



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
C.P (IB)/413(ND)2024

An application 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:

RASHTRIYA CARGO MOVERS,

Through its partner & authorised
Signatory Mr. Aditya Agarwal,
Having Registered Office At: 101,
Steel Chambers, First Floor,
Bharuch Street, Carnac
Bunder, Mumbai-400009
E-Mail. cargo.rcm@gmail.com

... APPLICANT/OPERATIONAL
CREDITOR

VERSUS

PRAFFUL OVERSEAS PRIVATE LIMITED,

Having Registered Office At: 349, 1st Floor,
Naya Katra, Chandni Chowk, New Delhi-110006

Also having address at:

101-102, Sagar Shopping Centre, Sahar Darwaja, Ring Road, Surat,
Gujarat-395003



E-Mail. contactho@prafful.com

... RESPONDENT/CORPORATE DEBTOR

Order Delivered on: 01.04.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Arjun M Padhiyar, Adv

For the Respondent : Mr. Sumit Parikh

ORDER

PER: SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The instant application is filed by Rashtriya Cargo Movers, through its partner & authorised signatory Mr. Aditya Agarwal, (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against Prafful Overseas Private Limited (hereinafter referred as 'Respondent/Corporate Debtor') for failing to make the payment of Operational Debtor amounting Rs.



1,21,85,631/- (Rupees One Crores Twenty-One Lakhs Eighty Five Thousand Six Hundred Thirty One Only).

2. The Respondent Company “Praful Overseas Private Limited” was incorporated under the provisions of the Companies Act, 1956 having its registered office situated at 349, 1st Floor, Naya Katra, Chandni Chowk, Delhi 110006. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor.

Averments of the Applicants:

3. Briefly stated the facts of the present case as averred by the applicant are that the Operational Creditor has provided the transportation services from 01.12.2023 to 15.03.2024 to the Respondent for which bills are raised by the Operational Creditor. Applicant submitted that the corporate debtor defaulted to make the payment of bills raised from 01.12.2023 to 15.03.2024.
4. Applicant further submitted that the Corporate Debtor defaulted to make the payment of Rs. 1,21,85,631/- which includes Principal Amount of Rs. 1,18,53,087/- along with Interest calculated at 21% P.A. total amounting Rs. 3,32,544/- for providing transportation services from 01.12.2023 to 15.03.2024 for which bills are raised by the Operational Creditor. That the date of default is 15.12.2023.



5. Applicant submitted that the Applicant has issued Demand Notice dated 23.03.2024 and the same is delivered to the corporate debtor at its registered office on 28.03.2024 and its alternate communication address on 26.03.2024. However, neither been any response from the Corporate Debtor nor any payment to Operational Creditors received. Hence the present Application under section 9 of IBC is filed.

Reply of the Respondent/Corporate Debtor:

6. On the other hand, the respondent through his reply submitted that the corporate debtor deals in import and export as well as trading of nylon filament yarn which is widely used in textile and garment designing industries for crafting and decorating clothes and having good source of income and was having number of active business operations and further the same also included huge customers, however, on account of sudden changes in government policies and other financial crunch in the global market, the business of the corporate debtor got collapsed more so after COVID-19 pandemic.
7. Respondent further submitted that the amount claimed by the Operational Creditor amounting to Rs. 1,21,85,631/- (Rupees One Crores Twenty One Lakhs Eighty Five Thousand Six Hundred and Thirty One Only) which includes principal amount of Rs. 1,18,53,087/- along with interest calculated at the rate of 21% P.A. total amounting to Rs. 3,32,544/- is undisputed as the same is due and payable by the corporate debtor.
8. Respondent submitted that the corporate debtor has availed the said transportation services as stated by the applicant from 01.12.2023 to 15.03.2024, however, at several times as an when required the applicant



on account of delay in transportation has also raised an oral complaint to the authorized person of the Applicant and hence, the same may be considered as dispute. However, the Respondent does not have any written proof to that effect.

9. Respondent further submitted that the corporate debtor on account of financial crunches and further instability in the market is not able to pay the outstanding amount, however, request for 10-11 months' time to make the payment of default amount and therefore, the same may be granted by the applicant.

Analysis and Findings

10. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application. The relevant documents annexed with the submissions have also been examined.
11. It is noted that the Operational Creditor has provided the transportation services from 01.12.2023 to 15.03.2024 to the Respondent for which bills are raised by the Operational Creditor. The default amount stated by the Applicant/Operational Creditor is 1,21,85,631/- for which a demand notice under section 8 of the Code was send by the Applicant/Operational Creditor to the Respondent/Corporate Debtor on 23.03.2024. The proof of service is also placed on record.
12. The foundational requirements for admitting an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) are enumerated in *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.* (2018) 1 SCC 353. The Supreme Court clarified that an operational creditor must establish:



- (i) The existence of an "operational debt" exceeding ₹1 crore;
- (ii) A default in repayment;
- (iii) Delivery of a valid demand notice under Section 8 of the IBC; and
- (iv) No payment or existence of a "dispute" raised prior to the receipt of the notice.

- 13.** The Applicant furnished invoices, ledger accounts, and a certificate under Section 9(3)(c) of the IBC, collectively establishing an undisputed debt of ₹1,21,85,631/-. The Respondent explicitly admitted liability in their reply para 3 (Page No. 3), confirming the debt's existence and default. The date of default (15.12.2023) and subsequent non-payment fulfill the threshold under Section 4 of the IBC.
- 14.** The Respondent's claim of an oral dispute over service delays lacks substantiation. Section 8(2)(a) necessitates a *pre-existing dispute* supported by documentary evidence. The NCLAT in *Embassy Property Developments Pvt. Ltd. vs. State of Karnataka* (2020) 13 SCC 308 emphasized that unsubstantiated oral assertions cannot invalidate an operational debt.
- 15.** The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* (2018) emphasized that the Adjudicating Authority must admit a petition if the debt and default are established, and no credible dispute exists. The Respondent's generic denial without evidence fails to meet the threshold of a "plausible dispute" as defined in *Mobilox*.
- 16.** Having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied.



Therefore, the present company application (C.P. No. (IB)-413/(ND)/2024) stands admitted and the CIRP is hereby initiated against Prafful Overseas Private Limited.

- 17.** The applicant in Part -III of the application has proposed the name of IRP, accordingly, this bench appoints Mr. Amrish Navinchandra Gandhi, as the Insolvency Resolution Professional (“IPR”) of the corporate debtor. The registration number of the IRP being IBBI IBBI/IPA-002/IP-N00670/2018-2019/12036 and email id – amrishgandhi72@gmail.com. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 is attached with the application. The AFA validity of the IRP valid upto 31.12.2025.
- 18.** We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Amrish Navinchandra Gandhi to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however shall be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- 19.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



“(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)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, concessions, clearances or a similar grant or right during the moratorium period.”

20. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and



Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- 21.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
- 22.** It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under section 19 of the IBC to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- 23.** A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
- 24.** Let the copy of this order be served to the parties.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)