without any demurrer. The Financial Creditor submits that the Corporate Debtor has himself admitted its liability towards interest on delayed payments and in this regard the Corporate Debtor vide its emails dated 08.11.2019 and 21.11.2019 had issued the Ledger of the Applicant maintained by the Corporate Debtor. Copies of the emails and Ledger Account issued by the Corporate Debtor is annexed herewith as **Annexure – R1** (pages 8 to 10 of the Rejoinder). The Financial Creditor submits that the above facts establish that it was clear understanding between the parties that in case of any delay in making payment beyond the stipulated date the Corporate Debtor shall make payment of interest @ 16%per annum on the overdue amount.

22. Besides the above, the Operational Creditor further submits that after filing the present Petition under Sec.9 of the Code, the Corporate Debtor again vide its email dated 28.01.2020 contacted the Applicant and shown his willingness to settle the matter by making payment of 50% of the amount due under the debit notes along with principal amount. A true copy of the email dated 28.01.2020 is annexed herewith as **Annexure – R-2**. Therefore, it is not only an understanding between the parties that in case of delay in making payment beyond the stipulated date, the

Corporate Debtor shall make payment of interest @ 16% but the Corporate Debtor has expressly admitted its liability towards payment of interest @ 16% on the overdue amount in its emails as well as impliedly by claiming GST input on the debit notes.

23. Further, the alleged existence of dispute purportedly raised by the Applicant by relying on emails dated 02.12.2019 and 07.12.2019 is a dishonest attempt by the Corporate Debtor to mislead this Hon'ble Tribunal. Further submitted that from the perusal of the minutes of meeting dated 24.05.2019 (recorded on page 113 of the CP), it is clear beyond doubt that the alleged quality dispute was duly addressed and resolved by the Applicant and the Corporate Debtor had himself after being satisfied with the material had appended his signatures on successful trial. There was no further dispute. It is pertinent to note that the emails dated 07.12.2019 and 02.12.2019, issued by the Operational Creditor, clearly shows that there is no dispute remaining as to quality of the material and the Operational Creditor is demanding its overdue payments.

24. The Operational Creditor has relied upon the Judgement of Apex Court in "*Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*" wherein it is very clearly stated and mentioned that on a "real dispute" as to the payment between the parties would fall within the

inclusive definition contained in Section 5(6). The Hon'ble Apex Court also mentioned the test for "existence of a dispute" which includes a contention that requires further investigation, but the same cannot be a patent feeble legal argument or an assertion of facts unsupported by evidence, which is clearly the case in the present case.

25. The Operational Creditor conformed the condition of Section 65A and 65B of the Indian Evidence Act, 1872 are complied with in respect of emails mentioned in this Affidavit.
26. The Operational Creditor submits that the contents of para from 1-13 of the reply are wrong hence denied.
27. The Operational Creditor contends that the contents of para 8 of the Reply are wrong and denied. Although, the Corporate Debtor had recently made the payment of Rs.7,33,310/- on 24.09.2021 but, the same is in partial discharge of its liability of Rs.21,17,882/- and as on the date of filing of the present affidavit, the Corporate Debtor is in default of Rs.13,84,572/- towards the payment of operational debt to the Operational Creditor. The Operational Creditor submits that the present application is complete and deserves to be admitted and hence prays to initiate the CIRP of the Corporate Debtor. Further contends that as the payment of Rs.7,33,310/- is made by the Corporate Debtor in partial discharge of its liability, there is no question of such payment being made in protest nor the Corporate

Debtor is entitled in law to recover the said amount from the Applicant.

There is no documentary evidence of the existence of dispute as alleged by the Corporate Debtor.

Findings:

28. We have heard the submissions of the Counsels for both sides and perused the records.
29. The Corporate Debtor has raised an argument that there exists a pre-existing dispute in the captioned petition. However, we note that the dispute regarding the quality of goods raised by the Corporate Debtor was resolved by a representative of the Operational Creditor and the same was recorded in the minutes of the meeting held on 29.05.2019. The above minutes were signed by representative of the Corporate Debtor. Thus, we conclude that the above dispute was resolved well before the captioned petition was filed. In view of the above the argument regarding pre-existing dispute with respect to the quality of goods stands irrelevant.
30. From the facts averred above it is clear that there is no dispute regarding the principal amount of Rs.7,33,310/- as the same has been paid by the Corporate Debtor on 24.09.2021. The persisting dispute is with regard to the interest on delayed payment @ 16% per annum, the total sum amounting to Rs.13,84,572/-.

31. The Corporate Debtor has submitted that there is no basis or any contractual agreement between the parties with respect to payment of any interest and hence the present petition deserved to be dismissed. However, the Operational Creditor has relied on the acknowledgement of the debit notes by the Corporate Debtor vide an email dated 28.01.2020, wherein the Corporate Debtor has agreed to pay 50% of the amount against the Debit notes. This e-mail clearly reflects an understanding between the parties with respect to the debit notes, which were issued imposing interest on delay receipts. In view of the above, we find the contention of the Corporate Debtor cannot be relied upon.
32. 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.
33. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
34. The petition bearing **CP (IB) 413/MB/C-1/2020** filed by **Kamal Engineers and Contractors 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 **NVM Plastic Private Limited [CIN: U74900PN2010PTC137999]**, the Corporate Debtor, is **admitted**.

35. There shall be a moratorium under Section 14 of the IBC, in regard to 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;
- b. Transferring, encumbering, alienating or disposing of by the 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 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;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

36. Notwithstanding the above, during the period of moratorium: -
- a. 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;
 - b. 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;
37. 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.
38. 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.
39. This Tribunal hereby appoints **Mr. Ravi Prakash Ganti**, Registration No. IBBI/IPA-002/IP-N00102/2017-18/10245, Email: gantirp@gmail.com Mob. No.: 7506007687 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.

40. 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.
41. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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).
42. 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.
43. 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.

44. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

DSB/Jenny
06.01.2023

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)