IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 79/9/JPR/2020

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

IN THE MATTER OF:

M/s Prime Impex (Operational Creditor)
Jaipur Office:7/59 Vidhyadhar Nagar, Jaipur -302039
Factory at: H-103, Badharna Marble Mandi, VKI Extension, Jaipur- 302013 Rajasthan

…Applicant / Operational Creditor

VERSUS

M/s Shalfeyo Industries Pvt. Ltd.
(Erstwhile Adelante Exim India Private Ltd.)
CIN: U51909RJ2014PTC046650
Having its Registered Office at:
250/47, RHB, Pratap Enclave Haldhighati Marg, Pratap Nagar, Sanganer Jaipur Jaipur RJ 302017 IN

…Respondent / Corporate Debtor

For Petitioner (s) : Mr. Amol Vyas, Adv.

For Respondent (s) : Mr. Naresh Kumar Sejvani, Adv.

ORDER PRONOUNCED ON:16.08.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Prime Impex through its partner Mr. Akul Singhal ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Adelante Exim India Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Applicant, M/s Prime Impex, is engaged in the business of Marble, Granite stones etc. The office of the Applicant is situated at 7/59 Vidhya Dhar Nagar, Jaipur -302039, Rajasthan and Factory is located at H-103, Badharna Marble Mandi, VKI Extension, Jaipur-302013, Rajasthan. The alleged default on the part of the Respondent for the non-payment of operational dues amounts to Rs. 11,95,447/- (Rs. Eleven Lakhs Ninety-Five Thousand Four Hundred Forty-Seven Only).

3. The Respondent, is a private limited company incorporated under the Companies Act, 1956 on 02.12.2014 having CIN: U51909RJ2014PTC046650. The Respondent company is engaged in the business of supply of marble, tiles work and civil contracting at Airport etc. The Respondent has an Authorised Share Capital of Rs. 25,00,000/- (Rs. Twenty-Five Lakhs Only) and Paid-Up Share Capital of Rs. 25,00,000/- (Rs.

Twenty-Five Lakhs Only). It has been mentioned that the name of the Respondent Company has changed from M/s Adelante Exim India Pvt Ltd to M/s Shalfeyo Industries Private Limited. From the records available on the website of the Ministry of Corporate Affairs the registered address of the Corporate Debtor is 250/47, RHB, Pratap Enclave Haldhighati Marg, Pratap Nagar, Sanganer Jaipur- 302017. Hence, in view of the aforementioned change as well as the Order dated 02.06.2022, the name of the Corporate Debtor wherever referred to as M/s Adelante Exim India Pvt. Ltd., it shall be construed as M/s Shalfeyo Industries Pvt. Ltd. as mentioned in the memo of parties.

4. The Applicant has filed the present petition alleging the following set of facts:

   a. The Respondent issued purchase orders which have been annexed with this Application as *Annexure A* of the Application. Consequently, the Applicant supplied Granite Stone to the Respondent and six invoices were raised pursuant to the aforementioned supply.

   b. The Applicant supplied the specified goods and raised 6 invoices amounting to a total of Rs. 14,78,420/- (Rs. Fourteen Lakh Seventy-Eight Thousand Four Hundred Twenty Only), from 21.09.2019 to 05.12.2019. The aforementioned goods were sent by the Applicant through regular/reputed transport companies after and at the final stage of delivery of goods, quality inspection was carried out by the

Corporate Debtor. It is pertinent to mention that invoices numbered as PI/07/19-20 dated 25.10.2019, PI/10/19-20 dated 16.11.2019 and PI/12/19-20 dated 05.12.2019 clearly mention the Payment Term as Post-Dated Cheques; invoice numbered as PI/04/19-20 dated 13.10.2019, states the Payment term as 60 days from the billing date.

c. The details of the invoices, Post-dated cheques ('PDC') issued by the Respondent along with the date of dishonour of the cheques is tabulated below for ease of reference:

Sr. No.	***Invoice No.***	***Invoice Date***	***Bill Amount***	***Date of PDC***	***Date of Dishonour***
1.	PI/01/19-20	21.09.2019	Rs. 82,973/-	-	-
2.	PI/03/19-20	27.09.2019	Rs. 39,333/-	-	-
3.	PI/04/19-20	13.10.2019	Rs. 3,51,553/-	14.12.2019	19.12.2019
4.	PI/07/19-20	25.10.2019	Rs. 1,98,733/-	25.12.2019	04.01.2020
5.	PI/10/19-20	16.11.2019	Rs. 2,77,160/-	16.01.2020	18.01.2020
6.	PI/12/19-20	05.12.2019	Rs. 5,28,668/-	04.02.2020	25.02.2020
Total			**Rs.14,78,420/-**		

d. The payment against invoices dated 13.10.2019, 25.10.2019, 16.11.2019 and 05.12.2019 has been defaulted by the Respondent as the Post-Dated Cheques issued by the Respondent have been returned without realisation for reasons i.e. Payment Stopped by Drawer for cheques dated 14.12.2019, 25.12.2019 and 04.02.2020 and Funds Insufficient for cheque dated 16.01.2020.

e. The Applicant has submitted that Respondent paid a total Rs.2,82,973/- (Rupees Two Lakhs Eighty-Two Thousand Nine Hundred and Seventy-Three Only) which have been apportioned towards the older dues i.e. supplies relating to the first invoice dated 21.09.2019 amounting to Rs. 82,973/- and second invoice dated 27.09.2019 amounting to Rs.39,333/-. Further the balance of Rs.1,60,667/- has been apportioned towards the third bill dated 13.10.2019. Hence, the due amount as on the date of filing of this Application is Rs. 11,95,447/- (Rupees Eleven Lakhs Ninety-Five Thousand Four Hundred and Forty-Seven) which includes invoice dated 05.12.2019 amounting to Rs. 5,28,668/-, invoice dated 16.11.2019 amounting to Rs. 2,77,160/-, invoice dated 25.10.2019 amounting to Rs. 1,98,733/- and partial amount of invoice dated 13.10.2019 amounting to Rs. 1,90,886/- (Total amount of Rs. 3,51,553 (-) Partial Payment of Rs. 1,60,667/-)

f. The aforementioned details as reflected in Part IV of the Application are as follows:

Part IV

<table>
<tr><td colspan="3"><u>PARTICULARS OF OPERATIONAL DEBT</u></td></tr>
<tr><td>1.</td><td>Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.</td><td><u>Amount of Debt Due:</u> Rs. 11,95,447/-
<table>
<tr><th>Sr. No.</th><th>Invoice No.</th><th>Invoice Date</th><th>Bill Amount</th><th>Due Payment</th></tr>
<tr><td>1.</td><td>PI/01/19-20</td><td>21.09.2019</td><td>Rs. 82,973/-</td><td>-</td></tr>
<tr><td>2.</td><td>PI/03/19-20</td><td>27.09.2019</td><td>Rs. 39,333/-</td><td>-</td></tr>
<tr><td>3.</td><td>PI/04/19-20</td><td>13.10.2019</td><td>Rs. 3,51,553/-</td><td>Rs. 1,90,886</td></tr>
<tr><td>4.</td><td>PI/07/19-20</td><td>25.10.2019</td><td>Rs. 1,98,733/-</td><td>Rs. 1,98,733/-</td></tr>
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<tr><td></td><td></td><td><table><tr><td>5.</td><td>PI/10/19-20</td><td>16.11.2019</td><td>Rs. 2,77,160/-</td><td>Rs. 2,77,160/-</td></tr><tr><td>6.</td><td>PI/12/19-20</td><td>05.12.2019</td><td>Rs. 5,28,668/-</td><td>Rs. 5,28,668/-</td></tr><tr><td colspan="4">Total</td><td>Rs.11,95,447/-</td></tr></table>
The date of default is 19.12.2019.</td></tr>
<tr><td>2.</td><td>Amount claimed to be in default and the date on which the default occurred</td><td>The total amount to be in the default is Rs. 11,95,447/-</td></tr>
</table>

5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply vide Dairy No. 799/2022 dated 15.03.2022 stating as follows:

   a. The Corporate Debtor has submitted that vide Letter dated 11.03.2019, the SGB Infra Limited allotted the work to the Corporate Debtor whereby it was required to complete the flooring work with the specified quality of material as mentioned therein at Jaipur International Airport. Copy of the work order has been filed as Annexure-1 of the Reply. Certain relevant terms of the aforementioned work orders were referred to by the Corporate Debtor which are not being reiterated herein. The Corporate Debtor was required to carry out the work in accordance with the terms and conditions stipulated therein.

   b. In pursuance to the above work order, the Corporate Debtor vide work orders dated 04.10.2019 and 18.10.2019 placed an order for granite slabs with the Applicant. At the first round of inspection by SBL Infra Limited on 15.12.2019, there was deficiency found in the goods in the material quality and it was observed that the granite was of 15 mm to

15.5 mm whereas as per the specification of work orders, it was supposed to be of range of 16mm to 18mm. Thereafter, SGB Infra Limited vide letter dated 16.12.2019 requested removal of the flooring on account of the aforementioned difference.

c. The Corporate Debtor duly communicated to aforesaid issues to the Operational Creditor and parallelly wrote to his banker to stop payment of cheques issued to the Applicant. However, the applicant unloaded the further material at the site despite clear instructions of return back given to his lorry drivers and the personnel but they refrained to take back the same. It is also pertinent to mention that the even the staff of the Applicant himself had clearly given in writing that they are unloading the material as per instructions and directions of his boss.

d. The Corporate Debtor has further submitted that Annexure-E of the Application annexed to show the receipt of quality check of goods, is actually not the receipts of quality checks rather the pages from the diaries of guard/custodian who maintains the details of loading and unloading stock. Further the applicant has only annexed pages running from 51 to 53 only and conveniently suppressed page no. 54 & 55 of the said diary which contains the details of the deficient goods and the statement of lorry driver who mentions that the product is 14.5-15 mm and all these goods will be changed. Further it is submitted that the Applicant has also supressed the reply dated 07.01.2020 to its statutory notices issued under the Negotiable Instruments Act, 1881 wherein the issue of the quality of goods were raised categorically.

e. The Corporate Debtor has stated that the core issue to be seen under Section 9 proceedings depends upon whether prior to issuance of demand notice, there was an existence of plausible dispute in relation to the quality of services. In the present matter admittedly, the material provided by the applicant was not upto the mark and as per specified in the purchase order. The Corporate Debtor in response to the statutory demand notice also brought in the knowledge of the Applicant the existence of the dispute vide the following:

   i. The communication of the Issues/discrepancies/sub-standard quality of material supplied by the applicant vide e-mail dated 16.12.2019 and 21.12.2019

   ii. Failure of applicant in responding to the email dated 21.12.2019 shows the admission of dispute much prior to the issuance of demand notice u/s 8 of IBC.

f. The Corporate Debtor has also relied on the following judgments to support its contention that in case of the existence of dispute prior to issuance of Demand Notice under section 8, the petition is not maintainable:

   i. *Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd. 2018 1 SCC 353*

ii. *Innoventive Industries Ltd. v. ICICI Bank and Ors. (2018)1SCC407*

iii. *K. Kishan v. Vijay Nirman Company Pvt. Ltd. (Civil Appeal No. 21824 & 21825 of 2017)*

iv. Design Work Infrastructure India Pvt. Ltd. v. Premier Restaurants Pvt. Ltd. (Company Appeal No.73 of 2017)

v. Value Line Interior Pvt. Ltd. V. Rattan India Power Ltd. (Company Appeal AT, Insolvency No. 305 of 2017)

vi. Jotun India (P.) Ltd. v. Extreme Coatings (P.) Ltd. (Company Petition No. IB-442 (ND)/2018)

vii. *Ravi Mahajan v. Sunrise 14 A/S, Denmark (Civil Appeal No. 21794-21795 of 2017)*

g. The Corporate Debtor has also submitted that the application has not been filed in accordance with the prescribed form and format containing the complete and mandatory details. Hence the application is not maintainable. Further the Corporate Debtor has submitted that this is a fit case to invoke the provisions of Section 65 of the Code as the application has been filed with malicious intent.

h. The Corporate Debtor has also submitted that that IRP proposed by the Applicant has not disclosed his consent and conveniently supressed and concealed the fact of interest of conflict for reason of ulterior and self-benefit motive, to attain the personnel score and earns the undue gains thereby breaching the regulations of the Insolvency and Bankruptcy of India (Insolvency Professional) Regulations, 2016.

6. It is seen that the proposed IRP Mr. Vikas Rajvanshi has filed an interlocutory application bearing IA No. 171/JPR/2022 vide diary No. 1101/2022 dated 12.04.2022 for withdrawal of consent filed in Form 2 to serve as the IRP in the present matter. The applicant i.e. the proposed IRP has stated that due to personal and unavoidable circumstances, he does not intend to be appointed as the IRP in the instant matter.

7. The Applicant has filed rejoinder to the reply vide Dairy No. 2108/2022 dated 14.07.2022, whereby the following has been submitted:

   a. The Applicant has submitted that the Corporate Debtor has forged and fabricated the diary pages which have been annexed with the Reply. The aforesaid act amounts to perjury for which a separate application has been referred by the Application under Section 340 of the Code of Criminal Procedure, 1973. It has been submitted that the document at page 48 of the Reply is forged and fabricated document as the noting which has been mentioned by the Corporate Debtor in the para has been written by it subsequent to the signatures of Mr. Ratul Singhal and Mr. Ravinder, only to fabricate the said document. The entire material mentioned at Pg. No. 55 of the diary was unloaded and accepted by the Corporate Debtor without any demur. The alleged remark has been made only to save the Corporate Debtor from making the payment to the Operational Creditor and to create a camouflage of the dispute between the parties.

b. Further it is submitted that in order to avoid any controversy the proposed IRP has already withdrawn its consent and a communication to that effect has already been filed before the Tribunal. Hence, the issue raised is no more res-integra.

8. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this application. The matter is within the purview of the Law of Limitation as the date of default was 04.12.2019, and the application was filed on 26.02.2020 which is well within the ambit of Law of Limitation.

9. Before we delve into the matter at hand, it is important to note that the Corporate Debtor had raised the issue with respect to the proposed IRP stating that the proposed IRP had not disclosed his consent and suppressed the fact of conflict of interest for reason of ulterior and self benefit motive. The Proposed IRP has already filed IA numbered as IA (IBC) No. 171/JPR/2022. Therefore, this issue has been rendered infructuous.

10. The main issue present before us is regarding the amount due by the Corporate Debtor to the Operational Creditor. The undisputed fact in the matter is that the Applicant had supplied the goods and raised as many as six invoices the details of which have been mentioned in part IV of the

application. The payment against invoice dated 21.09.2019 and 27.09.2019 amounting to Rs. 82,973/- and Rs. 39,333/- respectively are not a matter of dispute as the Applicant itself has stated that the amount of these invoices has duly been paid with respect to the invoices dated 13.10.2019 an amount of Rs. 1,90,886/- (3,51,553 i.e. the bill amount (–) 1,60,667 i.e. the balance amount apportioned towards the third bill). Hence, the total amount of debt defaulted from the 4 invoices is Rs. 11,95,447/-. It is seen from the records produced before us that the 4 post-dated cheques dated 14.12.2019, 25.12.2019, 16.01.2020 & 04.02.2020 were all presented in the bank for clearance but for the cheque dated 14.12.2019, 25.12.2019 & 04.02.2020 the payment was stopped by the drawer. Whereas for the cheque dated 16.01.2020, the cheque was returned with the endorsement of funds insufficient. The said goods were admittedly delivered to the Corporate Debtor.

11. It is seen from Annexure E-5 of the application that the goods were duly supplied to the Corporate Debtor. The Corporate Debtor has raised the point that there was an existence of a dispute to the quality of goods that was supplied by the Operational Creditor. The Corporate Debtor has submitted that the material provided by the Applicant was not as per the specified purchase order i.e. the granite was of 15 mm to 15.5 mm whereas as per the specification of word orders it was supposed to be a range of 16 mm to 18 mm. The Corporate Debtor has submitted that the inspection report dated

16.12.2019 whereby it was directed to remove the flooring which is in city side porch area at on cost.

12. The Corporate Debtor has annexed a series of emails exchange between the parties as Annexure F of the application. The Corporate Debtor vide mail dated 16.12.2019 has informed the Operational Creditor regarding the low quality of material and further informed that the management has decided to stop all payment on immediate basis. In reply to the said email the Applicant herein stated that the material was dispatched as per the specifications laid down in the purchase order and further there was no prior intimation regarding the non-desirable quality of the material. In the said reply, it was also stated that all the material has been consumed without any complain with respect to the quality. Thereafter, another mail was referred to by the Corporate Debtor whereby it has been stated that the Corporate Debtor had rejected the complete truck load on 15.12.2019. In the said email only the Operational Creditor was requested to replace the material within 5 days or accept the debit note.

13. It is seen that only after this inspection report was given to the Corporate Debtor the Corporate Debtor stopped payment of the post-dated cheques dated 14.12.2019, 25.12.2019 & 04.02.2020. It appears that it is only after the inspection report was given to the Corporate Debtor, the Corporate Debtor mailed the Operational Creditor regarding the quality of goods. There is no document on record which can show that the issue regarding the

quality of goods was raised before the said date. These goods have been consumed by the Corporate Debtor in the project undertaken as mentioned above. Further, in the mail annexed at page 46 of the application the Corporate Debtor has stated that all the goods supplied were destroyed in front of the Operational Creditor representative Mr. Sher Singh. Thereafter, the demand notice dated 27.12.2019 in compliance with Section 8 of the Code was issued. The said notice was replied to vide letter dated 07.01.2020. In the said reply the Corporate Debtor has stated that the goods were jointly inspected by the parties.

14. Hence, in our view, there was no dispute raised at the time of delivery of goods when the inspection was required to be carried out. It is only after the Inspection Report was provided to the Corporate Debtor, that the Corporate Debtor raised issues regarding the quality of goods delivered. There exists a clear debt as the Corporate Debtor has consumed the goods and therefore, is under an obligation to pay the Operational Creditor with respect to the goods consumed. It is evident from the reasons stated hereabove that Corporate Debtor has clearly defaulted in payment of debt due to the Operational Creditor.

15. In Mobilox Innovations Private Limited Vs Kirusa Software Private Limited, para 34, the Hon’ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows:-

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

However, the defence has to be plausible and while not examining it on merits, it must not appear as a moonshine defence.

16. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor and there appears to be no pre-existing dispute between the parties. Any allusion to such dispute appears to be confirmed.

17. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor had proposed an IRP although the proposed IRP has withdrawn its consent before this Tribunal. Hence, this bench can appoint the RP from the pool of RPs empanelled with the IBBI.

18. In view of this Mr. Umang Jain, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P01959/2020-2021/13105 (email: caumangjain@gmail.com ; mobile no.+91 9351846668), is hereby appointed as the IRP. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.

19. Consequences of initiation of CIRP shall be inter-alia as follows:

    (i) The IRP appointed by the Adjudicating Authority, Mr. Umang Jain, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

    (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

(iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

(iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

20. Accordingly, CP No. (IB)-247/9/JPR/2019 is admitted.

(DEEP CHANDRA JOSHI)
JUDICIAL MEMBER

(PRASANTA KUMAR MOHANTY)
TECHNICAL MEMBER