



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 15/IBC/MB/2022**

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

*In the matter of*

**POWER2SME PRIVATE LIMITED**

Having registered office at: AD-13, Tagore Garden, New  
Delhi- 1100027 and Having Corporate Office at Plot No. 88,  
Udyog Vihar Phase IV Gurugram 122015, Haryana

*.....Operational Creditor*

**Vs**

**VHM INDUSTRIES LTD**

(CIN: U17100MH1987PLC044506)

Registered office at: 220, Kewal Industrial Estate, Senapati  
Bapat Marg, Lower Parel (West), Mumbai- 400013

*.....Corporate Debtor*

Reserved for order on: **26.07.2022**

Order pronounced on: **02.08.2022**

**Coram:**

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

**For the Applicant:** Mr. Subhash Bhalwal

**For the Respondent:** Ms. Jyoti Muley

**Per: Shri H.V. Subba Rao, Member (Judicial)**

1. The above Company Petition is filed by M/s. Power2Sme Private Limited hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against M/s. VHM Industries Ltd called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 2,38,24,697/-.

**BRIEF FACTS OF THE CASE**

2. The Operational Creditor is engaged in business of procuring and selling of raw material, consumable, operational supplies, industrial goods etc. (collectively referred to as the "Raw Material") to micro, small and medium enterprises ("SMES") for increase their profitability by demand aggregation and providing raw material at competitive prices by directly buying from large manufacturers and enabling its customers to increase business efficiencies against cash payment or on credit basis.
3. The Operational Creditor further submit that the Corporate Debtor placed the order for purchase of Cotton Fabrics and Fancy Suitings 5208 of particular specifications as per the purchase orders raised by on credit basis. The Details of the various purchase orders are as under:
  - i. P.O. No. 353 dated 14.08.2019 for Qty. 31635 mtrs. at Basic rate of 150.55 amounting to 47,62,689/-. The total of the said P.O. including 5% G.S.T amounted to Rs. 50,00,823/
  - ii. P.O. No. 354 dated 16.08.2019 for Qty. 30864 mtrs. Basic rate of 151.55 amounting to 46,77,591/-. The total of the said P.O. including 5% G.S.T amounted to Rs. 49,11,471/



- iii. P.O. No. 355 dated 16.08.2019 for Qty. 32024 mtrs.at Basic rate of 148.54 amounting to 47,56,970/-. The total of the said P.O. including 5% G.S.T amounted to Rs 49,94,818/
4. The Operational Creditor transported the said material of particular specification to the Corporate Debtor by Logistics Agency. The said material were transported in ten parts. The details of E-Way Bills are as under:
- |                               |                   |
|-------------------------------|-------------------|
| E-Way Bill No. 6911 2730 3266 | dated 14.08.2019  |
| E-Way Bill No. 6811 2759 6131 | dated 16.08.2019  |
| E-Way Bill No. 6911 2760 0068 | dated 16.08.2019  |
| E-Way Bill No. 6111 2759 4754 | dated 16.08.2019  |
| E-Way Bill No. 6711 2759 8811 | dated 16.08.2019  |
| E-Way Bill No. 6011 2759 7383 | dated 16.08.2019  |
| E-Way Bill No. 6011 2758 7438 | dated 16.08.2019. |
| E-Way Bill No. 6811 2758 6062 | dated 16.08.2019  |
| E-Way Bill No. 6511 2758 4223 | dated 16.08.2019  |
| E-Way Bill No. 6011 2759 3604 | dated 16.08.2019  |
5. The Operational Creditor further submits that at the request of Corporate Debtor the Operational Creditor sold materials as requested of particular specification on 90 days credit and have raised various invoices.
6. The Corporate Debtor have issued cheques towards discharge of their liability. That two cheques had been dishonored on its presentation. The details of the cheques are as under:

Customer Name	Cheque Number	Bank Name	Cheque Amount
VHM Industries Ltd.	8302	Karur Vysya Bank	50,00,000
VHM Industries Ltd.	8301	Karur Vysya Bank	50,00,000
Total			100,00,000

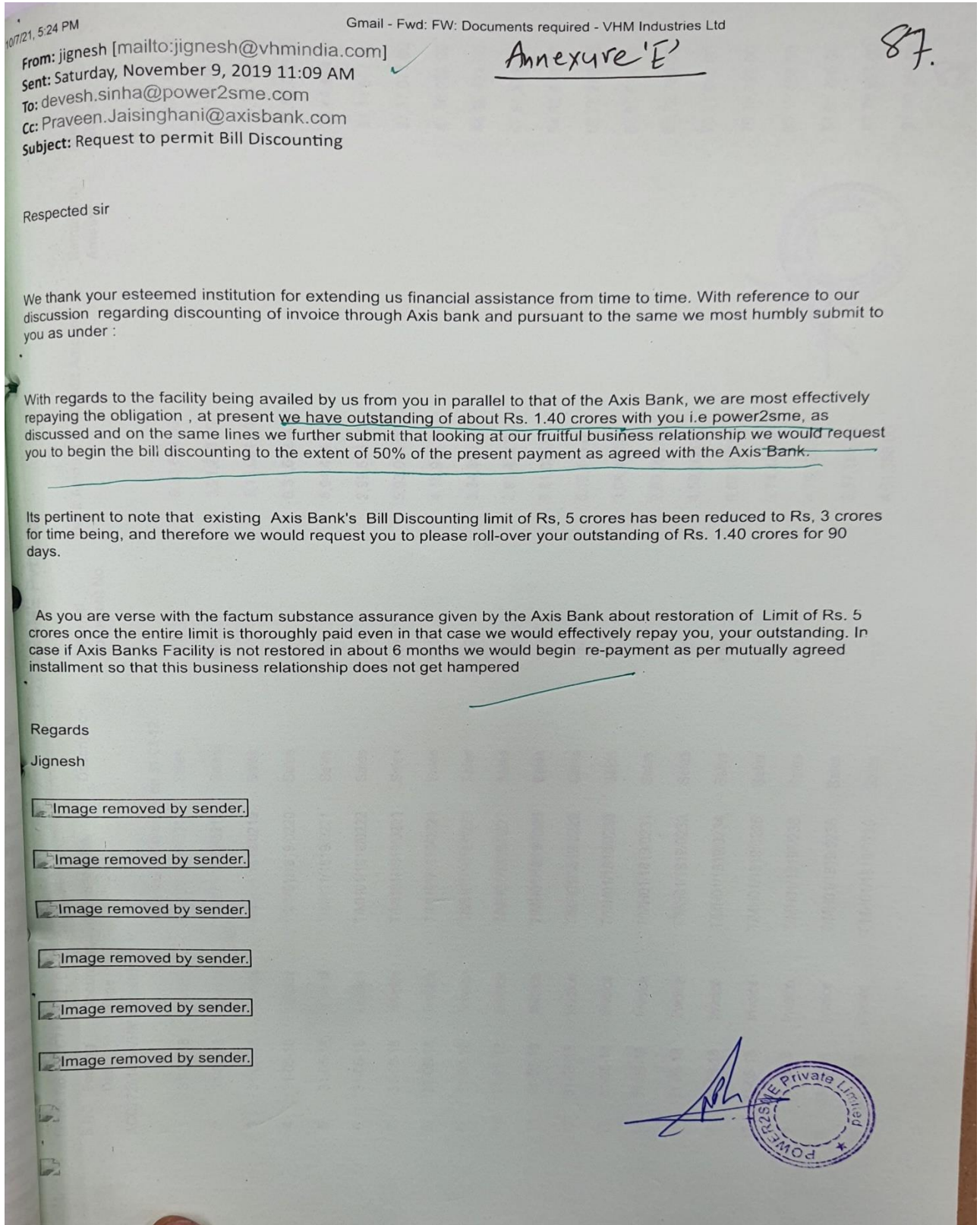
7. The Corporate Debtor failed and neglected to comply with the payment terms and conditions as stated in the various invoices which is marked as Exhibit "C" to C-20" above. The Operational Creditor was then compelled to issue Demand Notice in Form-3 dated 17.01.2020, being the Statutory Notice under The Insolvency and Bankruptcy Code 2016 brought the aforesaid facts on record and demanded payment of the unpaid operational debt due from the Corporate Debtor being issued under section 8 of Insolvency and Bankruptcy Code 2016. The Operational Creditor informed the Corporate Debtor that they are in default of Rs.1,57,93,681/- as on 15.01.2020 payable with interest @30% per annum accrued thereon. The said Notice was served upon the Corporate Debtor and its Directors by India Post and the same has been delivered. The said Notice was received by the Corporate Debtors.
8. The Corporate Debtor have addressed an email dated 09.11.2019 to the Operational Creditor confirming their debt.
9. The Operational Creditor submits that the Corporate Debtor have left an outstanding balance of Rs. 2,38,24,697/- as stated in the Statement of Accounts.

10. In the circumstances stated above it is just and necessary that the process of insolvency resolution can be initiated as there is default in payment of admitted liability in respect of claim which is due from the Corporate Debtor under Section 3(11) and Section 9 of the Insolvency and Bankruptcy Code 2016 as has committed default in respect of invoices.

### **FINDINGS**

1. Since the Corporate Debtor failed to appear before this Bench despite service of notice, the Corporate Debtor was set ex parte vide order dated 10.05.2022 and the matter was listed for hearing on 10.06.2022 and thereafter on 05.07.2022 and on 26.07.2022.
2. The Corporate Debtor except putting up appearance through different counsels on 05.07.2022 and on 26.07.2022, even did not choose to file any reply or vakalatnama of any advocate.
3. This Bench having no alternative, heard the argument of counsel appearing for the Petitioner on 26.07.2022 and reserved the matter for orders in the presence of the counsel appearing for the Corporate Debtor.
4. Ld. Counsel appearing for the Operational Creditor invited the attention of this Bench to the various purchase orders and E-Way Bills annexed to the Company Petition basing on which the above Company Petition was filed. The counsel appearing for the Operational Creditor also invited the attention of this Bench to the demand notice dated 17.01.2020 annexed at page no.73 of the Petition and the postal receipt along with track report issued by the Postal Authority in support of proof of delivery of demand notice on the Corporate Debtor. The Corporate Debtor having received the Demand Notice did not send any reply nor paid the amount to Operational Creditor.
5. The Operational Creditor also invited the attention of this Bench to the e-mail dated 09.11.2019 sent by the Corporate Debtor to the

Operational Creditor to prove the admission of liability and default by Corporate Debtor. The above email is reproduced hereinunder;





6. After hearing the submissions and upon perusing the material available on record, this Bench feels that the Petitioner has successfully demonstrated the existence of “debt and default” committed by the Corporate Debtor in this case. Since the Corporate Debtor remained ex-parte the claim of Operational Creditor remained unchallenged.
7. Since the purchase orders pertains to the period of 2019, the above Company Petition being filed on 12.01.2022 is well within limitation. Thus, the Petitioner has satisfied all the necessary legal requirements for admission of the above Company Petition and the above Company Petition deserves to be admitted.
8. Accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) 15 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. VHM Industries Ltd.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Hirachand Nemichand Bafna (hnb1502@rediffmail.com)**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01207/2018-2019/11922 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.



- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANURADHA SANJAY BHATIA  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**