

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
(IB)-364(ND)2021

IN THE MATTER OF:

BHS-Sonthofen(India)Pvt. Ltd.

...

Applicant/Petitioner

Versus

Akona Engineering Pvt. Ltd.

...

Respondent

Under Section: 9 of IBC, 2016

Order delivered on 01.06.2022

CORAM:

**SHRI ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)**

**SHRI L.N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

For the Applicant : Mr. Ravi Chandra Mohan, Adv

ORDER

This is an Application filed under Section 9 of the IBC. Heard the Ld. Counsel appearing for the Applicant as well as the Corporate Debtor. Ld. Counsel for the Petitioner submits that vide Order dated 25th April 2022, the right of the Respondent to file the reply has been closed and the matter is listed for arguments.

2. Ld. Counsel appearing for the Petitioner further submits that in terms of the reply to the demand notice, the Corporate Debtor has admitted the debt and also default in making payment of the dues.

3. For better appreciation of the facts, we would like to refer to Part IV of the application, the scanned copy of which is reproduced overleaf :

(Sapna)



Part- IV

PARTICULARS OF OPERATIONAL DEBT

<p>I. TOTAL AMOUNT OF DEBT</p>	<p>As on 03.05.2021, amount claimed to be due is Rs. 1,22,17,790/- (Rupees One Crore Twenty Two Lacs Seventeen Thousand Seven Hundred and Ninety Only) till actual date of payment and interest @ 18% p.a. payable from the date of default till the date of actual payment.</p>								
<p>DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE</p>	<p>The Corporate debtor placed Three Purchase Orders vide reference numbers – (1) AKONA//OCT/19-20/PO-480 dated 03-10-2019; (2) AKONA/BHS/OCT/19-20/PO-474 dated 11-10-2019; and (3) AKONA/Feb/19-20/PO-488 dated 04-02-2020 and the amount totaling to Rs. 1,42,78,000/- for which the corporate debtor has paid only an amount of Rs. 41,00,000/- towards advance in various dates as Rs. 10,00,000/- on 11-10-2019; Rs. 14,00,000/- on 11-10-2019 and Rs. 17,00,000/- on 05-02-2020 and the balance outstanding is Rs. 1,01,78,000/-</p> <p>1. It is to be submitted that the Applicant / Operational Creditor had provided material of BHS Twin Shaft Mixer as per the purchase order specifications given by the Corporate Debtor / Respondent company vide purchase order reference details as follows:</p> <table border="1" data-bbox="619 1713 1340 1899"> <thead> <tr> <th>SNo</th> <th>Purchase Order No.</th> <th>Date</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>AKONA//OCT/19-</td> <td>03-</td> <td>46,12,000</td> </tr> </tbody> </table>	SNo	Purchase Order No.	Date	Amount	1	AKONA//OCT/19-	03-	46,12,000
SNo	Purchase Order No.	Date	Amount						
1	AKONA//OCT/19-	03-	46,12,000						



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	20/PO-480	10- 2019	
2	AKONA/BHS/OCT/19- 20/PO-474	11- 10- 2019	35,99,000
3	AKONA/feb/19- 20/PO-488	04- 02- 2020	66,67,000
TOTAL AMOUNT OF MATERIAL SUPPLY			1,42,78,000

2. It is to be submitted that from the date of supply of above said material for an amount of Rs. 1,42,78,000/- (Rupees One Crore Forty Two Lacs Seventy Eight Thousand Only), the Corporate Debtor / Respondent Company have paid only an amount of Rs. 41,00,000/- (Rupees Forty One Lacs Only) in various dates as Rs. 10,00,000/- (Rupees Ten Lacs Only) on 11th October 2019, Rs. 14,00,000/- (Rupees Fourteen Lacs Only) on 11th October 2019 and Rs. 17,00,000/- (Rupees Seventeen Lacs Only) on 5th February 2020. That as per the request of the Corporate Debtor / Respondent Company, the Applicant / Operational Creditor / petitioner company have allowed 30 days credit period to honor the entire invoice values but the Corporate Debtor / Respondent company uttered in




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payment of outstanding dues even after 463 days due period from the date of first invoice (14-10-2019).

3. It is to be submitted that the Operational Creditor / Applicant company have reminded the Corporate Debtor / Respondent Company so many times to clear the outstanding dues but the Corporate Debtor / Respondent Company has keep on postponing the payment and finally the Operational Creditor / petitioner company vexed with the behavior of the Corporate Debtor / respondent company and its key managerial personnel behavior and finally initiated demand notice in Form 3 & Form 4 as per Insolvency and Bankruptcy Code (IBC), 2016 on 18th February 2021 for an amount of Rs. 1,22,17,790/- which includes interest @ 18% p.a. i.e., Rs. 20,39,790/-.
4. It is to be submitted that the Operational creditor has received reply on 2nd March 2021 from the Authorized Legal Advisor (Mr. Balram Chaudhary) of the Corporate Debtor / Respondent company which stated as "(1) That my client is in receipt of your aforesaid notice in this context, I have to state that due to financial crises we could not made payment to you. So we will do 75% payment in the month of March 2021 will be cleared in the last week of April 2021 positively. (2) Total amount - Rs. 1,01,78,000/- It is

	<p>to be submitted that the Corporate debtor have not fulfilled even one single payment terms as per its reply.</p> <p>5. It is to be submitted that the Operational Creditor / Applicant company have not received the outstanding dues amount from the Corporate Debtor in response to the notice issued u/s 8(1) through form 3 of IBC, 2016. That it is very clearly stated in section 9(1) of IBC, 2016 as "After expiry of the period of 10 days from the date of delivery of notice or invoice demanding payment u/s 8(1), if the operational creditor does not receive payment from the corporate debtor or notice of dispute u/s 8(2), the operational creditor may file an application before the Adjudicating authority for initiating the Corporate Insolvency resolution process"</p> <p>6. It is to be submitted that the Operational Creditor humbly submits that, it is left with no option than to knock at the doors of this Hon'ble Tribunal u/s 9 of the Insolvency and Bankruptcy Code for the relief prayed for in accordance to the provisions of the code.</p>
<p>2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR</p>	<p>Amount claimed to be in default is Rs. 1,22,17,790 (Rupees One Crore Twenty Two Lacs Seventeen Thousand Seven Hundred and Ninety Only) along with interest @ 18% p.a. payable from the date of default till the date of actual payment.</p> <p><u>First default occurred on 07.02.2020 and same is still continuing.</u></p> <p>Copy of the Calculation Sheet showing the </p>
<p>COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>Amount to be paid by the Corporate Debtor is attached along with this Application.</p>

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(Sapna)

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4. Ld. Counsel for the petitioner submits that the reply to the demand notice is placed at page 52 of the application. He further submits that since there is default in making payment of the dues, the application may be admitted.

5. On the other hand, Ld. Counsel appearing for the Corporate Debtor seeks adjournment to settle the matter. We are not inclined to give anymore opportunity. The prayer to adjourn the matter is hereby rejected.

6. At this juncture, we refer to the reply to the demand notice placed at page 52 of the Application, the scanned copy of which is reproduced below :



AKONA ENGINEERING PVT. LTD.

(AN ISO 9001 : 2015 & CE CERTIFIED)

Mfrs of: Fully Automatic Computerized Concrete Batching & Mixing Plant, Wet Mix Plant
Asphalt Batch Type Hot Mix Plant, Stone Crusher & Other Construction Equipments

Ref. No:.....

Date

02/03/2021

REPLY NOTICE ON BEHALF OF M/S AKONA ENGINEERING PVT. LTD. R/O 52, NEW GANDHI NAGAR, GHAZIABAD, UTTAR PRADESH-201001. THROUGH DIRECTOR MR. R. B. RATHORE

To,

BHS-Sonthofen (India) Pvt. Ltd.
O/o 6-3-252/1/7/B, 3rd Floor
Opp. IIPM, Erramazil
Banjara Hills, Hyderabad, Telangana
PIN- 500034

Sir,

On behalf of my above said client M/s Akona Engineering Pvt. Ltd., I Have to give reply of your notice dated- 18-02-2021 which is as under:-

- (1) That my client is in receipt of your aforesaid notice in this context, I have to state that due to financial crises we could not made payment to you. So we will do 75% payment in month march-2021 will be cleared in the last week of April-2021 positively.
- (2) Total amount- 1,01,78,000.00

I hope that you will appreciate the matter, I hope that very good relation between you and my client will be far better in future.

Yours Sincerely,

(BALRAM CHAUDHARY)
Authorised Legal Advisor
Of M/s Akona Engineering Pvt. Ltd.

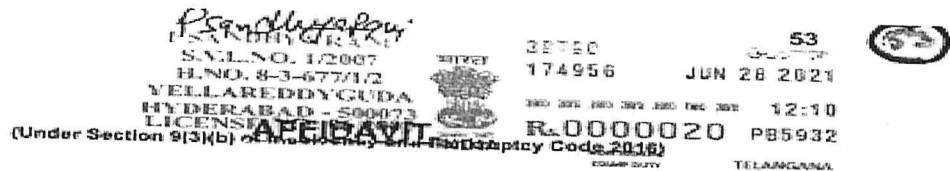
Head Office : "HYCON HOUSE" A-455, Hindon Vihar, Delhi-Meerut Road, Ghaziabad-201 001 (U.P.) India
Phone No. : +91-120-2854742, Toll Free - 1800121457457
Mfg. Unit : Khasra No. 200, Village Raipur, Post - Shagwanpur, Distt. - Haridwar-247687, (UKH) India
Website : www.akonaIndia.com. E-mail : Info@akonaIndia.com

(Sapna)



7. On perusal of the averments made in the application as well as in the reply to the demand notice placed at page 52, we observe that the amount of debt has been admitted by the respondent and the total amount of default as per Part IV is Rs.1,22,17,790/- as on 3rd May, 2021 and the date of default is 7th February 2020.

8. We further notice that the applicant has filed an Affidavit u/s 9(3)(b) of the IBC, the scanned copy of which is reproduced below:



I, Neelesh Pramodrai Desai, S/o Mohan Lal Desai, being the Managing Director and authorized person of the Company M/s. BHS-Sonthofen (India) Pvt Ltd having office at D.No: 6-3-252/1/7/B, 3rd Floor, Opp. IIPM, Erramanzil, Banjara Hills, Hyderabad – 500 034 solemnly affirm as follows:

1. I am the Managing Director of the Operational Creditor M/s. BHS-Sonthofen (India) Pvt Ltd in the above said matter and I am duly authorized by the said applicant to make this affidavit on its behalf
2. I hereby state and affirm that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt pursuant to issuance of demand notice by the Applicant / Petitioner company under section 8(1) of the Insolvency and Bankruptcy Code, 2016.
3. I have not received the outstanding due amount of Rs.1,22,17,790/- which includes interest of Rs.20,39,79/- from the corporate debtor till date.
4. In response to my claim of the said amount or any part thereof, I have relied on the following documents
 - i) Purchaser Orders
 - ii) Tax Invoices and Ledger outstandings,
 - iii) Bank Statement,
 - iv) Due Confirmation Letter from Corporate debtor

Solemnly affirmed at Hyderabad this 28th day of June, 2021.

Before me
Notary/ Oath Commissioner



Verification

I, the deponent herein above, do hereby verify and affirm that the contents of para 1 to 4 of the affidavit are true and correct to my knowledge and behalf. Nothing is false and nothing material has been concealed there from.

Verified at Hyderabad on this 28th June, 2021



ATTESTED
S. BHASKAR B.L. LL.B.
ADVOCATE & NOTARY
H. No: 6-3-392, Banjargutta,
Behind Police Station
Hyderabad - 82, Telangana, India
Phone : 9392535629



9. Under such circumstances, in terms of Section 9(5) of the IBC, 2016. It is seen that the application is complete, no operational debt was paid and even no dispute has been raised. The Applicant has not proposed the name of the IRP.

10. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. The Petition filed under Section 9 fulfils all the requirements of law. **Therefore, the Petition is ADMITTED in terms of Section 9(5)(i) of the IBC.** Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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.”

11. Since there is no IRP proposed by the Operational Creditor. Therefore, this Bench appoints Mr. Rajeev Lochan having IBBI Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885 (Email : csrajeevlochan@gmail .com) from the list of panel of IPs recommended by IBBI to this Adjudicating Authority.

(Sapna)



12. The Operational Creditor is directed to deposit Rs.2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

13. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. GUPTA)
MEMBER (T)



(ABNI RANJAN KUMAR SINHA)
MEMBER (J)