

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 63/2023  
In  
CP (IB) No. 20/Chd/Hry/2020**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of**

**Overseas Infrastructure Alliance (India) Pvt. Ltd.**

Through its Authorized Representative Mr. Nandlal  
Chaturvedi,  
Having its Registered Office at  
501-502, OIA House, 470, Cardinal  
Gracious Road, Andheri (E), Mumbai-400099  
CIN No.U65920MH1989PTC052900

...Petitioner-Operational Creditor

Vs.

**Mcraygor Mechanicals Pvt. Ltd.**

Having Its Registered Office at:  
1402, Sector-6, Bahadurgarh, Haryana-124507  
CIN No. U29150HR2001PTC034671

...Respondent-Corporate Debtor

**Judgement delivered on: 08. 02.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-  
Operational Creditor : Mr. Vaibhav Sahni, Advocate

For the Respondent-  
Corporate Debtor : Proceeded *ex parte* vide order dated 21.03.2022.

**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Overseas Infrastructure Alliance (India) Pvt. Ltd.** Through its Authorized Representative Mr. Nandlal Chaturvedi, (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Mcraygor Mechanicals Pvt. Ltd. (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The matter was reserved on 20.09.2022 for order and was relisted for hearing on 01.11.2022 as there was a termination letter dated 05.11.2018 (Annexure- K), it was stated by the petitioner/ operational Creditor that the mail was addressed to Mr. Vijay on 29.10.2018, recording the details of the visit and 15 days time was sought. Due to the failure to deliver the product, he offered to return back the advance payment. However, no record of such an email was annexed with the main petition. In compliance of the above order, IA 63/2023 was filed appending the email dated 29.10.2018 as Annexure A with the affidavit. The same was taken on record vide order dated 09.01.2023 of this Adjudicating Authority. Thus, IA No. 63/2023 is allowed and disposed of accordingly.

3. The Corporate Debtor, namely, **Mcraygor Mechanicals Pvt. Ltd.**, is a Company incorporated on 01.05.2001 under the provisions of the Companies Act, 1956 with CIN No. U29150HR2001PTC034671 with its

Having Its Registered Office at: 1402, Sector-6, Bahadurgarh, Haryana-124507. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure B.

4. The facts of the case, briefly, as stated in the petition are that the respondent approached the petitioner for the purchase of materials including Exhaust Truck, IVECO make Chassis, Erection/ Commissioning of System by way of placing/ issuing the purchase order no. 4500006131 dated 28.01.2016 for USD 1,65,330/-. The petitioner amended the original order three times (i.e. on 29.06.2016, 27.08.2016 and 31.07.2018) including an increase in the original price. The final agreed price to be paid was Rs. 1,50,00,000/- on completion of the work assigned. The petitioner paid the advance amount of Rs. 40,50,000/- in two installments to the respondent on 18.09.2017 and 31.08.2018 via online transfer against which the post-dated cheques bearing no. 173310 and 077872 dated 30.09.2016 and 05.09.2018 were issued by the respondent in favour of the petitioner. The petitioner terminated the purchase order on 05.11.2018 on account of the failure of the respondent in completing the work assigned to them within the given time frame. The petitioner neither received any amount nor ordered goods from the respondent. A criminal complaint is pending against the respondent under Section 138 read with 141 of the Negotiable Instrument Act bearing No. "Summon Private Cases - SS/0000022/2019" before the learned Metropolitan Magistrate, Andheri, Mumbai.

5. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 40,50,000/- (Rupees Forty Lakhs Fifty Thousand Only) principal amount along with @24% p.a. interest and default occurred on 12.11.2018, the debt fell due as per termination notice dated 05.11.2018. Copy of the Board Resolution (Annexure D), Statement of Bank Account/Bank Certificate (Annexure F), Purchase Order (Annexure H), Ledger Account Statement (Annexure I), and Termination Letter (Annexure K) is attached with the main petition.

6. A demand notice is stated to be issued by the operational creditor on 20.03.2019 through registered post (Annexure G) as the returned envelope & postal receipt are submitted vide IA No.183/2021. The demand notice was returned back to the operational creditor with the remarks that 'the addressee does not reside at this address'. Therefore, no reply to the demand notice is submitted with the petition.

7. Notice of this petition was given to the respondent-corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No.01359/1 dated 21.03.2022 but none appeared on behalf of the respondent/corporate debtor nor any reply was filed, however, the respondent proceeded ex-parte on 21.03.2022. The short written submissions are filed by the petitioner vide Diary No. 00018/2 dated 15.09.2022.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice dated 20.03.2019 was sent by the corporate debtor through the registered post, as the returned envelope and postal receipt are submitted vide IA No.183/2021 (Annexure G).

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit filed vide IA No.183/2021 by the operational creditor that there is no notice given by the corporate debtor relating to a dispute of unpaid operational under Section 9(3)(b) of the Code. Although, it is mentioned by the petitioner that the complaint under Section 138 of the Negotiable Instruments Act is pending before the learned Metropolitan Magistrate, Andheri, Mumbai. but it is settled law that it does not amount to a pre-existing dispute. Reliance can be placed upon the decision of **Sudhi Sachdev Vs. APPL Industries Ltd. [2018] ibclaw.in 98 NCLAT, New Delhi** wherein it was stated that, *“it is not in dispute that there is a debt payable to the Operational Creditor and default on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as a recovery proceeding, it cannot be held to be a dispute pending before a court of law. The pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of a dispute”*. Therefore, there is no pre-existing dispute between the parties at all with regard to the unpaid operational debt.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice was issued dated 20.03.2019 is attached

as Annexure G. However, the period of limitation would begin from the date of default 12.11.2018 the debt fell due as per the termination notice dated 05.11.2018. Copy of the Board Resolution (Annexure D), Statement of Bank Account/Bank Certificate (Annexure F), Purchase Order (Annexure H), Ledger Account Statement (Annexure I), and Termination Letter (Annexure K) is attached with the main petition. There was a termination letter dated 05.11.2018 (Annexure- K), it was stated by the petitioner/ operational Creditor that the mail was addressed to Mr. Vijay on 29.10.2018, recording the details of the visit and 15 days time was sought. Due to the failure to deliver the product, he offered to return back the advance payment, IA 63/2023 was filed appending the email dated 29.10.2018 as Annexure-A with the affidavit. The present application under Section 9 of the Insolvency and Bankruptcy Code,2016 has been filed on 04.12.2019 vide Diary No. 6848. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) principal amount of Rs. 40,50,000/- (Rupees Forty Lakhs Fifty Thousand Only) along with @24% interest. The operational creditor supplied Exhaust Truck/vessel/suction vacuum pump/high-pressure jetting pump & other accessories. Copy of the Board Resolution (Annexure D), Statement of Bank Account/Bank Certificate (Annexure F), Purchase Order (Annexure H), Ledger Account Statement (Annexure I), and Termination Letter (Annexure K)is attached with the main

petition. Accordingly, the petitioner proved the debt and the rest amount is above the threshold limit of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Mcragor Mechanicals Pvt. Ltd. and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Naveen Kumar Jain and there is nothing adverse against him. In view of the above, we appoint Mr. Naveen Kumar Jain, Registration No.

IBBI/IPA-001/IP-P00650/2017-2018/11097,E-mail:insolvencyprofessional@ediffmail.com, Mobile No. 8130301706 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Naveen Kumar Jain shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of

Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of

the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report

filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational

sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

19. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

February 08, 2023  
SD/TB