

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

(IB)-1695 (ND) 2019

In the matter of

POWER2SME PRIVATE LIMITED  
PLOT No. 88, UDYOG VIHAR PHASE IV  
GURUGRAM-122015, (HR)

.....Petitioner

VERSUS

VANDEU INTERNATIONAL PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT  
PLOT NO. L-14, UDYOG NAGAR  
PIRAGARHI, NEW DELHI-110063  
md@vandue.com

.....Respondent

SECTION: 9 of IBC, 2016

Order delivered on: 01.11.2019

CORAM:

JUSTICE (RETD.) RAKESH DAYAL KHARE, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv Pankaj Bhagat for the Petitioner

None present on behalf of Respondent

**ORDER**

**Per Ms. Sumita Purkayastha (Member Technical)**

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
  
2. The Petitioner Company is engaged in the business of procuring and selling of raw material, operational supplies, industrial etc. (collectively referred to as "Raw Material") to micro, small and medium enterprises ("SMEs"). The Respondent Company approached the Petitioner Company for the supply of some raw material. A Material supply agreement dated 10.07.2018 was executed between the Petitioner and Respondent. The Operational Debtor issued purchase order of Rs. 29,78,791.20/- dated 07.12.2018 demanding the Shoe Sole. The Operational Creditor supplied the material to Operational Debtor and raised invoice and raised debit note from time to time. The Operational Creditor and the Operational Debtor had since long been transacting, upon sale of the materials by the Operational Creditor. As per averments made by Operational Creditor, the operational debtor through its directors promised and assured the payments of invoices and debit notes as per due dates mentioned in invoice/debit notes. It is clarified that Rs. 31,83,632 is due towards the following invoices and debit notes:

Posting	Document No.	Original	Balance	Due Date
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Date		Amount(Rs .)	Amount(Rs .)	
07.12.2 018	T/DL04/1819/0885	29,78,791	29,78,791	05.02.201 9
29.03.2 019	DN/DL/1819/013	88,433	38,433	29.03.201 9
31.05.2 019	DN/DL04/1920/000 7	1,66,408	1,66,408	31.05.201 9
		32,33,632	31,83,632	

3. The total amount due in default is Rs. 31,83,632 as on 31. 05.2019 which includes Rs. 29,78,791/- towards principal amount and Rs. 2,04,841/- towards interest. The further interest of Rs. 76,270/- accrued thereon from 01.06.2019 upto 04.07.2019. The last invoice of Rs. 28,91,700/- was raised on 07.12.2018. As per agreement, the corporate debtor is also liable to pay future interest @24% per annum from the date of expiry of the credit period till realization. It is stated that the goods were sent through transportation. Despite assurances, promises and part payments, the above mentioned amount is still due and payable. The Operational Creditor stopped further supply.
4. The Operational Debtor issued cheques towards payment of goods received by them but on presentation, the cheques were dishonored by their banker and returned vide return memo dated 08.05.2019



with reason "Payment Stopped by the Drawer". Following are the details of the cheques:

Cheque No.	Bank Name	Cheque Amount (INR)
125671	Bank of India	29,78,791
174	Kotak Mahindra Bank	90,000
	Total	30,68,791

5. The Petitioner served Demand notice dated 31.05.2019 by speed post, courier, email to the Corporate Debtor U/Sec.8 of the Insolvency & Bankruptcy Code, 2016 seeking refund of payments within 10 days from the date of receipt of the notice. The post returned un-served and postal remarks "not delivered, insufficient address" from the Registered office of the Corporate Debtor. The Demand notice sent through email at the email ID available at the MCA portal was duly served and delivered on 03.07.2019. It is averred by the Operational Creditor that despite receiving the notice dated 31.05.2019 and several reminders dated 20.02.2019, 25.02.2019 and so on, the corporate debtor failed to make payment of the debt. No reply of the same was received by the Petitioner.
6. The Petitioner, therefore, filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 29,78,791/- plus interest charged Rs. 2,04,841/-. Further interest of Rs. 76,270/- accrued thereon from 01.06.2019 upto 04.07.2019.



7. As per the averments made in the application the Operational Creditor states that the Corporate Debtor issued total two cheques amounting to Rs. 30,68,791/- for payment of some of its unpaid invoices. However cheques issued were not honored by the bank and criminal case for the same was filed u/s 138 of the Negotiable Instruments Act.
8. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) of Code are on record to corroborate his case. The requirement of 9(3)(c) has not been complied with.
9. As per the averments of the Petitioners the Corporate Debtors did not make the payment against the default amount. None appeared on behalf of the Corporate Debtor to oppose the prayer made by the petitioner, hence they were proceeded ex-parte vide order dated 01.10.2019. The present petition being filed in July, 2019 is within the limitation, being within three years from the date of the cause of action. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-



- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation 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.

Further:

(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 moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (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.”*


10. The Operational Creditor has not proposed the name of any IRP.

Accordingly, we appoint Mr. Devnidhi Arya, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00148/2017-18/10312 email- [devaryafca@gmail.com](mailto:devaryafca@gmail.com) duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

11. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

12. Petition is therefore admitted.

  
**SUMITA PURKAYASTHA**  
Member (T)

  
**JUSTICE RAJESH DAYAL KHARE**  
Member (J)