



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

**CP (IB) No.207/MB-IV/2020**

Under Section 9 of the I&B Code, 2016

**In the matter of:**

Novatic Coatings Private Limited

[CIN: U24232PN2014PTC151915]

...Operational Creditor/Petitioner

V/s

ABCN Manufacturing Private Limited

[CIN: U74999MH2014PTC255975]

...Corporate Debtor/Respondent

**Order pronounced on: 17.03.2023**

***Coram:***

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

***Appearances (via videoconferencing):***

For the Petitioner(s) : Mr. Tirth Nayak, Advocates

For the Respondent(s) : Ms. Pranita Kelkar, Advocates

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is a Company Petition being C.P. (IB) No. 207/NCLT/MB/C-IV/2020 filed by Novatic Coatings Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy



Code, 2016 (Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against ABCN Manufacturing Limited, Corporate Debtor. The Petition is filed on 17.01.2020.

2. The Operational Creditor submits that he has executed various work orders from 14.11.2018 to 05.04.2019 for supply of paints to the Corporate Debtor. The Operational creditor further submits that he maintained a running account with the Corporate Debtor and the payments received were adjusted against the pending invoices on first in first out basis.

- 2.1. The Operational creditor in lieu of the executed work order has claimed a sum of Rs. 19,52,172.88/- (Principal of Rs. 17,76,252.88/- and Interest @ 18% from 28.10.2019 Rs.1,75,919. 11/-) as due from the Corporate Debtor against 21 tax invoices raised from 04.01.2019 till 19.03.2019. It is the submission of the Operational Creditor that the debt fell due on different dates between 18.02.2019 and 25.05.2019 in respect of different invoices.

- 2.2. The Operational Creditor issued a demand notice u/s 8 of the Code dated 04.11.2019 and the same was received by the Corporate Debtor on 16.11.2019 as evidenced from the Tracking Report attached with the Application.

3. The Corporate debtor has filed the reply dated 05.07.2021 stating that

- 3.1. As per the Ledger Accounts payments were made at regular intervals from year 2017 to 2019;

- 3.2. The Corporate Debtor received notice under Form 318 from Sales Tax Officer requiring the Corporate Debtor to make direct



payments of MVAT and CST out of the amounts of invoice payable to the Operational Creditor. Upon clarification of the same with the Operational Creditor, the Creditor telephonically requested the Corporate Debtor to pay off the liability directly and informed that the necessary adjustments shall be made correspondent to future payments; thus, the amount of Rs. 6,30,238/- was paid to the government towards MVAT and CST to be paid by Operational Creditor was paid by the Corporate Debtor.

3.3. Further, the Operational Creditor also submitted that owing to the accounts of the Operational Creditor being frozen by the State Tax Department, the Operational Creditor requested the Corporate Debtor to pay an amount of Rs. 5,00,000/- in the account of Vinayak Polytech towards the working capital to keep the business rolling of the Operational Creditor.

3.4. Thus, in view thereof the Operational Creditor has concealed material facts and thus, no debt is owed to the Operational Creditor.

4. The Operational Creditor has filed the Rejoinder stating that the amount paid by the Corporate Debtor in lieu of dues owed to the Government towards MVAT and CST has been given credit for and adjusted in the amount due and payable by the Operational Creditor. It is also further submitted that the dealing with Vinayak Polytech are not relevant in the present matter as it is different entity. Further, the payment made to Vinayak Polytech was in lieu of the services i.e. provided by the said company and thus have no bearing on the amounts due and payable to the Operational Creditor.



*Findings*

5. We have heard both the counsels and perused the material on record.

5.1. It is observed that the said Application has been filed within limitation and thus, this Bench has jurisdiction.

5.2. While going through the replies of the Corporate Debtor it is observed that the Corporate debtor has not brought on record any communication suggesting existence of any dispute prior to the issue of the Demand Notice. The Corporate Debtor has not denied that it has not received supply of goods from the Operational Creditor. The amounts claimed to have been paid to Sales tax department have already been reduced from the amount claimed to be in default. Also, we find merit in the contention of the applicant that amount paid to another party, even if related to it, cannot be appropriated towards the debt due to it unless specifically agreed by the applicant. As regards claim of interest on the principal default amount, we find that levy of interest is neither stipulated in the purchase order nor in the Tax invoice issued by the Applicant. Hence, interest of Rs. 1,75,919.11/-, claimed as part of Operational debt due and default, cannot be included in the amount of debt, in the absence of specific stipulation in relation to levy of interest as held by Hon'ble NCLAT in the case Mr. Prashat Agarwal v. Vikash Parasrampur & Anr. in Company Appeal (AT) (Ins) No. 690 of 2022

5.3. In view of foregoing, we find that there is a debt of Rs. 17,76,252.88/- and the Corporate Debtor has defaulted in payment thereof.



5.4. In the present case, the debt claimed in default has arisen from different purchase orders. We find that in case of **M/s. A2 Interiors Products Pvt. Ltd. Vs. M/s. Ahluwalia Contracts (India) Ltd. (2021) SCC online NCLT 438**, the Hon'ble NCLT had allowed the petition holding that debts arising from different work order(s) can be clubbed to satisfy the minimum threshold limit. The Para 27 of the said judgement reads as under -

*“27. Considering the documents on records and submissions made, it is observed that there exists an operational debt which is due and payable by the Corporate Debtor. Further with respect to the maintainability of an application, with regards the issue that whether for various claims arising out of separate work orders, single application can be filed by operational creditor. There are various judgments passed by separate claims can be part of single application. The Judgments are also relied by the applicant as referred above.”*

6. In view of the foregoing, we are of considered view that there exists a debt; such debts exceed the minimum threshold Rs. 1 Lakh (the then threshold limit); and the corporate debtor has defaulted in payment of such debt.
7. In view of foregoing, we hold that it is a fit case for admission u/s 9 of the Code.

### **ORDER**

The petition bearing CP(IB) 207/MB-IV/2020 filed by **Novatic Coatings Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **ABCN Manufacturing Private Limited** (“the Corporate Debtor) is **admitted**.

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

- (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) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Since, the Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter, this bench hereby appoints Mr. Anil Gunderao Anikhindi, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of Cost Accountants of India having registration no. BBI/IPA003/IPN000106/20172018/11216, Email Id anilcost@gmail.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and 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. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms



of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) 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).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**PRABHAT KUMAR**  
**Member (Technical)**  
17/03/2023

Sd/-

**KISHORE VEMULAPALLI**  
**Member (Judicial)**