



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 73/9/JPR/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

TIJARIA POLYPIPES LIMITED

...Operational Creditor/Applicant

Versus

DEEM CONSTRUCTION COMPANY PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

M/S TIJARIA POLYPIPES LIMITED

R/o SP-1-2316, Ramchandrapura Industrial Area
Sitapura Extn. Jaipur, Rajasthan- 302022

...Applicant/Operational Creditor

VERSUS

M/S DEEM CONSTRUCTION COMPANY PRIVATE LIMITED

R/o Sunshine Enclave, Plot No. 9A,
2nd Floor, Uniara Garden, Moti Doongri Road,
Jaipur, Rajasthan- 302004



Also at:
R/o G1- 262-263, EPIP, RIICO,
Sitapura, Jaipur, Rajasthan- 302022

...Respondent/Corporate Debtor

For the Applicant : Anurag Kalavatiya, Adv.
Akshita Koolwal, Adv.

For the Respondent : Mohit Khandelwal, Adv.

Order Pronounced On: 19.04.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Tijaria Polypipes Limited through its authorised signatory Mr Vikas Jain Tijaria ('Operational Creditor' / 'Applicant'), seeking to initiate a Corporate Insolvency Resolution Process ('CIRP') against M/s Deem Construction Company Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules'). A copy of the Board Resolution dated 29.08.2019 is annexed as Annexure – 4 of the Application.
2. The Applicant, M/s Tijaria Polypipes Limited, is engaged in the business of manufacturing plastic products. Its registered office is located at SP – 1 – 2316, Ramchandrapura Industrial Area, Sitapura Extension, Jaipur, Rajasthan – 302022. The alleged default on the part of the Respondent for the non-payment of operational dues amounting to Rs. 63,63,801/- (Rupees Sixty-



Three Lakhs Sixty-Three Thousand Eight Hundred and One Only) along with interest payable @ 12% per annum.

3. The Corporate Debtor, M/s Deem Construction Company Private Limited, is a private limited company incorporated under the Companies Act, 1956 on 19.07.2007, having CIN: U245201RJ2007PTC024757. The Respondent has its registered office at – Sunshine Enclave, Plot No. 9A, II Floor, Uniara Garden, Moti Doongri Road, Jaipur, Rajasthan – 302004. The Corporate Debtor has an Authorised Share Capital of Rs. 17,00,00,000/- (Rupees Seventeen Crores Only) and a Paid-Up Share Capital of Rs. 17,00,00,000/- (Rupees Seventeen Crores Only). A copy of the Corporate Debtor’s Master Data is annexed as Annexure – 9 of the Application.
4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 432/2020 dated 26.02.2020 are as follows:
 - a. The Respondent approached the Operational Creditor for purchasing ‘Tijaria Make HDPE Pipes’ (‘product’) in accordance with the specification as mentioned in the Agreement and placed a Purchase Order No. DCCPL/IGNP/Dheerwas/16-17/1895 dated 03.05.2017 (‘Purchase Order’). A copy of the Purchase Order is annexed as Annexure – 6 of the Application. As per the Agreement, the Applicant supplied a product amounting to Rs. 1,05,48,604/- (Rupee One Crores Five Lakhs Forty-Eight Thousand Six Hundred and Four Only).



- b. Against the Purchase Orders, the Applicant raised various invoices. Of such raised invoices, 12 Invoice ('Invoice') amounting to Rs. 45,48,604/- (Rupees Forty-Five Lakhs Forty-Eight Thousand Six Hundred and Four Only) from 24.05.2017 to 25.05.2017 remained unpaid. A copy of the Invoices is annexed as Annexure – 7 (Colly) on Pages 31 – 52 of the Application. *It is seen that the Respondent made an intermittent payment of Rs. 60,00,000/- (Rupees Sixty Lakhs Only) to the Applicant. This part payment made by the Corporate Debtor for the Purchase Orders is being acknowledged by the Applicant.* Copy of the Ledger Account of Corporate Debtor maintained by Applicant is annexed as Annexure A – 7 (Colly) on Pages 53 – 55 of the Application.
- c. As per the terms of the Invoice, it was agreed that payment is to be made within the stipulated time from the date of the invoice issued to the Respondent. *There is no interest clause in the Purchase Order, the Applicant is claiming interest of 12% of the unpaid invoices.* The total interest on the unpaid Invoice from 25.05.2017 to 31.12.2019 amounts to Rs. 18,15,197/- (Rupees Eighteen Lakhs Fifteen Thousand One Hundred and Ninety-Seven Only).
- d. As per Clause 8 – Delivery Schedule of the Purchase Order, it was stated that *the entire material will be supplied in 1 – 2 lots in the month of May 2017. A tentative monthly dispatch schedule shall be forwarded to you shortly.* Further, Clause 9 – Payment Terms of the Purchase Order



specified a *token advance of Rs. 5,00,000 (Rupees Five Lakhs Only)* along with supply order and balance payment via PDC up to May 25, 2017. Thus, based on the aforesaid terms and conditions, the Corporate Debtor failed to adhere to the conditions of the Purchase Order.

- e. The Applicant, in pursuance of the above cause of action, issued a Demand Notice dated 03.04.2019 ('Demand Notice') to the Respondent through registered and speed post on the registered office address of the company. The Demand Notice under Section 8 of the IBC stated unpaid Operational Debt as Rs. 45,48,604/- (Rupees Forty-Five Lakhs Forty-Eight Thousand Six Hundred and Four Only) excluding interest @12% per annum. The notice called for the immediate payment of the operational due within ten days from receipt of the Demand Notice failing which proceedings to initiate CIRP against the Respondent's company was stated to start. A copy of the Demand Notice dated 03.04.2019 is annexed as Annexure – 8 (Colly) of the Application. The proof of Service of Demand Notice through registered and speed post is filed on pages 64 and 65 of the Application, respectively.
- f. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till the filing of the present petition. The demand notice was accompanied by a computation of interest, details of invoices, and relevant dates of default. The copy of an affidavit under Section 9 (3)(b) and Section 9 (3)(c) of the Code is annexed as Annexure



– 2 and 3 of the Application, respectively. Moreover, the Applicant has attached the Bank Statement for the period of 01.08.2021 to 03.12.2021, showing that the Corporate Debtor has tendered no payment in respect of operational dues. A copy of the Bank Statement is annexed at Annexure – 10 (Colly) of the Application

g. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 63,63,801/- (Rupees Sixty-Three Lakhs Sixty-Three Thousand Eight Hundred and One Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 63,63,801/-# Total Principal Amount: Rs.45,48,604/- Total Interest Due: Rs. 18,15,197/-* Date from which Debt fell Due: 25.05.2017

* Calculated the Interest Amount @ 12% p.a. from the period of 25.05.2017 to 31.12.2019.

Computation of Amount to be claimed from Corporate Debtor is annexed at Annexure – 5 of the Application.

5. Notices were issued in the aforesaid Application, and the Respondent filed a

Reply *vide* Diary No. 2463/2021 dated 24.11.2021 stating that:

a. The Corporate Debtor is a government contractor engaged in the business of civil engineering and construction of real projects. It is also registered as an ‘AA’ Class Contractor, whose registered address has



changed to G – 1 – 262 – 263, EPIP, RIICO, Sitapura, Jaipur, Rajasthan – 302022.

- b. Given the global pandemic, the Company's growth has been hampered a lot, and it is passing through a significant financial crisis. This is a result of the non-release of the funds by the statutory bodies on the account of the non-allocation of requisite funds, for the approved civil work. It also stated that it does not want to shy away from its obligation and will pay the entire amount; however, it requires an extension of time. The copies letters as a reminder for clearing the dues of the Corporate Debtor to statutory bodies as annexed as Annexure – R1 of the Reply.
- c. Thus, it acknowledges the debt and is not willfully defaulting on the payment. It intends to repay the said amount and, the same is evident from the fact that the Respondent continued to pay its earlier debt even when it started to incur losses in the business. The default is only limited to five invoices which pertain to the business transaction for 2017 and offered to settle the matter amicably between the parties, both verbally and through an email dated 08.11.2021 ('Settlement Email'). A copy of the Settlement Email is annexed as Annexure – R2 of the Reply.
- d. The Operational Creditor did not reply to the Settlement Email but verbally showed its interest to settle the matter. Despite showing interest verbally, the Applicant kept delaying and after continuous follows ups, communications and verbal exchanges; the Applicant refused to settle



the matter on 20.11.2021. Thus, such actions of the Applicant show its ulterior motive to use the Code as a recovery mechanism.

6. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Additional Affidavits and the Documents enclosed with the Application.
7. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of the Laws of Limitation, as the cause of action arose in 2017, and the Application was filed before this Adjudicating Authority in 2020. Hence, the period of three years after the Default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
8. In the instant case, it is admitted by the Corporate Debtor that it has received the communication of Demand Notice under Form – 3 on 08.04.2019. Additionally, no suit or arbitration was pending before the Demand Notice was issued under Section 8 of the Code, and no prior dispute existed between the parties.
9. The first issue for consideration is whether the Demand Notice in Form – 3 dated 03.04.2019 was served upon the Respondent. The Demand Notice was sent *via* a physical copy through registered and speed post on 08.04.2019 to



the Respondent. The postal tracking slips are attached on Page No. 63 – 64 of the Application, respectively.

17. We have gone through the contents of the Application filed in Form No. 5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in Default) of Rs. 45,48,604/- (Rupees Forty-Five Lakhs Forty-Eight Thousand Six Hundred and Four Only), excluding the interest @12% per annum. It is observed that the Operational Creditor has issued various invoices (Annexure – 7) for goods supplied to the Respondent/ Corporate Debtor. Applicant/ Operational Creditor has given Demand Notice in Form No. 3 dated 03.04.2019, duly served on the Respondent/ Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.

10. It is abundantly clear from the documents produced before us that the Respondent has acknowledged the default in making full payments against the goods provided by the Operational Creditor. It has been shown that the Corporate Debtor failed to pay the aforementioned amount due on the dates mentioned in the statutory notice. It is also observed that the condition under Section 9 of the Code stands satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under IBC, 2016.



11. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as an Interim Resolution Professional ('IRP'). In the instant case, the Operational Creditor has proposed the name of Mr. Sandeep Kumar Jain to be appointed as IRP. Therefore, the Bench is appointing Mr. Sandeep Kumar Jain, bearing Registration No. IBBI/IPA-002/IP-N00174 /2017-18/10446 and E-mail ID cssandeep@armsandassociates.com and as the IRP in the present matter. The said IRP has filed the written consent to act as Resolution Professional in Form-A as provided under Section 16(4) of the Code. His written communication as per applicable Rules and Regulations is filed as Annexure – 11 (Colly) of the Application.
12. In this matter, the Interim Resolution Professional appointed herein, Mr. Sandeep Kumar Jain, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall also provide a copy of this Application, if not provided already, along with this order to the said IRP for his pursuance.
13. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.
14. Consequences of commencement of CIRP shall be inter-alia as follows:
- i. The IRP appointed by the Adjudicating Authority, Mr. Sandeep Kumar



Jain, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code, calling for claims from the creditors of the Corporate Debtor and collation of the same shall be done.

- ii. Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
- iii. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the bank account of IRP within three days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon forming a Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP concerning the Corporate Debtor. In terms of Sections 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- iv. In terms of Section 9 of the Code, this order shall be communicated at the



earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

Accordingly, CP No. (IB)- 73/9/JPR/2020 is admitted.

DEEP
CHANDRA
JOSHI

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**