

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.08/BB/2020
U/s. 9 of the IBC, 2016 r/w
Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Mahesh Hardware & Pipes Pvt. Ltd.
R/O: No.167/2, R.V. Road, Mavalli,
Bengaluru – 560 004

... Petitioner/Operational Creditor

VERSUS

M/s. Jains & Alliance Palm Ventures Pvt. Ltd.
R/O: No.85, Karthik Nagar, Marathalli,
K. R. Puram, Outer Ring Road,
Bengaluru – 560 037

... Respondent/Corporate Debtor

Order delivered on 30th November, 2021

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Mr. Hitesh Sanghavi, Adv.
For the Respondent : Mr. Girish Jain, Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. CP(IB) No.08/BB/2020 is filed by Mahesh Hardware & Pipes Private Limited (hereinafter referred to as 'Operational Creditor/Petitioner') under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of Jain & Alliance Palms Venture Private Limited (hereinafter referred to as 'Corporate Debtor/Respondent') on the ground that the Corporate Debtor has committed default for a total outstanding amount of Rs.12,75,316/-

(Rupees Twelve Lakh Seventy Five Thousand Three Hundred and Sixteen only) including interest being Rs.3,60,209/- (Rupees Three Lakh Sixty Thousand Two Hundred and Nine only) as on 19.06.2019 Workings on Computation of claim amount is annexed to the Petition.

2. Mr. Mahendra Jain, the Director of the Petitioner has filed this Petition being duly authorised by Board Resolution dated 24.09.2019 passed by the Petitioner. Copy of the Board Resolution dated 24.09.2019 is annexed to the Petition.
3. Brief facts of the case, which are relevant to the issue in question, are as follows:
 - (1) It is submitted by the Petitioner that it has been supplying plumbing products to the Respondent since 2015. The Respondent started defaulting in paying the invoice amounts in the year 2017. The total principal amount due and payable from the Respondent is Rs.9,15,107/- (Rupees Nine Lakh Fifteen Thousand One Hundred and Seven only). Copies of the invoices along with purchase orders are annexed to the Petition.
 - (2) It is submitted by the Petitioner that the Respondent has admitted its liability to repay a sum of Rs.7,76,681/- vide email dated 17.07.2018.
 - (3) The Petitioner submitted that the Respondent kept assuring the Petitioner that payments will be done. However, the Respondent failed to make the payments. The Petitioner issued Demand Notice under Section 8 of the Code, 2016 on 19.06.2019 demanding payment of Rs.12,75,316/- being the principal sums due along with simple interest at the rate of 15% p.a. from 15.07.2017. Copy of the Demand Notice and proof of service is annexed to the Petition.
 - (4) The Respondent replied to the demand Notice vide email dated 15.07.2019 enclosing a letter stating that the Respondent has asked its procurement and accounts department to verify the authenticity of the bills sent by the Operational Creditor and assured that it would release the payments for the genuine bills if the same had not been made so far.
 - (5) The Petitioner submits that email dated 15.07.2019 by the Respondent was suitably replied to, by the Petitioner stating that the Respondent is merely attempting to delay Petitioner's rightful payments.

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- (6) The Respondent filed its Statement of Objection on 25.02.2020 denying the allegations of the Petitioner and stating that the Petitioner has suppressed the payment of Rs.1,37,296/- received on 26.04.2018 and Rs.1,23,298/- received on 03.08.2018. The Respondent has annexed its Bank Statement showing the above payments being made to the Petitioner.
- (7) It is submitted that the Respondent sought certain clarification from the Petitioner vide email dated 15.07.2019 which was not complied with by the Petitioner. It is further submitted that the amount claimed in the Petition is incorrect. It is also stated by the Respondent that it stopped the business transactions with the Petitioner as it was dissatisfied with the materials supplied and would get similar materials at a much lesser price.
4. After the pleadings are completed and after hearing both sides, this Adjudicating Authority vide its order dated 19.06.2020 dismissed the instant CP by observing as under:-

"9. In view of the above facts and circumstances, namely that the Petitioner has attempted to use this forum as a recovery forum, and that also in respect of a disputed debt, without making out a case that the Respondent has become insolvent, we are of the considered view that the present petition cannot be allowed. However, this decision will not come in the way of the Petitioner to approach any other relevant forum to enforce its legal rights to recover the outstanding dues, if any, or settle the matter amicably with the Respondent.

10. Hence, CP (IB) No.08/BB/2020 fails and is dismissed. No order as to costs."

5. Having aggrieved with the said order of this Adjudicating Authority, the Petitioner in the CP filed Company Appeal (AT)(Insolvency)No.869 of 2020 before the Hon'ble NCLAT. After hearing both sides, the Hon'ble NCLAT vide its order dated 09.08.2021 allowed the Company Appeal as under:-

"24. With the aforesaid, we are unable to agree with the above mentioned finding of the Adjudicating Authority.

25. With the aforesaid discussion, we are of the view that Ld. Adjudicating Authority has wrongly rejected the claim on unfounded grounds. From the records, as we find that the Corporate Debtor has defaulted to pay more than one lakh and in absence of pre-existing dispute and the record being complete, we hold that the Application under Section 9 of the IBC preferred by the Operational Creditor was fit to be admitted.

26. For the aforesaid reason, we set aside the impugned order dated 19.06.2020 and remit the case to the Adjudicating Authority for admitting the Application under Section 9 of the IBC, after notice to the Corporate Debtor to enable the Corporate Debtor to settle the matter prior to the admission.

The Appeal is allowed with the aforesaid observations and directions. No costs."

6. In view of the order passed by the Hon'ble NCLAT in the Company Appeal the CP is restored to its original file and listed for fresh hearing on 22.11.2021.
7. Heard Mr. Hitesh Sanghavi, learned Counsel for the Petitioner and Mr. Girish Jain, learned Counsel for the Respondent and perused the pleadings on record.
8. In the facts of the case and in view of the categorical observations and findings of the Hon'ble NCLAT and since the CP is complete in all aspects, and having established the default in payment of the Operational Debt for the default amount being above Rs.1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
 - (a) 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;
 - (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (c) 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;
 - (d) 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) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

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- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
 - (g) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
9. In Part-III of Form No.1, Mr. Kanekal Chandrasekhar, Registration No. IBBI/IPA-002/IP-N00642/2018-2019/11964 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 24.11.2019 along with the certificate of registration issued by the Insolvency and Bankruptcy Board of India are found at Page Nos.529-530 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Kanekal Chandrasekhar and there is nothing adverse against him. In view of the above, we appoint Mr. Kanekal Chandrasekhar, bearing Registration No. IBBI/IPA-002/IP-N00642/2018-2019/11964, registered address at No.6 Shree, 9th Cross, Bhuvaneshwari Nagar, Hebbalkempapura, Dasarahalli Main Road, H.A. Farm Post, Bengaluru-560024, e-mail: kanekal.chandru@gmail.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
10. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
11. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution

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Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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