

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

C.P. No. 1071/MB/2020

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

JVS Comatsco Industries Private Limited

Having its registered office at Swastik House, 39/D, Jawaharlal Nehru Marg, Gultekdi, Pune - 411 037

.....Petitioner/Operational Creditor

Vs

Jaatvedas Construction Co. Private Limited

Having its registered address at F/306, 3rd Floor, Eastern Business District, L. B. S. Road, Bhandup West, Mumbai :400 078

.....Corporate Debtor

Order reserved on: 20.12.2022

Order pronounced on: 06.02.2023

Coram:

Shri Kuldip Kumar Kareer, Hon'ble Member (Judicial)
Smt. Anuradha Sanjay Bhatia, Hon'ble Member(Technical)

Appearances (Via Videoconferencing):

For the Petitioner: Ms. Unnati Shah, Advocate

For the Corporate Debtor: None Appeared.

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by JVS Comatsco Industries Pvt. Ltd. (hereinafter called "**the Petitioner/Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Jaatvedas Construction Co. Pvt. Ltd** (hereinafter called "**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 Adjudicating Authority) Rules, 2016 for an unresolved Operational Debt of **Rs. 34,73,472.75/-**.

The Brief Facts of the Case as Follows:-

2. The Petitioner is Private Limited Company, engaged in the business of providing building materials like bricks, blocks, plaster, mortar etc. The Corporate Debtor had placed various purchase orders with the Petitioner as per their requirements.
3. Accordingly, the Petitioner states that they supplied goods to the Corporate Debtor as per their purchase orders and raised twenty-nine invoices from 13th December 2018 to 19th February 2019. The goods were duly received and accepted by the Corporate Debtor without any demur and/or objections.
4. The Petitioner further states that the invoices raised provided a credit period of 45 days to make the payment towards the invoice, failing which, the Petitioner is entitled to charge an interest at the

rate of 18% per annum from the date, the amount became due till payment and/or realization.

5. Thereafter, the Corporate Debtor on 25th June 2019 made a part payment of Rs. 24,193/- towards the invoice dated 13th December 2018, but, failed to make payments towards the remaining claim amount of Rs. 29,96,019/-.
6. The Petitioner further states that Mr. Nilesh Parab (authorized representative of Corporate Debtor) sent an e-mail dated 25 June 2019, providing a “schedule of payment” towards the outstanding dues to Mr. Jignesh Patel (Director of the Petitioner). However, even after such confirmation, there was no payment of outstanding dues by the Corporate Debtor to the Petitioner. Further, the Petitioner had also sent a reminder vide an e-mail dated 2nd October, 2019 calling upon the Corporate Debtor to pay the outstanding dues within 3-4 days, failing which, appropriate legal action will be taken against the Corporate Debtor. However, the Corporate Debtor again failed to fulfil the payment obligation as per the Schedule of Payment.
7. Therefore, the Petitioner issued a Demand Notice dated 10th January 2020 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with copies of the computation, defaulted invoices and ledger statement. The Petitioner states that the said notice has been duly received by the Corporate Debtor, but has failed to make any payment. Hence this Petition.

FINDINGS:

8. We have heard the Counsel for the Petitioner and perused the material available on record.
9. The Petitioner had supplied goods and raised twenty-nine invoices from 13.12.2018 to 19.02.2019. The said invoices provided a payment term of 45 days from the date of receipt of goods, failing which, the Petitioner is entitled to levy the interest on the outstanding amount @ 18% per annum which was duly accepted by the Corporate Debtor without any objections or demur. Further, the Corporate Debtor on 25th June 2019 made a part payment of Rs. 24,193/- towards the invoice dated 13th December 2018. However, the Corporate Debtor failed to make remaining payment towards twenty-nine invoices amounting to Rs. 29,96,019/-. As the Corporate Debtor defaulted, the Petitioner charged an interest rate of 18% amounting to Rs. 4,77,453.75/-. Thereafter, the Petitioner served a Demand Notice dated 10.01.2020 under section 8 of Insolvency and Bankruptcy Code, 2016.
10. Further the counsel for the Petitioner has drawn the attention of this Bench to the Service Letter dated 12.03.2020, along with a dispatch proof evidencing that the notice as well as the present Petition filed under Section 9 had been served upon the Corporate Debtor, by the way of Hand Delivery. However, the Corporate Debtor failed to appear before this Bench even after the issuance of the notice. Further, this Bench vide an order dated 03.08.2022, directed the Corporate Debtor to file a reply within 2 weeks. Despite having been given a number of opportunities, the Corporate Debtor has neither appeared before the Bench nor filed any reply. As a result this Adjudicating Authority ex-parte against the Corporate Debtor.

11. After on going through the submissions made by the Learned Counsel for the Petitioner, it is observed that the Corporate Debtor proposed to pay the remaining outstanding amount by providing the “schedule of payment” through email dated 25.06.2019 (Annexure I -C). However, The Corporate Debtor failed to adhere to the schedule of payment provided by him and did not make any payment. Further, the liability of the Corporate Debtor is evident by the ledger statements (Annexure I -B) maintained by the Petitioner. Therefore, it is established beyond doubt that the Corporate Debtor had defaulted in making the payment of Operational Debt amounting to Rs. 34,73,472.75/, giving a cause of action to the Petitioner to invoke the provisions of Section 9 of the Code.
12. Since the Corporate Debtor did not file any reply, the claim of Petitioner remained uncontroverted. Therefore the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor and the Company Petition satisfies all legal requirements for admission. Considering the above facts, we are of the view that this Petition deserves to be **admitted**. It is ordered accordingly in following terms:

ORDER

- a. The above Company Petition No. 1071/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered **Jaatvedas Construction Co. Private Limited**
- b. **Mr. Ashok Venkatrao Barbole**, having registration No. IBBI/IPA-001/IP-P-02280/2021-2022/13720, having

email Id- caashokbarbole2009@gmail.com, having Mobile Number: 9860315222, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of **Rs. 2 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.
- 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.
- k. Accordingly, CP 1071 of 2020 is **admitted**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)