

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-533/ND/2020

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

PARMOD MITTAL

(Sole proprietor of M/s Mittal & Bros.)

Registered office at:

104, Prakash Industries Estate,

Giani Border, U.P.

Ghaziabad - 201006

...Operational Creditor

Versus

M/s JKR TECHNO ENGINEERS PRIVATE LIMITED

Registered office at:

B-87/4 (F-1), II Floor,

Dilshad Colony,

New Delhi - 110095

...Corporate Debtor

Delivered on: 03.01.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)



Appearances:

Operational Creditor : Adv. Ashok Juneja

Corporate Debtor : Adv. Amit Sandhuja, Adv. Divyam Agarwal

ORDER

Per: Dr. Binod Kumar Sinha, Member (Technical)

1. The instant application bearing IB-533/ND/2020 has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s Mittal & Bros. is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s JKR Techno Engineers Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is submitted that, Operational Creditor is engaged in the business of trading of Mild Steel ERW Black & Galvanized and CS Seamless Tubes and Pipes.



- b. It is submitted that, Operational Creditor has supplied goods from time to time as demanded by the Corporate Debtor and raised various invoices from January 23.01.2015 till 01.04.2016.
- c. It is further submitted that, Operational Creditor has time and again, reminded the Corporate Debtor pay the outstanding amount, but the same has been unpaid till today.
- d. It is averred that thereafter, Corporate Debtor had admitted/acknowledged the due Operational Debt in various email and Corporate Debtor had also issued various cheques in favour of Operational Creditor but all cheques were dishonoured.
- e. It is further submitted that, Operational Creditor sent demand notice u/s 8 to the Corporate Debtor on 17.03.2018. The Corporate has also replied to the said notice. The Corporate Debtor has not repaid the amount in default till date of filing the instant application even after persistent reminders and notices.

3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 15.01.2021. Corporate debtor has also filed their reply to the captioned petition.

4. We have heard the arguments advanced by Ld. Counsels appearing for Operational Creditor as well as for the Corporate Debtor and also perused the record.



5. The Operational Creditor's claim is based on the facts that goods amounting to Rs. 69,21,839/- were supplied by the Operational Creditor to the Corporate debtor. The debt is still not paid by the Corporate debtor. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his Operational debt, applicant had issued Demand Notices dated 17.03.2018 under section 8 of IBC, 2016 at the registered office of the Corporate Debtor. However, response was given by the Corporate debtor to the notice but payments are still due.

6. Per contra, Corporate debtor has assailed the instant application on the ground of limitation. It is undisputed that, the applicant had supplied goods to the Corporate Debtor for which the claim of default is made, from financial year 2015-16 and the last supplies were made in August 2016. The Corporate Debtor has, therefore, submitted that the debt is due since the last goods were supplied on August 2, 2016 and the present application has been filed in January 2020, i.e., much after three years as the cause of action had arisen on 2 August 2016. Therefore, according to the Corporate Debtor, the instant petition is barred by limitation and must be dismissed. It is confirmed that the last invoice raised by the Operational Creditor is of 2nd August, 2016, and in normal course of events, the bar of limitation will kick on 2nd August, 2019. But while perusing the records, we found that the Corporate Debtor had made part payment of Rs. 1,00,000/- to the Operational Creditor on the 3rd August, 2017 as reflected in the following email communication:





Pramod Mittal <mittalbro104@gmail.com>

Payments

1 message

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shiv Sharma <admin@jkr.net.in>

Thu, Aug 3, 2017 at 4:55 PM

To: Pramod Mittal <mittalbro104@gmail.com>

Cc: "M.S.Raja" <raja@jkr.net.in>, M S RAJA <mserman1972@gmail.com>, radhika <radhika@jkr.net.in>, "Finance - JKR Techno engineers pvt. ltd." <finance@jkr.net.in>, jkrfinance.sachin@gmail.com

Dear Sir,

We have done the payment to your account of Rs. 100000/- (One Lac) throw NEFT with reference number CBINH17215149815.

Thanks & Reg.

Dharmendra

 **JKR TECHNO ENGINEERS PVT. LTD.,**

Koushambi Ghaziabad-201010

7. This e-mail dated 3rd August, 2017 sent by the Corporate Debtor is a clear confirmation that debt has been acknowledged by the Corporate Debtor itself through part payment thereof within 3 years and therefore fresh limitation will be counted from the date of such part payment in terms of sections 18 and 19 of the Limitation Act, the applicability of which to the proceedings under the IB Code, 2016 is no longer *res integra*.



8. Whereas section 18 of the Limitation Act provides for extension of initial period of limitation on the basis of a valid acknowledgement in writing, section 19 of the said Act provides for extension of limitation in cases where either on account or partial payment has been made by the debtor or even interest on the debt due is paid either by the debtor or an agent duly authorised by the debtor as a consequence of which a fresh period of limitation shall be computed from the time such payment was so made. Section 19 stipulates as hereunder:

" 19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Explanation —For the purposes of this section,— (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment; (b) "debt" does not include money payable under a decree or order of a court. "

9. Thus, for successful application of the provisions of section 19, the following conditions must be fulfilled: (a) The first condition to be fulfilled is that partial payment must be made on account of existing debt or interest thereon within the initial period of limitation; and (b) The second condition to be fulfilled is that the



payment must be acknowledged in writing by the person liable to pay or his duly authorised agent. It is pertinent to note here that the underlying principle of section 19 is that a partial payment on account of an existing debt or interest is nothing but acknowledgement of the right of the creditor and the corresponding liability of the debtor. However, it is pertinent to note here that for applicability of section 19, a payment must flow from the debtor to the creditor either in cash or in kind if accepted by the creditor and the factum of such payment must also be recorded by the payer itself.

10. In this instant case the Corporate Debtor has acknowledged the debt as on 03.08.2017 by virtue of partial payment of Rs. 1,00,000/- to the Operational Creditor within the original period of limitation and recorded and communicated the factum of such payment by way of email of the same date. Thus both the conditions for applicability of Section 19 of the Limitation Act are satisfied. Accordingly, fresh limitation period will start from 03.08.2017 i.e., the date on which Corporate Debtor has acknowledged the 'debt' and original limitation will get extended up to 2nd August, 2020. The present Application was filed on 25.01.2020, therefore, this Application is well within the limitation period and hence maintainable.

11. In the light of facts as averred by the Operational Creditor for the claims towards the goods supplied to the Corporate debtor it appears to us that the same shall also fall within the ambit of the definition of operational debt and the

applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. The averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate Debtor by placing any suitable evidence on record. Therefore, we have no other option but to allow the instant Application and to admit the Corporate Debtor into CIRP under the provisions of the IB Code, 2016.

12. The Operational Creditor in Part III of Form 5 has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Durga Das Agarwal having Regn. No. IBBI/IPA-001/IP-P00557/2017-18/10987 (Email ID cadda.ip@gmail.com) as IRP. The written Consent and IBBI registration certificate of IRP is taken on record. The IRP is directed to place on record valid Authorisation for Assignment (AFA) within 2 (two) days of pronouncement of this Order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

13. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:



- 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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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. The explanation below section - 14 (1) also stipulates "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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period".



14. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

15. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

16. The Operational Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect so that IRP could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.

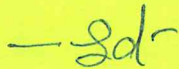
17. Further, the operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.



18. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA site of Ministry of Corporate Affairs for information of all concerned.

19. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

20. Accordingly, the instant Application bearing IB-533/ND/2020 stands admitted.



(Binod Kumar Sinha)
Member (Technical)



(Bachu Venkat Balaram Das)
Member (Judicial)