

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI BENCH – II, CHENNAI**

CP(IB)/46(CHE)/2022

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

*In the matter of **PLATINUM HOLDINGS PRIVATE LIMITED***

CREDBERG ADVISORS INDIA PRIVATE LIMITED

[CIN:U70109MH2019PTC324184]

Having Registered Office at:

Unit No. 503-A, Wing C, Fortune 2000,

Plot No. C-3, G Block, Bandra Kurla Complex,

Bandra East, Mumbai – 400 051.

...Applicant / Operational Creditor

-Vs-

PLATINUM HOLDINGS PRIVATE LIMITED

[CIN: U45202TN2006PTC059598]

Having Registered Office at:

2/1, Abugarden, OMR (Rajiv Gandhi Salai),

Navalur, Chennai,

Tamil Nadu – 603 103.

...Respondent / Corporate Debtor

Order Pronounced on 01st February, 2023

CORAM:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor: Mr. Varun Srinivasan, Advocate

For Corporate Debtor: Mr. E. Om Prakash, Senior Advocate

For Mr. M. Ravi, Advocate

ORDER

This Application has been filed by **CREDBERG ADVISORS INDIA PRIVATE LIMITED** (hereinafter referred to as the 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') r/w Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, **PLATINUM HOLDINGS PRIVATE LIMITED** (hereinafter referred to as the 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part - I of the Application, it is seen that the Applicant / Operational Creditor is represented by its Director - Mr. Pawan Swamy who is duly authorised by way of a Board Resolution dated 29.12.2021. The registered office as per the Application is stated to be situated at Unit No. 503-A, Wing C, Fortune 2000, Plot No. C-3, G Block, Bandra Kurla Complex, Bandra East, Mumbai - 400 051. Affidavit dated 31.01.2022 verifying the present Application is filed.

3. Part - II reflects that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 on 24.04.2006 with CIN: U45202TN2006PTC059598. The registered office of the Corporate Debtor is situated at 2/1, Abugarden, OMR (Rajiv Gandhi Salai), Navalur, Chennai, Tamil Nadu - 603 103. The Authorised Share Capital of the Corporate Debtor is stated to be Rs.4,00,00,000/- (Rupees Four Crores Only) and the Paid-up Share Capital is stated to be 2,00,000/- (Rupees Two Lakhs and Only).

4. From Part – III of the Application, it can be seen that the Operational Creditor has not proposed any Insolvency Professional.

5. From Part-IV of the Application, it can be seen that a total sum of Rs. 2,93,50,000/- (Rupees Two Crore Ninety-Three Lakh Fifty Thousand Only) is being claimed by the Operational Creditor as the Operational Debt and 24.02.2020 is stated to be the date of default.

6. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt', which are extracted as follows;

- I. Demand Notice dated 3rd January 2022 under Section 8 of the Code, issued by the Operational Creditor to the Corporate Debtor alongwith postal receipts and tracking report for RAD and email issuing notice alongwith its postal delivery receipts.
- II. Board Resolution dated 29th December 2021
- III. Master data of the Corporate Debtor as available Ministry of Corporate Affairs.
- IV. Letter dated 3rd May 2019 executed between the Operational creditor and Corporate Debtor.
- V. Invoice dated 6th August 2019 raised by Operational Creditor on Corporate Debtor bearing no. 2019-008-002-IND for an amount of INR 27,50,000/-
- VI. Invoice dated 2nd December 2019 raised by Operation Creditor on Corporate Debtor bearing no. 2019-012-002-IND for an amount of INR 22,00,000/-

- VII. Invoice dated 24 February 2020 raised by Operation Creditor on Corporate Debtor bearing no. 2020-002-004-IND for an amount of INR 3,23,50,000/-
- VIII. Details of payments made by Corporate Debtor to Operational Creditor on 7 August 2019, 2nd December 2019 and rd December 2019 towards Invoice dated 6th August 2019 and 2nd December 2019.
- IX. Details of payments made by Corporate Debtor to Operational Creditor on 44 August 2020, 3rd September 2020 and gl October 2020 towards Invoice dated 24th February 2020.
- X. Email dated 6th May 2020 of Operational Creditor and email dated 8th May 2020 of the Corporate Debtor.
- XI. Letter of acknowledgment of debt dated 27 November 2020 signed by both Operation Creditor and Corporate Debtor.
- XII. Auditor Reports for Financial Statement for year 2018-2019 and 2020-2021.
- XIII. Statement of bank account from Is August 2019 upto 19th January 2021.

7. The statutory notice of demand under Section 8 of the IB Code dated 03.01.2022 is stated to be delivered on the Corporate Debtor. Proof of service of the same by way of post as well as by email is placed on record at page 45 – 52 of the Application. The Corporate Debtor has neither raised any notice of dispute nor made any payment, thus the present Application came to be filed on 10.02.2022 before this Tribunal.

8. It is submitted that the Corporate Debtor availed advisory services from the Operational Creditor for raising capital for the project (Ozone Techno Park Project at OMR Chennai) from

Goldman Sachs or any of its affiliated companies. It is submitted that by way of a letter dated 03.05.2019, the terms of consideration for the services were agreed upon by the Corporate Debtor. The terms under the said letter are extracted as under:

Success Fee:

On the completion of the documentation of the transaction and on receipt of first drawdown of funds by the Client from the Investor, a Success Fee as calculated below:

- A fee of 100 Basis Points (1.00 %) of any and all "Commitment Amounts" disbursed by the Investor as defined below.

"Committed Amounts" shall mean, all amounts paid to the Client by the Investor or Investors by way of bank construction finance, Lease Rental Discounting (LRD), equity shares capital and/or structured debt, in connection with the Project in any form, whether in currency, equity or debt in any other form of instrument like CCDs, NCDs etc.

The payment of the Fees, by the Client, to Credberg, shall be as under:

- a. The Client agrees that the fee payable to Credberg shall be considered as a part of the use of funds disbursed by the Investor to the Client and that the fee payable to Credberg shall be paid by the Investor on behalf of the Client, as a part of the first tranche of funds disbursed. The Client agrees that this understanding shall be recorded as a part of all transaction documents agreed between the Client and the Investor.
- b. The Success fee shall remain payable by the Client to Credberg even if the Client concludes the transaction with the Investor for this specific transaction, up to twelve months of signing this Engagement.
- c. The Success fee as indicated above shall be considered exclusive of any and all Governmental taxes, levies, duties and GST, which shall be paid in addition to, and along with the Success Fee, at the applicable rates.

A perusal of the above would show that the Corporate Debtor has agreed to pay 1 % of the "Committed Amount" which is successfully raised by the Corporate Debtor.

9. It is submitted that the Corporate Debtor had received the "Committed Amount" of Rs.373,00,00,000/- (Rupees Three Hundred and Seventy Three Crores Only), and consequently, invoices for services provided by the Operational Creditor for Rs.3,73,00,000/- (Rupees Three Crores and Seventy Three Lakhs Only) (being the amount computed at 1% of the committed

amounts) were raised in three tranches as per the request of the Corporate Debtor. The details of the invoices raised and payments thereof are stated as below:

S. No	Invoice No.	Invoice Date	Amount (In Rs.)	Remarks
1.	2019-008-002-IND	06.08.2019	27,50,000/-	This amount has been paid by the CD on 7 th August 2019 after deducting TDS.
2.	2019-012-002-IND	02.12.2019	22,00,000/-	An amount of Rs.10,00,000/- has been paid by the CD on 2 nd December 2019. An amount of Rs.9,80,000/- has been paid by the CD on 3 rd December 2019.
3.	2020-002-004-IND	24.02.2020	3,23,50,000/-	"Outstanding invoice."

10. As against the above invoices aggregating to a sum of Rs.3,73,00,000/-, the Corporate Debtor has admittedly paid Rs.30,00,000/- in three tranches i.e, on 04.08.2020, 03.09.2020 and 09.10.2020. As per the Operational Creditor, the balance amounting to Rs. 2,93,50,000/- (Rupees Two Crores Ninety Three Lakhs Fifty Thousand only) is the debt which is due and payable from the Corporate Debtor.

11. The Corporate debtor has filed its reply dated 20.07.2022 vide SR. 4517 on 20.07.2022 wherein the sole objection is with respect to the maintainability of the present Application. It is argued that case of the Operational Creditor with respect to the date of default as per the statutory notice in 'Form - 3' read with the present Application in 'Form - 5' is 27.11.2020, thus is clearly hit by the period covered under Section 10A of the Code. Reliance

was placed on the judgement of the Hon'ble Supreme Court in the case **Ramesh Kymal Vs. M/s. Siemens Gamesa Renewable Power Pvt Ltd [(2021) 3 SCC 224]**.

12. The Operational Creditor by way of an 'Additional Affidavit' dated 03.01.2023 submitted that the date (27.11.2020) as originally mentioned under the present Application was only a typographical error and due to sheer oversight on the part of the Operational Creditor. The Operational Creditor in order to cure the said defect has rectified and refiled the present Application before this Tribunal. Thus, the date of default while deciding the present Application is taken as 24.02.2020.

13. It was vehemently argued by the respondent that since the proceeding under Section 9 Code is invoked from the date the delivery of the statutory demand notice, the date as mentioned under the notice must necessarily correlate to that of the date mentioned in the present Application. Learned counsel for the Operational Creditor relies upon the decision of the Hon'ble Appellate Tribunal in the case of **Rajendra Bhai Panchal Vs. Jay Manak Steels and Ors [MANU/NL/0387/2020]** wherein the Hon'ble Appellate Tribunal had the occasion to deal with the question of 'mistake' in the statutory demand notice. The relevant portion of the said Judgement is extracted as under:

"39. It is to be borne in mind that the additional affidavit dated 23.08.2019 filed before the 'Adjudicating Authority' in

C.P. (IB) 227/NCLT/AHM/2018 was filed only to cure certain defects relating to part V of the Form V and the amendment was not of the character of changing the debt amount and that the same was allowed as per order dated 14.10.2019 and that the amended Form V of the petition formed part and parcel of the proceedings.

40. It is to be remembered that a mistake in a 'Demand Notice' does not necessarily mean that it is defective. If a 'Corporate Debtor' wants to question the validity of the demand it is for it to show that the prejudice was suffered by it as a result of defect.

41. If there is a mistake in the demand but the creditor is clearly owed the statutory minimum figure or more, the fact that the debt is mis stated may not automatically invalidate the demand as per decision 'Cardiff Preserved Coal & Coke Co.' V. 'Norton 36 LJ Ch 451. Further, the Court will take into account whether any injustice was caused to the 'Debtor' and even a grossly overstated statutory demand may not automatically be set aside as per decision Re a Debtor (No 490 / SD / 1991), (1992) 2 All ER 664 (ChD)."

Therefore, the Corporate Debtor has not and would not be prejudiced by fact that Operational Creditor has mentioned the wrong date of default due to its inadvertence.

14. As arguments of the Corporate Debtor that typographical error of mentioning of date of default in Section 8 notice vis-a-vis Section 9 Application is corrected and same is allowed to be rectified and taken on record by this Tribunal. Moreover, the issue is dealt with by Hon'ble NCLAT in the above judgement cited *supra* as relied upon by the Applicant settles the point and the defence raised by the Corporate Debtor for non-maintainability in negative.

15. We have perused the Application and the documents relied upon by the Operational Creditor. Primarily, availment of services rendered by the Operational Creditor is not disputed by the Corporate Debtor and the debt and default arising therefrom is not disputed by the Corporate Debtor. Further the default meets the threshold proscribed under Section 4 of the Code and the Application is clearly not hit by limitation as the date of default is 24.02.2020 and the present Application came to be filed on 10.02.2022. Thus, the Operational Creditor has *prima facie* proven the existence of debt and subsistence default on the part of Corporate Debtor.

16. Taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between 1st January, 2023 - 30th June, 2023 appoints **Mr.R.Raghavendran** with Registration Number [**IBBI/IPA001/IPP00211/2017-2018/10411**] having E-mail ID (*E-mail ID:- ragavca@gmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named

and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

17. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including the 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

18. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services

shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

19. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

20. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh Only*) to the Interim Resolution

Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI is also furnished with a copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned, for updating the status of Corporate Debtor in Masterdata.

-Sd

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

V.Shreekumar