

IN THE NATIONAL COMPANY LAW TRIBUNAL,**KOCHI BENCH****TIBA NO.16/KOB/2019**

(Under Rule 9(6) of the Insolvency and Bankruptcy Code)

Date of Order: 25.10.2019

Applicant/Operational Creditor

M/s Ultra Tech Cement Limited,
having its Registered Office at
Ahura Centre, B Wing, 2nd floor,
Mahakali Caves Road, Andheri
(East) Mumbai.

Vs.

Respondent/Corporate Debtor

M/s Inkal Ventures Private Limited, having its
Registered Office at 25/578G, Fifth Floor, Pathicheril Enclave,
NH 47, South Kalamassery, Changampuzha Nagar PO
Ernakulam, Cochin-682033.

Counsel for applicant

.. M/s King and Patridge

Counsel for respondent

.. Joy Thattil Ittoop & Bijish B.Tom

ORDER

This is a Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as **I&B Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on by the Petitioner **ULTRATECH CEMENT LIMITED** (hereinafter as '**Operational Creditor/Petitioner**') against **M/S INKAL VENTURES PRIVATE LIMITED** (hereinafter as '**Corporate Debtor**'). The Petition was filed at Hon'ble NCLT,

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Chennai Bench and thereafter it was transferred to Kochi Bench. It was further put up on 21.08.2019 before this Bench.

2. The Operational Creditor is involved in the business of supplying and trading of grey cement, ready mix cement, etc...In addition to this the Operational Creditor also provided high quality cements (M30 Regular Grade Concrete) according to the expectation of the customers.

3. The Corporate debtor through purchase order No.1022CN /T/P/09/2016-2017 date 02.02.2017 sought supply of high-quality cement material from the Operational Creditor. Accordingly, operational creditor supplied material vide Invoice No. 3681208073 dated 03.02.2017 amounting to Rs.3,90,000/- and Invoice No.3681208074 dated 03.02.2017 amounting to Rs.3,70,500/-.

4. The goods were delivered as per the specification demanded by the corporate debtor and no dispute regarding the quantity or quality of the material supplied nor with regard to the Invoices raised on such supply.

5. After making partial payments towards the material supplied by Operational Creditor, the Corporate debtor has defaulted payment of Rs. 4,50,500/- as on date filing of the Application. The Operational Creditor has reminded the outstanding due through several E-mail communications. On 09.11.2017 through one such communication requested for payment Rs.5,85,500.00 as outstanding against the supply of materials. From then onwards several reminders regarding the debt amount was communicated to the Corporate Debtor but the Corporate debtor neither paid nor disputed the debt. The only request they made was that time is required to meet the debt.

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6. As no payments is following from Corporate Debtor towards the dues, Applicant issued a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 20.11.2018 (under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

7. The debtor through demand notice claimed payment of an outstanding sum of Rs 6,16,383.00/- being the total principal amount of Rs.4,50,500.00 along with interest at the rate of 21% per annum thereon calculated at the agreed rate from the date the invoice became due for payment till the date of notice. The said notice was received by the Corporate debtor on 03.12.2018.

8. The applicant further states that neither the payment nor any notice of dispute was raised by the corporate debtor and hence present application is filed under section 9 of IBC, 2016 which is duly served on corporate debtor.

9. And on 22.08.2019 the notice was sent from registry to the Corporate Debtor and counsel on behalf of the Corporate Debtor appeared on 05.09.2019 and sought short time as they want to amicably settle the matter. The same was granted and the Application was posted to 27.09.2019. On 27.09.2019 sought further time to file a settlement memo. While allowing for the same, the case reserved for orders to 25.10.2019. However, no settlement memo was filed. In the absence of settlement memo, we relied on the Section 5 (20) and (21) to see the definition of "Operational Creditor" and "Operational Debt" as given in the Code are satisfied..

10. Further we relied on Section 9 (3) (a) (b) (c) of the Code to determine whether process for initiation of CIRP was followed by the Operational Creditor or not. It also appears from the Application that the claim amount satisfies the

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minimum default requirement under section 4 of the Code. Therefore, on all counts the petition deserves to be admitted.

11 In the given facts and circumstances, we are of the view that the present application is complete and the Applicant is entitled to claim its dues, which remain unpaid by the Corporate Debtor. In the light of above facts and records the present application is admitted before bench.

12. As a consequence, the **Application No. TIBA/16/KOB/2019** is **admitted** in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of 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 off 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 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.

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It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a Corporate Debtor.

a) The order of moratorium shall have effect from the date 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.

(b) that the public pronouncement of the corporate Insolvency Resolution process shall be made immediately as specified under Section 13 of IBC.

13. The applicant has not specified the name of the resolution professional; therefore, this Bench appoints **Mr. PADMAKUMAR K.C** having registration **No. IBBI/IPA-001/IP-P01021/2017-2018/11671(Email-padmakumarkc@gmail.com) TC-1/1997(3), Fair Drams, Women's College North Gate, Thiruvananthapuram-695014** as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional namely **Mr. PADMAKUMAR K.C** to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of

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Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor

15. The registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated the 25th day of October, 2019

Sd/-
(**Veera Brahma Rao Arekapudi**)
Member (Technical)

Sd/-
(**Ashok Kumar Borah**)
Member (Judicial)

Memo No.TIBA/16/KOB/2019/-----

Date: 28.10.2019

1. M/s King & Patridge, Advocates & Notary Public, 2nd floor, Catholic Centre, No.108, Armenian Street, Chennai-600 001. (**Counsel for the applicant**)
2. M/s Joy Thattil Ittoop & Bijish Tom, Advocates, M/s Callidus Legal, Advocates, Chittoor Road, Cochin-682012 (**Counsel for the respondents**).
3. Mr. Padmakumar K.C., TC No.1/1997(3), Fair Dreams, Women's College North Gate, Thiruvananthapuram-695014. (**Interim Resolution Professional**).