IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

CP (IB) No.671/KB/2019

In the matter of:
Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:
Prama Instruments Private Limited [CIN:U33100MH1996PTC104297], a Company incorporated under the Companies Act, 1956, having its registered office atPrama House, 21, Cama Industrial Area, Walbhat Road, Goregaon (East), Mumbai - 400063.

... Operational Creditor

Versus

QRT Labs Private Limited [CIN U74999BR2016PTC031900], a company incorporated under the Companies Act, 1956, having its registered office at Mahavir Lane, Chakaram Link Road, Budha Colony, East Boring Canal Road, Patna – 800001.

... Corporate Debtor

Date of hearing: 14.02.2022

Date of pronouncement: 24.02.2022

Coram:

Shri Rajasekhar V.K.	:	***Member (Judicial)***
Shri Balraj Joshi	:	***Member (Technical)***

Appearances (via video conferencing):

For the Operational Creditor	:	Mr. Pritesh Burad, Advocate Mr. Pankaj Agarwal, Advocate
For the Corporate Debtor	:	Mr. Avirup Mondal, Advocate Mr. Shikesh Jha, Advocate Ms. Ahana Ghosh, Advocate Ms. Sudarshana Dutta, Advocate

ORDER

***Rajasekhar V.K., Member (Judicial)**:*

1. This Court convened *via* video conferencing.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ('***theCode***') by Prama Instruments Private Limited ('***Operational Creditor***'), a Company incorporated under the Companies Act, 1956, by Mr. Madanmohan Ambikaprasad Mishra, duly authorised*vide* Board Resolution dated 24 November, 2018, seeking to initiate Corporate Insolvency Resolution Process ('***CIRP***') against QRT Labs Private Limited('***Corporate Debtor***'), a company incorporated under the Companies Act, 1956.

3. The present petition was filed on 23 April, 2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹35,54,755/- (Rupees thirty-five lakh fifty four thousand seven hundred fifty five only) along with interest calculated @24% from the date of invoice. The date of default is 23 October, 2018.

Submission of the learned Counsel for the Operational Creditor

4. The Operational Creditor is engaged in the business of manufacturing and supplyinglab equipment and related products and the Corporate Debtor was in requirement of lab instruments for their business purpose. The Corporate Debtor purchased lab equipment from the Operational Creditor between the period 10 March, 2017 to 15 September, 2017, against which invoices were raised by the Operational Creditors.[1]

5. The Corporate Debtor never returned the equipment neither raised any issue with respect to the quality of the equipment. Further, a cheque was drawn on Kotak Mahindra Bank, Patna branch, bearing cheque No.000421 dated 30 September, 2018 for a sum of ₹11,46,783/- (Rupees eleven lakh forty-six thousand seven hundred eighty-three only) by the Corporate Debtor towards part payment of the invoices raised by the Operational Creditor.

[1] Annexure B of the Petition

6. The Corporate Debtor also issued the following cheques:

Sl No.	*Cheque No.*	*Date*	*Amount*
1.	000005	16.10.2018	₹2,48,000/-
2.	000006	03.11.2018	₹6,05,340/-
3.	000009	30.09.2018	₹11,46,783/-

7. On deposit of the said cheques by the Operational Creditor, the cheques were dishonoured on the grounds of '*payment stopped by drawer.*'Subsequently, on 26 November, 2018 a demand notice under section 138 of the Negotiable Instrument Act, 1881 was sent by the Operational Creditor, to which the Corporate Debtor replied *vide* letter dated 10 December, 2018.

8. Despite several reminders and demand, the Corporate Debtor failed to make the payment of the outstanding amount of ₹35,54,755/- (Rupees thirty-five lakh fifty-four thousand seven hundred fifty-five only).Criminal Case against the Corporate Debtor is still pending before the Ld. Judicial Magistrate, First Class, Vashi, Belapur.

9. The Operational Creditor has also issued a demand notice dated 28 January, 2019, under section 8 of the Code to the Corporate Debtor and the same was received on 05 February, 2019 by the Corporate Debtor.[2]Even after receipt of the demand notice under section 8 of the Code, the Corporate Debtor neither disputed[3] the existing dues nor paid the same.

Submissions of the learned Counsel appearing on behalf of the Corporate Debtor

10. The Corporate Debtor and the Operational Creditor had entered into a Memorandum of Understanding ***('MoU')*** dated 04 August, 2016 to develop their business in northern and eastern regions.

11. The liability of ₹35,54,755/- (Rupees thirty-five lakh fifty-four thousand seven hundred fifty-five only) can only be reconciled between the parties after the amount owed to the Corporate Debtor as per the MoU is adjusted. The cheques issued by the Corporate Debtor was as a security towards the MoU.

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[2] Annexure G of the Petition

[3] Page 16 of the Petition

12. Further, the Operational Creditor has not mentioned about the cheque no. 000429 for ₹8,53,000/- cleared on 03 October,2018, cheque no.000406 for ₹4,57,840/- cleared on 20 October, 2018 and cheque no.000404 for ₹1,47,500/- cleared on 20 October, 2018 against the liability for the goods purchased.

13. The cheque issued by the Corporate Debtor assecurity to the terms and agreements of the MoU has been wrongly used by the Operational Creditor.

Rejoinder by the Operational Creditor to the reply of the Corporate Debtor

14. The Operational Creditor submits that nowhere in the Reply the Corporate Debtor had raised any issue or disputed the invoices rated from 10 May, 2017 to 15 September, 2018.

15. Further, as per paragraph 18 of the MoU it states that the terms and conditions will be reviewed on 30 September 2016 and accordingly fresh terms and conditions will be made. Hence, the invoices raised by the Operational Creditor from 10 May, 2017 to 15 September, 2018 has no nexus in this instant case.

Analysis and Findings

16. We have heard Ld. Counsel appearing on behalf of the Operational Creditor and Ld. Counsel appearing on behalf of the Corporate Debtor and perused the records.

17. Upon perusing the record, it is noted that cheque no.000421 was issued by the Corporate Debtor, whereas cheques nos.000005, 000006 and 000009 were issued by Mr.Aayush Pareek, director of the Corporate Debtor.

18. Further, as envisaged under section 9 of the Code, the key ingredients that needs to be taken into account to admit the application are as follows:[4]

    (i) Whether the application is complete?

    (ii) Is there payment of the unpaid operational debt?

[4] Mobilox Innovations Pvt. Ltd v Kirusa Software Pvt. Ltd (2018) 1 SCC 353 decided on 21.09.2017

(iii) Whether the demand notice has been delivered by the Operational Creditor?

(iv) Whether the notice of dispute has been received by the Operational Creditor or is there any record of dispute in the Information Utility?; and

(v) Whether any disciplinary proceeding is pending against the proposed Interim Resolution Professional by the Operational Creditor?

19. However, in this instant case neither any dispute was raised by the Corporate Debtor nor any payment of the dues were made after receiving the notice under section 8 of the Code. Further, as per MoU dated 04 August, 2016 the terms and conditions of the MoU was to be reviewed on 30 September, 2016 and a new contract was to be entered between the parties, whereas the invoices raised by the Operational Creditor are from 10 March, 2017 to 15 September, 2017. Hence, the contention raised by the Corporate Debtor with regard to the MoU signed between the parties in 2016 is not having nexus with the said invoices.

20. Further, as submitted by the Corporate Debtor in point 6 of their Reply, there are no documents on record before us which would substantiate the contention of the Corporate Debtor that the Operational Creditorowes moneyto the Corporate Debtor. It is also pertinent to mention that the Corporate Debtor had never raised this issue before the filing of this application.

21. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.

22. It is, accordingly, hereby ordered as follows:-

    a. The application bearing ***C.P. (IB) No. 671/KB/2019***filed by Prama Instruments Private Limited, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against QRT Labs Private Limited, the Corporate Debtor, is **admitted**.

    b. There shall be a moratorium under section 14 of the IBC.

    c. The moratorium shall have effect from the date of this order until this Adjudicating Authority 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.

    d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

    e. ***Mr. Rajendra Kumar Agarwal***, registration number ***IBBI/IPA-001/IP-P00324/2017-18/10594***, email: ***rkaco93@yahoo.co.in***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated under sections 15, 17, 18, 19, 20 and 21 of the Code.

    f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.

g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h. The Operational Creditor shall deposit a sum of ₹3,00,000/- with the IRP to meet initial expenses. These expenses are subject to approval by the Committee of Creditors (CoC), and shall be reimbursed to the Operational Creditor after they are approved by the CoC.

i. In terms of section 7(5)(a) of the Code, the Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Patna by all available means 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.

23. ***CP (IB) No.671/KB/2019*** to come up on ***25.04.2022*** for filing the progress report.

24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi	**Rajasekhar V.K.**
Member (Technical)	**Member (Judicial)**

24.02.2022

SafuraA., LRA