

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No.1503/2022
And
CP (IB) No. 570/Chd/Chd/2019**

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Prayag Polytech Pvt. Ltd.
Through Mr. Milan Aggarwal, Director
C-587, Industrial Area,
Phase-1, Bhiwadi-301019,
Rajasthan, India

...Petitioner-Operational Creditor

Vs.

Kirtiman Cements and Packaging Private Ltd.
SCO 196 197, Sector 34A,
Chandigarh-160022
CIN No. U26941CH1996PLC017613

...Respondent-Corporate Debtor

Judgement delivered on: 03 . 01.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. Raghav Kakkar, Advocate

For the Respondent-
Corporate Debtor : Mr. V.B. Gupta with Mr. Vipul Dharmani, Advocates
(already proceeded ex parte)

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by M/s Prayag Polytech Pvt. Ltd. through its Director, Mr. Milan Aggarwal, (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Kirtiman Cements and Packaging Industries Ltd. (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Kirtiman Cements and Packaging Industries Ltd., is a Company incorporated on 22.01.1996 under the provisions of Companies Act, 1956 with CIN No. U26941CH1996PLC017613 with its Office: SCO 196 197, Sector 34A, Chandigarh-160022. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure 1.

3. The facts of the case, briefly, as stated in the petition are that the petition is filed by the operational creditor against corporate debtor who has failed to pay the operational debt amounting to Rs.2,70,466/- (including interest @24% per annum on August 15, 2019). During period 2017-18, the operational creditor supplied masterbatches to the corporate debtor and raised invoices of Rs.41,58,572/- out of which the operational creditor received a sum of Rs.39,21,987/- and a balance of Rs.2,36,585/- was due. After September, 2018, the corporate debtor failed to make payments. On July 01, 2019, corporate debtor served a demand notice in Form-III

demanding Rs.2,63,310/- (including @24% interest p.a. as on 30.06.2019).

The corporate debtor neither responded to demand notice raising any dispute nor credited the legitimate dues of the operational creditor.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 2,36,585/- (Rupees Two Lakhs Thirty-Six Thousand Five Hundred and Eighty-Five Only and interest @ 24% per annum on August 15, 2019) and default occurred on 30.11.2018. i.e. when the last invoice was raised on the corporate debtor. Copy of Board Resolution dated 18.12.2018 (Annexure A-2), invoices (Annexure A3), Ledger account (Annexure 4), Bank Statement (Annexure 7), computation of default and dates of default (Annexure A-8) is attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 01.07.2019 through registered post (Annexure 5). The corporate debtor neither responded to the same raising any dispute nor bothered to credit the legitimate dues of the operational creditor within the period of 10 (ten) days from the date of receipt of demand notice as specified under Section 8(2) of the Insolvency and Bankruptcy Code, 2016.

6. Notice of this petition was given to the respondent-corporate debtor to show cause as to why this petition be not admitted. The learned counsel for respondent appeared on 19.02.2020 and proceeded ex-parte on 02.06.2022. Later on, when case was fixed for ex-parte arguments, the corporate debtor filed application IA No.1503/2022 for setting aside order dated 02.06.2022 wherein it is stated that the total amount of Rs.1,27,681/- was credited into the bank account of the petitioner. The last tranche of

Rs.27,681/- was credited on 21.04.2022. The respondent under bona fide belief believed that the petitioner will withdraw the present petition as the matter was settled and payment was made, inadvertently, missed to represent on the date of hearing. The petitioner acting under mala fide and in contravention of the agreement between the parties on basis of which an amount of Rs.1,27,681/- was credited to his account, backtracked from the said understanding and did not withdraw the present petition. Therefore, on non-appearance on behalf of the respondent, was proceeded against ex parte vide order dated 02.06.2022.

7. Heard on IA No.1503/2022. In the present petition, the operational creditor claimed the debt of Rs.2,36,585/- wherein, an amount of Rs.1,27,681/- stated to have already been paid, and the rest amount Rs. 2,95,676 is still due. It may be noted that respondent-corporate debtor did not file any reply but when proceeded ex parte then other counsel appeared who stated to settle the matter but no settlement agreement has been produced. Therefore, there is no reason to set aside ex parte order as this petition pertains to the year 2019. In view of these facts and circumstances, the ex parte order dated 02.06.2022 cannot be set aside by this Adjudicating Authority, therefore, the application IA No.1503/2022 is dismissed and disposed of accordingly.

8. The short written submissions are filed by applicant vide Diary No. 00104/01 dated 22.08.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 01.07.2019 sent by the corporate debtor through the registered post, tracking report shows that the demand notice was duly served (Annexure 5).

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by the operational creditor that there is no dispute communicated by the corporate debtor for the unpaid debt and no payment had been received during this period. No reply was received to the demand notice within the stipulated 10 days time from receipt of the demand notice. There is no pre-existing dispute between the parties at all with regards to the unpaid operational debt. Therefore, the operational debt was not disputed by the corporate debtor and was stated that in the total debt of Rs.2,36,585/- wherein, an amount of Rs.1,27,681/- have already been paid, and the rest amount which is above threshold limit of rupees one lakh is still due.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 01.07.2019 in Form 3 attached as Annexure A-5. However, the period of limitation would begin from the date of default 30.11.2018 i.e. when the last invoice was raised on the corporate debtor. Copy of Board Resolution dated 18.12.2018 (Annexure A-2), invoices (Annexure A3), Ledger account (Annexure 4), Bank Statement (Annexure 7) and computation of default and dates of default in tabular form (Annexure A-8) are attached with the main petition. The present application under Section 9 of Insolvency and Bankruptcy Code,2016 has been filed on

13.09.2019 vide Diary No. 4765. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 2,36,585/- (Rupees Two Lakhs Thirty-Six Thousand Five Hundred and Eighty-Five Only and interest @ 24% per annum on August 15, 2019). The operational creditor supplied masterbatches to the corporate debtor and raised invoices. Copy of Board Resolution dated 18.12.2018 (Annexure A-2), invoices (Annexure A3), Ledger account (Annexure 4), Bank Statement (Annexure 7) and computation of default and dates of default (Annexure A-8) is attached with the main petition. Accordingly, the petitioner proved the debt and the default as an amount of Rs.1,27,681/- have already been paid, and the rest amount is above threshold limit of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent

committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Kirtiman Cements and Packaging Industries Ltd. and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vigyan Prakash Arora and there is nothing adverse against him. In view of the above, we appoint Mr. Vigyan Prakash Arora, Registration No. IBBI/IPA-001/IP-P01106/2017-18/11797, E-mail: vigyan@vigyanarora.com, Mobile No. 9815000485 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Vigyan Prakash Arora shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the

duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and

extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may

take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational 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 of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. 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 passes an order for liquidation of corporate debtor under Section 33 as the case may be.

20. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to

send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

January 03, 2023
sd/TB