



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

IA 458/2021

IN

CP (IB) No. 976/MB-IV/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

AMC Chemicals Private Limited

[CIN: L34101TN1948PLC000105]

...Operational Creditor/Applicant

V/s

**PJM Minerals and Industries Private
Limited**

[CIN: U50101MH1990PTC056302]

...Corporate Debtor/Corporate Debtor

Order Dated: **28.04.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor(s)

:

Mr. Ashish Pyasi a/w Ms.
Namrata Biyawat i/b NB
Legal, Advocate.

For the Corporate Debtor(s)

:

None Present.



ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application being C.P. (IB) No. 976/MB/C-IV/2020 filed on 13.08.2020 by Mr. Amrish D. Desai, Director of AMC Chemicals Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against PJM Minerals and Industries Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Operational Creditor has filed Board Resolution dated 23.07.2020 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Operational Creditor.
 - 2.1 The Operational Creditor in its Part 4 of the Application under the Code has claimed a total of Rs. 1,78,51,034/-. The debt fell due on 15.02.2020 as per the last payment made on 14.02.2020 on account of which the Corporate Debtor was supposed to immediately dispatch the materials upon payment made pertaining to the order placed on a telephonic conversation by the Operational Creditor.
 - 2.2 The Operational Creditor is engaged in the business of manufacturing, supplying and trading of Manganese Sulphate solution and Zinc Sulphate solution. The Corporate Debtor approached the Operational Creditor for supply of raw material "Manganese Oxide Powder" and promised timely supplies at the most reasonable price.



- 2.3 The Operational Creditor agreed to purchase Manganese Oxide Powder from the Corporate Debtor and placed total orders for Rs. 5,07,41,057 and the Corporate Debtor supplied the raw material to the Operational Creditor and raised 57 invoices from August, 2019 to March, 2020 for the same. The Operational Creditor has also filed a copy of the Bank statement from 29.07.2020 to 11.08.2020 to prove that no payments were made by the Corporate Debtor to the Operational Creditor. The Operational Creditor has also filed the Ledger Account in the books of the Corporate Debtor from 01.04.2019 to 31.03.2020.
- 2.4 The Operational Creditor submits that it was orally agreed between the parties that the Corporate Debtor would supply raw materials immediately upon receiving the payments. The Corporate Debtor made supplies of only Rs. 3,28,90,023 and failed to honour its obligation of supplying the Manganese Oxide Powder for Rs. 1,78,51,034/- (Rupees One Crore Seventy-Eight Lakhs Fifty-One Thousand and Thirty-Four Only) and neither has it returned the amount received by it from the Operational Creditor for the order placed by it.
- 2.5 The Operational Creditor via various reminders requested the Corporate Debtor to supply the remaining raw materials but the Corporate Debtor failed to do so.
- 2.6 The Operational Creditor states that therefore, on 29.07.2020, it issued a Demand Notice in terms of Section 8 the Insolvency and Bankruptcy Code, 2016 upon the Corporate Debtor with regard to the Corporate Debtor's outstanding liability to the Operational Creditor.



- 2.7 The Corporate Debtor has not issued a notice of dispute relating to the outstanding dues within ten days of the receipt of the demand notice and has filed an Affidavit u/s 9(3)(b) of the Code to this effect.
3. The Corporate Debtor in its reply dated 09.12.2020 in which he states that there is no Operational Debt as per Section 5(21) of the Insolvency & Bankruptcy Code, 2016 ("Code") and states that "*operational debt*" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"
- 3.1 The Operational Creditor has not provided any goods or services and has only provided advance money against the supply of the goods which is not an Operational Debt; there being no Operational Debt, the application filed by the Petitioner under section 9 of the Code is not maintainable as it is filed with the intention for recovery of advance money given by the Petitioner to the Respondent for supply of goods. The Corporate Debtor further states that the said principle is also reiterated by the Hon'ble National Company Law Tribunal vide its order dated 20.08.2020 in ***Smt. Andal Bonumalla versus Tomato Trading LLP. & Smart Login Solutions Pvt. Ltd through its IRP Company Appeal (AT) (Insolvency) No. 752 of 2019*** wherein it had clarified as hereunder:

"Whether an advance amount for supply of goods can be considered as an Operational Debt under Section 5(20) of the I&B Code? -The Hon'ble Appellate Tribunal answered in



negative that advance amount paid by the Respondent No. 1 to Respondent No. 2 for supply of Sugar is not an Operational Debt"

Thus, in view of Section 5(21) r/w 5 (20) of the Code and the said order of the Hon'ble NCLAT,

- 3.2 The Corporate Debtor further stated that Hon'ble Supreme Court vide its order dated 23.10.2018 in *Transmission Corporation of Andhra Pradesh Government versus Equipment Conductors and Cables Limited (Civil Appeal No. 9597 of 2018)* had emphatically stated that "IBC is not intended to be substitute to a recovery forum".
- 3.3 The Hon'ble National Company Law Tribunal vide its order dated 04.09.2020 in **M/s Kuntal Construction Pvt. Ltd. Versus M/s Bharat Hotels Ltd. Company Appeal (AT) (Insolvency) No. 542 of 2020** had emphatically stated that "The Insolvency Resolution Process is not a civil recovery forum and if any alleged amount is payable to the Appellant the same needs to be tried in Arbitration/Civil Court"
- 3.4 The Corporate Debtor further states that the Petitioner has grossly misrepresented that the debt due fell on 19.12.2019 and thereafter stated that the default occurred on 15.02.2020 in Form 5 of the said Petition respectively. In fact, the Corporate Debtor had supplied goods on and also after 19.12.2019 as well as on and also after 14.02.2020 until 01.03.2020. So how can the date of default be 15.02.2020 when the Respondent has been supplying even after that date until



01.03.2020. In fact, the goods were provided by the Respondent till 01.03.2020 from time to time and immediately as per the agreed terms and the Petitioner kept paying money to the Respondent even after 19.12.2019 till 14.02.2020. The said transactions are also reflected from the Ledger of the Operational Creditor in the books of the Corporate Debtor. The Corporate Debtor states that since there is no Operational Debt, there is no default and that the Demand Notice dated 29.07.2020 u/s 9 of the Code was wrongfully issued with an intention to recover the money paid as advance and not due against supply of goods or services. The Corporate Debtor further states that the Demand Notice dated 29.07.2020 was received by the Respondent on 03.08.2020 around 5.30 P.M. as reflected from the track consignment report on pg. no. 164 of this Petition. Thereafter, the Operational Creditor before the statutory period of ten days as per section 8(2) of the Code could expire, filed an application u/s 9 on 11.08.2020, the same can be reflected from the List of dates and events, the date of the Form-5 & the bank statement provided by the Petitioner is also till 11.08.2020 on pg.no 9, pg. no. 10 & pg. no. 27 respectively. It is evident that the Operational Creditor did not wait for the statutory period of ten days to expire.

4. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
5. On perusal of records, this Bench finds that the Corporate Debtor has not supplied goods against the balance amount of advance lying with it after 01.03.2020. Accordingly, the default occurs on 01.03.2020 and the petition can not be dismissed for technical objection that the date of default can not be 15.02.2020 as claimed by the Operational Creditor. Further, this Bench finds that the Hon'ble Supreme Court



has held in the matter of **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions (P) Ltd.**, (2022) 7 SCC 164 that the advance received against supply of goods is an operational Debt. There is clear admission of liability and no dispute in relation to outstanding advance against goods lying with Corporate Debtor has been raised.

6. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.
7. The Applicant has not proposed the name of any Registered Insolvency Resolution Professional u/s 9(4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016 and has requested this Bench to appoint a Resolution Professional u/s 16(3)(a) of the Code to this effect.
8. This Bench further notices that an IA is filed by the Operational Creditor u/s 60(5) of Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 for rejecting the reply and Affidavits filed on behalf of the Corporate Debtor and for initiation of contempt and criminal proceedings. The Applicant states that the Reply to I.A, Undertaking and the Reply to Petition was served by the Corporate Debtor upon the



Counsel for the Applicant on 18th November 2020, 27th November 2020 and 9th December 2020 respectively. The Applicant submits that the signature of the Deponent does not match with the signature of Mr. Devkaran Navik, the Designated Director of the Respondent. The Applicant further says that he approached the said Deponent and informed him about the undertaking and the reply filed on behalf of the Corporate Debtor in which his name and signature is mentioned. The Applicant states and submits that the said deponent i.e. Mr. Devkaran Navik has confirmed that he has not signed any affidavit or undertaking or reply on behalf of the Corporate debtor. The Applicant states that the said deponent i.e. Mr. Devkaran Navik, the Designated Director of the Corporate Debtor served upon him a letter dated 13th January 2021 accepting the fact that fraud and forgery has taken place against him and appropriate legal action shall be taken in this regard by him. In the said letter, he wrote that he also remembered that the matter between the Operational Creditor and Corporate Debtor is getting settled and accordingly consent terms were drawn up to record such understanding.

9. The above stated alleged fraud has been brought on the record by the Counsel for the Operational Creditor previously as well in IA 1821/2020 in the hearing held on 25.01.2021 and Mr. Devkaran Navik and Mr. Satyabrat Satpathy were asked to be present in person on the next date of hearing i.e. 02.03.2021. Both were present in person on 02.03.2021 and were directed to give an explanation regarding the alleged signing of affidavit upon whatsapp instructions. An affidavit dated 03.12.2021 has been filed by Mr. Satyabrat Satpathy stating that he had put the signature of Mr. Devkaran Naik on the affidavit under his instruction and produced a copy of communication over Whatsapp.



10. In view of the aforesaid, this Bench feels that the Corporate Debtor has misled this bench, however, since the corporate debtor is being admitted into the CIPR vide this order, this Bench feels that no purpose shall be served to continue with the proceedings for such alleged forgery. Accordingly, this Bench **dismiss** this IA-458/2021.

ORDER

11. This Application being C.P. (IB) No. 976/NCLT/MB/C-IV/2020 filed under Section 9 of I&B Code, 2016, filed by AMC Chemicals Private Limited, Operational Creditor/ Applicant against PJM Minerals and Industries Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.

II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
- b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench hereby appoints Mr. Yatinkumar Sumantilal Shah, a registered insolvency resolution professional having Registration Number: IBBI/IPA-001/IP-P-01785/2019-2020/12764, Email Id.- yatinshah01@yahoo.co.in and Mobile No.- 9820135632; as Interim



Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/LRA Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)