



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**

C.P. No. (IB) 832/MB/C-III/2023

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

In the matter of

RK Traders

Having office at:

H. No. 263 1/2, Near Highten Industrial Estate, Satiwali, Vasai, Palghar – 401208, Maharashtra

...Operational Creditor/Petitioner

Versus

Bhattad Marketing & Distribution Limited

Having office at:

Ground Floor, A Wing, Shop No. 1, Shatrunjay Heights, Satyanand, Maharaj Marg, Bhayander West, Thane – 401101, Maharashtra

...Corporate Debtor/Respondent

Order pronounced on: 12.06.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Operational Creditor : Adv. Sanjay Dubey i/b KP Tiwari & Co

For the Corporate Debtor : Adv. Diksha Tripathi



Per: Sh. Charanjeet Singh Gulati, Member (Technical)

1. This Petition has been filed by RK Traders (“**Petitioner/ Operational Creditor**”) to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Bhattad Marketing & Distribution Limited (“**Respondent/Corporate Debtor**”) under **Section 9** of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) for the alleged default on part of the Corporate Debtor in repayment of debt of **Rs. 1,72,22,648.80/-** plus interest @18% from 21.11.2019.

Brief Facts:

2. The Operational Creditor is engaged in the business of trading of incense sticks and related products. The Corporate Debtor is also in the business of trading/manufacture of incense sticks.
3. On issuance of purchase orders by the Corporate Debtor, the Operational Creditor supplied incense sticks worth Rs. 18,92,48,659.80/- to the Corporate Debtor between April 2019 to October 2019 and raised invoices accordingly. The last invoice was raised on 21.10.2019.
4. The Corporate Debtor has made part payment of Rs. 17,19,26,011.00, leaving Rs. 1,73,22,648.80 as the outstanding balance. The Confirmation of Accounts dated 31.01.2023 for the period 01.04.2019-31.03.2023 is annexed to the Petition. As per the ‘Confirmation of Accounts’ Statement, the last payment by the Corporate Debtor was made on 03.06.2020. The said Statement shows an outstanding balance of Rs. 1,73,22,648.80 which has been duly acknowledged by the Corporate Debtor.
5. The Operational Creditor submits that there was a series of telephonic conversation between the Operational Creditor and the Corporate Debtor regarding payment of the outstanding balance. However, despite assurances, the Corporate Debtor failed to make the payment.




Consequently, the Operational Creditor sent a demand notice dated 11.03.2023 under section 8 of the I&B Code, 2016 calling upon the Corporate Debtor to make the payment. The Corporate Debtor replied to the said notice vide email dated 21.04.2023 denying its liability. Hence, the present petition has been filed by the Operational Creditor.

Reply of the Corporate Debtor

6. The Corporate Debtor had filed its Reply dated 21.12.2023 challenging the maintainability of the Petition on the following grounds:
 - i) The incense sticks supplied by the Operational Creditor were of inferior quality and the Corporate Debtor has received several complaints from its customers about sub-standard quality of incense sticks. Despite several requests, the Operational Creditor continued to supply incense sticks of inferior quality. Some of them were not accepted and were just lying as scrap in the Corporate Debtor's premises.
 - ii) Several invoices issued by the Operational Creditor are not in conformity with the Purchase Orders and specifications given by the Corporate Debtor and, in some invoices, the amounts being claimed have been miscalculated.
 - iii) There was no agreement as to claiming interest on outstanding amounts, if any, between the Operational Creditor and Corporate Debtor. Moreover, the invoices issued by the Operational Creditor do not specify levying of interest on the amounts claimed.

FINDINGS

7. Heard Ld. Counsel for the parties and perused the record.
8. As a matter of fact, the Operational Creditor has raised invoices from 27.04.2019 to 21.10.2019 aggregating to Rs. 18,92,48,659.80/-. The







Corporate Debtor has made part payment of Rs. 17,19,26,011.00/-, however, denied the liability of the balance amount of Rs. 1,73,22,648.80/- that constrained the Operational Creditor to file the present Petition.

9. The Corporate Debtor, in its reply dated 21.12.2023, has contended that some of the invoices are not in conformity with the purchase orders leading to some miscalculation and hence, there is no amount due from the Corporate Debtor. The issue regarding the quality of the incense sticks was also raised in the reply. The Corporate Debtor had even disputed the interest of 18% claimed in the Petition contending that neither the same was mentioned in the invoices sent by the Operational Creditor nor an agreement was signed to that effect.
10. It is also found that the Corporate Debtor had sent a reply dated 21.04.2023 to the Operational Creditor's demand notice dated 11.03.2023 raising similar disputes. However, the Bench notes that the Corporate Debtor has not raised any dispute pertaining either to the quantum of amount or the quality of goods provided by the Operational Creditor prior to the issuance of the demand notice under section 8 of the I&B Code, 2016.
11. The Corporate Debtor had itself stated in its reply to the demand notice stating that *"since it is the first occasion for us to object to your ill demands, we by way of the instant Reply strongly object to the illegal and unlawful demand raised vide the instant Demand Notice."*
12. Moreover, we also note the submission of the Corporate Debtor that the incense sticks of inferior quality were not accepted by the Corporate Debtor and are lying in the Corporate Debtor's premises as scrap which indicates that the disputed goods were also not returned to the Operational Creditor. Thus, it cannot be concluded that there was a



prima facie and pre-existing dispute with respect to the quality of the goods supplied by the Operational Creditor.

13. With respect to the contention regarding the amount payable by the Corporate Debtor, we again note that the last invoice was issued by the Operational Creditor on 21.10.2019 whereas the demand notice was sent on 11.03.2023. There is no document annexed showing any dispute regarding the amount due or the veracity of the invoices between 21.10.2019 and 11.03.2023.
14. Besides the above, the Corporate Debtor has not raised any other tenable contention. Under such circumstances, we are satisfied that there is no pre-existing dispute between the Operational Creditor and the Corporate Debtor.
15. The statement of Confirmation of Accounts dated 31.01.2023 showing outstanding balance of Rs. 1,73,22,648.80/- issued by the Operational Creditor bears the stamp and signature of the Corporate Debtor. The relevant portion of the said Confirmation of Accounts statement is reproduced below:

	<table border="1"> <tr> <td>18,92,48,659.80</td> <td></td> </tr> <tr> <td>18,92,48,659.80</td> <td>Closing Balance</td> </tr> <tr> <td></td> <td>17,19,26,011.00</td> </tr> <tr> <td></td> <td>1,73,22,648.80</td> </tr> <tr> <td></td> <td>18,92,48,659.80</td> </tr> </table>	18,92,48,659.80		18,92,48,659.80	Closing Balance		17,19,26,011.00		1,73,22,648.80		18,92,48,659.80
18,92,48,659.80											
18,92,48,659.80	Closing Balance										
	17,19,26,011.00										
	1,73,22,648.80										
	18,92,48,659.80										
I/We hereby confirm the above	Yours faithfully,										
 BHATTAR MARKETING AND DISTRIBUTION LTD AUTHORIZED	For R. K. TRADERS  Authorized Signatory I.T. PAN No.: ATNPT7321R										
TRUE COPY 											



16. The above statement clearly shows that the Corporate Debtor has affirmed its liability of Rs. 1,73,22,648.80/- and is therefore, bound by its obligation as held in **M/s IDBI Capital Markets & Securities Ltd. vs. M/s JBF Petrochemicals Ltd. [Company Appel (AT) Ins) No. 524 of 2020]** decided on 20.12.2021, wherein the Hon'ble NCLAT has observed as follows:

“109. An Acknowledgement of Liability pre-supposes that an individual acknowledging possesses some interest, thereby he is bound by statement. Further, an Acknowledgement of Liability is to involve an admission of a subsisting jural relationship between the parties and consciousness and an intention of continuing such a relationship, till it is terminated in a lawful manner.

110. An 'Acknowledgement' in terms of Section 18 of the Limitation Act, 1963 must be of a liability, the said liability, being alive or in existence, as on the date of the 'Acknowledgement'. An 'Acknowledgement' must be prior to the lapse of the prescribed period either for a suit or an application in respect of such property or right as per decision Shivam Construction Co V. Vijaya Bank, Ahmedabad AIR 1997 Guj. 24 at Spl Pages 29, 30.

111. Although the Respondent/Corporate Debtor had issued a Reply dated 27.03.2018 to the Demand Notice dated 21.03.2018, issued by the Appellant/Operational Creditor denying and disputing its liability to make payment in respect of the claim made by the Appellant/Operational Creditor and there exists no 'operational debt' due and payable to the Appellant/Operational Creditor and further that the Respondent/Corporate Debtor in regard to the issuance of balance confirmation dated 30.10.2017 affirmed by it to and in favour of the Appellant/Operational Creditor, the same according to it was issued as a matter of general practice and, therefore, it will not constitute an



'Acknowledgement of Liability.' On perusal of the contents of the confirmation of balance as on 30.09.2017 certified by the Accounts Executive of the Respondent/Corporate Debtor unerringly points out that the said 'Confirmation of Balance dated 30.10.2017' is an 'unambiguous and unequivocal' one and it clearly binds the Respondent/Corporate Debtor to the debit balance of Rs.78,00,000/-and this sum outstanding of Rs.78,00,000/- reflecting in the Book of Accounts of the Appellant/Operational Creditor and as such the Respondent/Corporate Debtor cannot wriggle out of the predicament in which it is placed."

17. Notably, in the instant case, the Corporate Debtor had made part payment of Rs. 17,19,26,011.00/- and the last payment was made on 03.06.2020, and the balance of Rs. 1,73,22,648.80/- is due. Section 3(11) of the I&B Code defines "debt" as "*a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.*" Further, Section 3(12) of the Code defines "default" as "*non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.*"
18. The part payment of Rs. 17,19,26,011.00/- coupled with the 'Confirmation of Accounts' statement dated 31.01.2023 signed by the Corporate Debtor prove beyond doubt that the balance debt of Rs. 1,73,22,648.80/- has been duly acknowledged by the Corporate Debtor. Despite such acknowledgement, the Corporate Debtor failed to make the payment. Thus, this Tribunal is satisfied that debt and default has been established.
19. The date of default is stated as 21.11.2019 i.e. the due date of the last invoice dated 21.10.2019. The Corporate Debtor has made the last payment on 03.06.2020. The Hon'ble NCLAT in **IDBI Trusteeship**



Services Limited vs. Direct Media Distribution Ventures Private Limited [Company Appeal (AT) (Ins) No. 850 of 2023], decided on 12.09.2023, held that mere part payment by the Corporate Debtor does not alter the date of default. The observations of the Hon'ble NCLAT in **IDBI Trusteeship** (supra) is reproduced below:

“The mere fact that the said amount is reduced by certain amount realised in September, 2020 cannot change the default which occurred on 16th June, 2020 consequent to invocation of the corporate guarantee by notice dated 12th June, 2020. The submission of Mr. Ramji Srinivasan that since by subsequent events certain amount was realised which has been given due credit in the total outstanding, the date of default has to be treated subsequent date i.e. 15th May, 2022 cannot be accepted. The notice dated 13th May, 2022 at best is in continuation of the invocation of corporate guarantee notice dated 12th June, 2020 demanding the outstanding amount from Corporate Guarantor after adjusting the amount realised in September, 2020. Subsequent realization of part amount by sale of share and giving credit to said amount in outstanding amount which fell due on 16th June, 2020 cannot take out the Application under Section 7 out of prohibition under Section 10A. The submission of Mr. Ramji Srinivasan that Application is not barred by Section 10A cannot be accepted.”

20. From the above, it is clear that the date of default qua the Corporate Debtor stands at 21.11.2019 part payments by the Corporate Debtor after the default date. Though it is settled law that part payments cannot change the date of default, it certainly can extend the limitation period. The Hon'ble NCLAT in **Jayprakash Vyas vs. Prabhat Steel Traders Pvt. Ltd. & Anr [Company Appeal (AT) (Ins) No. 1238 of 2019]**, decided on 24.07.2020, has held that *“when part payment is made before the expiration of the prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made.”*




21. In the present case, payments were made by the Corporate Debtor from 02.07.2019 till 03.06.2020 as stated in the Confirmation of Accounts Statement dated 31.01.2023 which statement is also signed by the Corporate Debtor. Evidently, the last payment was made on 03.06.2020 and therefore, a fresh period of limitation starts from 03.06.2020 and expires after 3 years i.e. on 03.06.2023. The Corporate debtor has acknowledged its liability as can be seen from the Confirmation of Accounts Statement dated 31.01.2023, thereby further extending the limitation period. Thus, the present Petition is filed within the limitation period.
22. The Corporate Debtor, in its reply to the petition, objected to the interest component alleging that there is no agreement to that effect and even the invoice does not mention about charge of any interest in case of default. On perusal of the record, we agree with the submission of the Corporate Debtor that there is no clause on interest charges either in the invoice or the purchase order. We also do not find any evident understanding between the parties as to the imposition of interest in case of default as well as the rate of such interest. Nonetheless, the principal amount, being Rs. 1,73,22,648.80, alone satisfies the threshold limit prescribed under section 4(1) of the I&B Code, and therefore, the present petition is maintainable.
23. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 832 of 2023 is **admitted** and ordered as follows:

ORDER

- i) The above Company Petition No. (IB) 832 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Bhattad Marketing and Distribution Limited**.



- ii) The Petitioner has proposed the name of **Mr. Manoj Kumar Mishra**, Registration No. IBBI/IPA-001/IP-P01152/2018-2019/11902, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 13.04.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 25.12.2022. On verification of the validity of the AFA of the proposed IRP, we found that the same is valid upto 07.12.2024. Accordingly, **we appoint Mr. Manoj Kumar Mishra** (manojkmishra95@gmail.com) as the **Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii) The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
- iv) There shall be a moratorium under section 14 of the Code prohibiting 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 Securitization and



Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- v) 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.

- vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- vii) The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.

- viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

24. The Company Petition No. 832 of 2023 is accordingly **admitted**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)