

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

**C.P. (IB) No. 600/MB/2023**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

***In the matter of***

M/s. Shubham Electrotech Pvt. Ltd.  
(CIN: U30000MH2005PTC156472)

...Operational Creditor

*v/s.*

M/s. Marks Pryor Marking Technology  
Pvt. Ltd.

(CIN: U29299PN2005PTC021118)

...Corporate Debtor

Order Pronounced on: **06.12.2023**

***Coram:***

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

***Appearances:***

For the Petitioner	:	Mr. Avinash Khanolkar, Ld. Counsel for the Petitioner
For the Respondent	:	Mr. Agam Maloo, Ld. Counsel for the Respondent

**ORDER**

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“**IBC, 2016**”) by M/s. Shubham Electrotech Pvt. Ltd. (“**Operational Creditor**”) on 22.07.2023 seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against M/s. Marks Pryor Marking Technology Pvt. Ltd. (CIN: U29299PN2005PTC021118) (“**Corporate Debtor**”) for the amount payable to the Operational Creditor.

**Submissions of the Operational Creditor:**

2. The Corporate Debtor is a company incorporated on 08.08.2005 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Pune, Maharashtra, having its registered office at G. No. 135, Pirangut, Tal: Mulshi Distt., Pune Tal: Mulshi, Distt.: Pune, Maharashtra. This Bench has jurisdiction to deal with the present petition.
3. The present petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹1,04,93,932/- (Rupees One crore, four-lakhs, ninety-three thousand, nine hundred and thirty-two only) along with interest of ₹75,55,632/- (Rupees Seventy-five lakh, fifty-five thousand, six hundred and thirty-two only) totaling to a sum of ₹1,80,49,564/- (Rupees One crore, eighty-lakh, forty-nine thousand, five hundred and sixty-four only). The date of default as specified in Part-IV of the Application is 11.02.2019.
4. The Operational Creditor submits that the Corporate Debtor issued four Purchase Orders to the former, for supply of materials and services *dated* 13.10.2017, 31.03.2017, 25.05.2018 and 16.01.2019. In accordance with the

same, the Operational Creditor supplied the material as requested and raised invoices on the Corporate Debtor against the same from the period *dated* 27.10.2018 to 05.02.2019.

5. The Operational Creditor has attached copy of 72 invoices issued from October 2018 to February 2019 together with the relevant ledger account for F.Y. 2018-19. Out of 72 invoices, two (2) invoices bearing Nos. SEPL/1819/G/310 and SEPL/1819/G/382 *dated* 25.05.2018 are having 60 days credit and rest of the invoices are with 90 days credit issued on various dates from 27.10.2019 to 05.02.2019.
6. The Operational Creditor submits that pursuant to a Memorandum of Understanding *dated* 17.06.2021 wherein the Corporate Debtor has explicitly acknowledged the default amounting to ₹1,04,93,932/- (Rupees One crore, four-lakhs, ninety-three thousand, nine hundred and thirty-two only); The Operational Creditor sent a Demand Notice to the Corporate Debtor *dated* 31.03.2023 asking to pay the outstanding amount of ₹1,04,93,932/- along with an interest of ₹75,55,632/-.
7. The Operational Creditor submits that the Corporate Debtor has not disputed the existence of amount of unpaid operational debt and has responded thereafter *vide* E-mail *dated* 10.04.2023 stating its inability to pay the outstanding dues, due to cashflow issues. Therefore, the Operational Creditor decided to initiate CIRP of the Corporate Debtor to recover its dues and has filed this petition under Section 9 of the IBC, 2016.

### **Findings**

8. Heard the Learned Counsel(s) for the Operational Creditor and the Corporate Debtor.

- i. This Bench *vide* Order dated 11.09.2023, had granted a final opportunity to the Corporate Debtor for filing a Reply with regards to the present petition. On account of inaction by the Corporate Debtor in this regard, including no representation on its behalf as recorded in the Order *dated* 12.10.2023, this bench forfeited Corporate Debtor's right to file reply *vide* Order *dated* 12.10.2023.
  - ii. The Bench has taken note of the Additional-Affidavit filed by the Operational Creditor in compliance of the Order *dated* 18.07.2023, whereby the Operational Creditor was directed to clarify its locus to file present petition with regards to the Limitation Period. The same is taken on record.
9. Upon perusal of the record files, we are of the considered view that there exists a debt of ₹1,80,49,564/- being amount due under the invoices and there is a default in payment thereof. As regards claim of interest @ 18% on account of delayed payment, we find that there is a specific stipulation in each invoice to this effect.
10. We place further reliance on Hon'ble NCLAT's judgment in the case of ***Mr. Prashat Agarwal vs. Vikash Parasrampuriah and Santanu T. Ray*** [Company Appeal (AT) (Ins) No. 690 of 2022]. The relevant part of the judgment is extracted hereinunder:

*“In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and no dispute on this clause was ever raised as noted from record available before us. (iv) Before coming to any conclusion, it will also be pertinent to go through legal definition of debt. The definition of debt as per section 3(11) of IBC is as under:-*

**3(11) “debt” means a liability or obligation in respect of a claim which**

*is due from any person and includes a financial debt and operational debt.”*

*Since, the word “claim” is mention in definition of debt in Section 3(11) we need to refer to definition of claim under Section 3(6) of IBC which is as follows:*

*“3(6) "claim" means (a) right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*

*Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for “right to payment” (Section 3(6) IBC) and therefore will form part of “debt” (Section 3(11) IBC).”*

11. Accordingly, following the decision of Hon’ble NCLAT in the case of Mr. Prashat Agarwal (*supra*) wherein interest was held to be part of debt amount, we feel that the interest herein of ₹75,55,632/- is also inclusive in the amount of debt in default. Hence, the total debt in default aggregates to ₹1,80,49,564/- which is more than ₹1 crore *viz.* the threshold limit stipulated under Section 4 of IBC, 2016.
12. The Operational Creditor has proposed the name of **Mr. Mandar Shrikant Wagh**, having Registration No. **IBBI/IPA-002/IP-N00450/2017-2018/11276**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form-2 dated 19.05.2023 as required under rule 9(1) of the *Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016* along with a copy of his Authorisation for Assignment.
13. The present Company Petition 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; therefore, there is no reason to deny the admission of the Petition. In view of the same, this Adjudicating Authority admits the present Company Petition and orders initiation of CIRP against the Corporate Debtor.

**ORDER**

14. It is accordingly hereby ordered as follows:

(a) The above **Company Petition No. (IB) 277/2021** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Marks Pryor Marking Technology Pvt. Ltd.

(b) This Bench hereby appoints **Mr. Mandar Shrikant Wagh**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00450/2017-2018/11276 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) 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, 2016. 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.

(d) The Financial Creditor shall deposit a sum of INR 5,00,000/- (Rupees Five-lakhs only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The

expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- (e) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (f) 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.
- (g) 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;
- (h) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (i) The Registry is directed to communicate this Order to the Financial 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.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

**Sd/-**

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**06.12.2023**

**Sd/-**

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**

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