

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 36/Chd/Pb/2020**

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

**In the matter of:**

**Bikram Shukla**

C-21, Sector A-7 P-1,  
Tronica City, Ghaziabad,  
Uttar Pradesh-201102

...Petitioner-Operational Creditor

Vs.

**Amtech Project & Product Pvt. Ltd.**

having its registered office at  
Gaddo Lakhawal Road,  
Village-Kohara, Ludhiana  
Punjab-141112  
CIN No. U28910PB2002PTC025182

...Respondent-Corporate Debtor

**Judgement delivered on: 05.07.2023**

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

For the Petitioner-

Operational Creditor : Mr. Anupam Dwivedi, Advocate

For the Respondent-

Corporate Debtor : Mr. Satish Kumar Sharma, Advocate

**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 Bikram Shukla.

(for brevity '**Operational Creditor**' / '**Petitioner**'), with a prayer to initiate the Corporate Insolvency Resolution Process (**CIRP**) in the case of Amtech Project & Product Pvt. Ltd. (for brevity '**Corporate Debtor**' / '**Respondent**').

2. The Corporate Debtor, namely, Amtech Project & Product Pvt. Ltd. is a Company incorporated on 06.06.2002 under the provisions of the Companies Act, 1956 with CIN No. U28910PB2002PTC025182 with its registered office at Kohara, Ludhiana, Punjab, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure-A-1.

3. The facts of the case, briefly, as stated in the petition are that Operational Creditor is engaged in the business of manufacturing and supplying of gears, pinions, bevels and other industrial items. The Corporate Debtor purchased the industrial item on a credit basis from Operational Creditor and if Corporate Debtor fails to pay within 15 days of issuing the invoices, the Corporate Debtor will be liable to pay interest @ 21% P.A. on the invoice amount. In July 2018, Corporate Debtor vide its email dated 10.07.2018 requested Operational Creditor to quote the best prices for seven specific industrial items namely Delta 450 VR-CT, Gear and Pinion 350 VR, HR 350, HR 500 150, HR 650 150, HR 400 and VR 322.5 vide email dated 10.07.2018, Corporate Debtor requested for the material items/material such as 3T Hoist Gears internal, 5T Hoist Gears Internal and 10T Hoist Gears internal. On 12.07.2018, 14.07.2018, and 18.07.2018, the Operational Creditor sent an email to Corporate Debtor quoting the best

price for the material requested. Vide email dated 24.07.2018, Corporate Debtor placed a purchase order dated 29.05.2018 for the supply of material. The Operational Creditor supply the items to Corporate Debtor. On 04.08.2018, Corporate Debtor sent purchase orders dated 02.08.2018 and 03.08.2018 to supply material. The Operational Creditor requested for clear drawings of the order. Vide email dated 30.08.2018, Corporate Debtor placed a purchase order for a supply of gear and pinion of different specifications. The Operational Creditor raised invoices against the material and dispatched the items through the transporter namely M/s Bharat Motor Transport Co.(P) Ltd. on different dates. Operational Creditor also generated e-way bills. Vide emails dated 15.11.2018, 1.12.2018 and 05.01.2019, Operational Creditor requested Corporate Debtor to make payments. Corporate Debtor replied vide email dated 07.02.2019 that he had been instructing his accounts section to make payment. Vide email dated 16.03.2019, the Operational Creditor sent details of the amount received and outstanding dues. Thereafter, Corporate Debtor made part payment of Rs. 2 Lakhs through NEFT on 29.03.2019. On 28.05.2019 and 01.06.2019, Operational Creditor requested for the outstanding amount.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.7,01,322/- (Rupees Seven Lakh one thousand three hundred twenty two Only). The default occurred on 30.03.2019 i.e. on account of non-payment of invoices. Copy of Purchase Orders (Annexure A-2), Invoices (Annexure A-3), Ledger Book (Annexure A-4), Bank Account Statement (Annexure A-6), Chart showing Interest

calculator (Annexure A-7), Certificate under Section 65-B of Indian Evidence Act (Page-109) are attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 25.11.2019. The demand notice has been delivered to the corporate debtor vide registered post as the tracking report and postal receipts are attached with the main petition at Annexure A-5. The corporate debtor had not replied to the demand notice till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. Affidavit of service had been filed vide Diary no. 1895 dated 11.03.2020. The corporate debtor has filed a reply vide diary No.00146/01 dated 25.05.2022, wherein it is stated that the Corporate Debtor had not any genuine dispute with regard to the credit of the company. The company petition is barred by limitation under Sections 10 and 11 of CPC. In the present matter instead of a company petition, a civil suit is maintainable for the determination of the truth. Even after making payment in advance, the material had not been delivered.

7. The rejoinder was filed vide Diary No.00146/2 dated 29.11.2022, wherein it is stated that the Corporate debtor admits that it does not have any genuine dispute. The invoices pertain to the year 2018-19, the last payment was received on 29.03.2019 and the default occurred on 30.03.2019. The petition was filed on 06.01.2020 and the same is within limitation. The IBC, 2016 is a special code that shall prevail over provisions of CPC. The Petition is supported with documents and transactions admitted by Corporate Debtor. The terms and conditions of the purchase order were

duly complied with and objections were raised for the first time after receiving notice.

8. The short written submissions have been filed by the petitioner vide Diary No.00146/3 dated 11.04.2023 and by the respondent corporate debtor vide Diary No.00146/5 dated 04.05.2023.

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 was duly served upon the corporate debtor. The demand notice dated 25.11.2019 was delivered to the corporate debtor vide registered post as the tracking report and postal receipts are attached with the main petition at Annexure A-5. The corporate debtor had not replied to the demand notice till date. Therefore, the demand notice was duly served upon the corporate debtor.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by the Operational Creditor that the Corporate Debtor has failed to bring to the notice of the Operational Creditor and the existence of a dispute or the pendency of suit or arbitration proceedings filed before the service of demand notice.

Although, it is stated by the respondent-corporate debtor that a civil suit has been filed titled as "Amgech Projects & Products Private Limited Versus Arvind Forging and another, CS no. 8525/2022 which is pending before the Court of Shri Kirandeep Singh, Civil Judge, Junior Division, Ludhiana. The Civil suit is filed much after the issuance of the demand notice and the

present petition. Similarly, Corporate Debtor has failed to establish that the present petition is barred under Section 10 and 11 of CPC. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice dated 25.11.2019 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default 30.03.2019 i.e. on account of non-payment of invoices. This application was filed vide Diary No. 51 on 06.01.2020. The plea of Corporate Debtor that it is time barred is without merits. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.7,01,322/- (Rupees Seven Lakh one thousand three hundred twenty two Only). Copy of Purchase Orders (Annexure A-2), Invoices (Annexure A-3), Ledger Book (Annexure A-4), Bank Account Statement (Annexure A-6), Chart showing Interest calculator (Annexure A-7), Certificate under Section 65-B of Indian Evidence Act (Page-109) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than 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 payback 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 aforesaid discussed 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 the 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, **Amtech Project & Product Pvt. 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. Jaramu Ram Thakur wherein his AFA Certification is valid upto 22.02.2024 and there is nothing adverse against him. In view of the above, we appoint Mr. Jaramu Ram Thakur, Registration No. IBBI/IPA-001/IP-P-01869/2019-2020/12933, E-mail: [jrthakurvms@gmail.com](mailto:jrthakurvms@gmail.com), Mobile No. +91-9888344644, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Jaramu Ram Thakur 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 the 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 the 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 the 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 the 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 the corporate debtor under Section 33 as the case may be.

20. The petitioner is directed to deposit an amount of ₹40,000/- (Rupees Forty 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 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)

July 05, 2023  
PKA/TB