

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**INDORE SPECIAL SINGLE BENCH  
AT AHMEDABAD**

**TP 259 of 2019  
[CP (IB) No. 203/9/NCLT/AHM/2018]**

[Application for initiation of Corporate Insolvency Resolution Process  
under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the matter of:**

**M/s. Oriental Coal Corporation ...**

**Applicant/  
Operational Creditor**

*Versus*

**M/s. Bhaskar Foods Private Limited ...**

**Respondent/  
Corporate Debtor**

**Order pronounced on 25/08/2022**

**CORAM:**

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**



**MEMO OF PARTIES**

M/s. Oriental Coal Corporation  
Having its registered office at:  
65, East High Court Road  
Ramdaspath, Nagpur 440 010  
Maharashtra State

... **Applicant/Operational Creditor**

**Versus**

M/s. Bhaskar Foods Private Limited  
Office Block 1A, 5<sup>th</sup> Floor,  
DB City, Corporate Park  
Arera Hills  
Opp. M.P. Nagar, Zone 01  
Bhopal 464 016  
Madhya Pradesh

... **Respondent/Corporate Debtor**

**Appearance:**

For the Applicant : Ms. Natasha Shah, Advocate  
For the Respondent

**ORDER**

1. This application was filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. **Oriental Coal Corporation** (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP) against **Bhaskar Foods**



**Private Limited** (for brevity 'Corporate Debtor'). The said application was heard by NCLT, Ahmedabad Bench – I comprising of Shri Harihar Prakash Chaturvedi, (the then Member Judicial) and Shri Prasanta Kumar Mohanty (the then Member Technical) and two separate dissenting final orders were passed by the Members of the Bench. Consequent to dissent opinion, the matter was assigned to Ms. Manorama Kumari (the then Member Judicial) for disposal. While the matter was pending, the then Member (J) Ms. Manorama Kumari demitted the office on 04.06.2021 and, thereafter, vide office order dated 29.11.2021 the said matter has been assigned to me for disposal.

2. The Member (Judicial) (as then he was) passed an order to dismiss the application on following grounds:
  - (a) the corporate debtor company has become defunct as its plant has already been sold out and thus the company is at present not active, hence even if CIRP is triggered there are remote possibilities to bring a viable resolution for revival of the company which is the aim of present I.B. petition.



- (b) there were some pre-existing disputes with regard to quality of goods supplied by the applicant and nature of payment made;
- (c) after adjusting the amount of debit note raised by the corporate debtor, the amount of debt payable by the corporate debtor is only Rs. 72,358.00, which is less than Rs. 1 lakh, required minimum threshold to initiate CIRP of the corporate debtor, therefore, the present application is not maintainable;
- (d) the application appears to be filed beyond three years, the limitation prescribed for filing I.B. petition and hence barred by limitation;

3. The Member (Technical) (as then he was) countered the observations made by Member (Judicial) and has given dissent opinion for following reasons which is summarised below:



- (a) It is very serious issue that the corporate debtor is sold, during pendency of this application. Moreover, sale of the company

by the corporate debtor does not confer any right on the corporate debtor “not to pay” the dues of operational creditor;

- (b) the debit note dated 16.11.2015 does not contain any specific reference of invoice to substantiate claim of the corporate debtor that there was a genuine dispute prior to issuance of demand notice. It is an attempt by corporate debtor to create an impression of pre-existing dispute, which is a moonshine defence.
- (c) As per IBC, the amount due will be considered taking into account both the principal and interest and not principal amount only, when there is agreed terms for payment of interest on delayed payment, as per invoice terms;
- (d) The corporate debtor had made last payment of Rs. 10 lakhs on 13.01.2016 acknowledging debt, extending limitation period by further three years from the date of such payment which is upto 16.01.2019. Thus application is well within limitation and not barred by law.



4. Perused the findings of both the members and documents available on record and heard both sides at length. After examining all grounds taken by both sides and reasoning in the order of both Members, my observations are as under:

(a) As per purchase order dated 29.11.2019 which stipulates and indicates that in the order itself there is a provision to compensate against supply of inferior quality goods and, accordingly, corporate debtor had raised debit note dated 16.11.2015 for an amount of Rs. 17,59,286.00 towards inferior quality of 312.775 MT coal. The corporate debtor has not brought on record any communication/evidence establishing pre-existing dispute prior to issuance of the demand notice on 13.03.2018. There is no acknowledgement of debit note by operational creditor neither any proof is placed for service of debit note on operational creditor by corporate debtor. No correspondence or any document about any dispute between the parties. Thus, defence raised by the corporate debtor that there is pre-existing dispute is moonshine defence and an afterthought adopted by the corporate debtor. This is further supported by the judgement



of Hon'ble Apex Court in "Mobilox Innovative Private Limited vz. Kirusa Software Private Limited" of which relevant para is reproduced hereunder:

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster."*

- (b) Further an amount of Rs. 28,31,644.00 as a debt is acknowledged by the corporate debtor vide email dated 05.08.2015 which happens to be the amount payable by the corporate debtor towards interest on delayed payments. The



applicant has placed on record a copy of invoice dated 29.01.2014 for Rs. 28,89,233.00 which stipulates that “Interest @ 2% per month will be charged if the invoice is not paid on due period”. Thus the amount of interest for delayed payment becomes part of contractual debt as per invoice, payable and included in operational debt.

- (c) As per Part IV, Form 5 an amount of Rs. 46,95,033/- is due and payable by the corporate debtor towards operational debt out of which Rs. 28,63,389/- is the amount receivable by the applicant towards interest on delayed payments outstanding on invoices issued, which is admitted by corporate debtor in its e-mail dated 05.08.2015.
- (d) As per the records, the corporate debtor had made the last payment of Rs. 10,00,000/- on 13.01.2016 through RTGS. The application filed on 09.05.2018 is, therefore, within limitation and not barred by law. It is well settled law that any part payment made or acknowledgement of debt or entry of debt in balance sheet shall trigger fresh period of limitation from such date.



(e) Further, it is also mentioned by corporate debtor as well as in the observations by the then Member (Judicial) that during the course of hearing the counsel appearing for the corporate debtor informed the court that the corporate debtor company has become defunct as its plant has already been sold out and the company is not active. No document is produced by the corporate debtor in support of such sale/disposal of assets of corporate debtor. On the contrary the applicant has brought on record a copy of the Master Data of the corporate debtor as on 24.01.2022 which shows that the company is active and last AGM was held on 16.10.2021. Otherwise also even if it is sold to third party, the present applicant is not privy to such transactions and such actions of corporate debtor will not extinguish rights of this applicant to proceed against corporate debtor.

5. In light of the above discussions, I concur with the view taken by Member (Technical) that the debt is established and default has occurred. As a result, the present application is admitted, in terms of Section 9 (5) of IBC, 2016.



6. The applicant has proposed the name of the Interim Resolution Professional (IRP) of Mr. Sambhulal Agarwal who is hereby appointed as IRP of corporate debtor having address at Sambhu & Associates, 2<sup>nd</sup> Floor, Bazaar Kolkata Building, Nayapara, Sambalpur 768 001 with registration No. IBBI/IPA-001/IP-P-00387/2017-18/10698, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is filed which is on record.
  
7. The Operational Creditor is directed to deposit a sum of Rs.2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Sambhulal Agarwal to meet the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim



Resolution Professional, and shall be paid back to the Operational Creditor.

8. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
9. A copy of the order shall be communicated to the applicant RP and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal. IBBI shall send a compliance report to the Registrar, NCLT.



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Sd/-

**DR. DEEPTI MUKESH**  
**MEMBER (JUDICIAL)**

Certified to be True Copy of the Original

*Suneel*  
5-9-22  
Joint Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad