

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

CP(IB) No. 225/Chd/J&K/2022

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

In the matter of:

Konkan Agro Marine Industries Private Limited

Having its registered office at:
226, Ganesh Vandan Hill RD, Shivaji Nagar
Nagpur, Maharashtra-440010

...Petitioner-Operational Creditor

Vs.

Jammu and Kashmir Cements Limited

Having its registered office at:
Nawai-I Subh Building,
Zero Bridge, Srinagar,
Jammu and Kashmir-190001
CIN No. U26959JK1974SGC000397

...Respondent-Corporate Debtor

Judgement delivered on: 22.08.2023

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

For the Petitioner-

Operational Creditor : Mr. Anand Chibbar, Senior Advocate
: Mr. Vaibhav Sahni, Advocate

For the Respondent-

Corporate Debtor : Proceeded *ex parte*
vide order dated 02.02.2023

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 Konkan Agro

Marine Industries Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Jammu and Kashmir Cements Limited (**for brevity 'Corporate Debtor' / 'Respondent'**). Copy of master data of the corporate debtor is attached with the main petition and attached as Annexure A-2.

2. The Corporate Debtor, namely, Jammu and Kashmir Cements Limited is a Company incorporated on 24.12.1974 under the provisions of Companies Act, 1956 with CIN No. U26959JK1974SGC000397 with its registered office at Nawai-I Subh Building, Zero Bridge, Srinagar, Jammu and Kashmir-190001. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor has floated tender for the purchase of imported coal and the operational creditor was a successful bidder. The petitioner used to supply coal to the corporate debtor on the issuance of purchase order. The petitione is regularly transacting with the Operational Creditor since year 2017 and a complete running account was maintained by the Operational Creditor of the Corporate Debtor. The petitioner upon the issuance of the Purchase Orders, transported the ordered goods to the Corporate Debtor via a transporter. The table depicting the details of the transportation made with regard to the supply of coal is attached as Annexure A-5 of the petition. The corporate debtor/respondent never raised any dispute qua the invoices neither any defect was pointed out in the goods. The corporate debtor had been making the part payments and the same was accounted by the

petitioner in its books of accounts/Ledger. Further, the last payment was received on 19.06.2020, and thereafter no payment has been made to the petitioner by the corporate debtor. Subsequently, the petitioner requested the corporate debtor for the release of the payment / outstanding but no response has been received. The Corporate Debtor by letter dated 11.01.2021 acknowledged that an amount Rs.4,31,42,485/- is outstanding as per the record maintained by the Corporate Debtor. Further in this letter, Corporate Debtor has also confirmed the said amount has also been confirmed by Assistant Manager (F), Hqrs. Vide No. 769 dated 29.12.2020 (Annexure 10).

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.4,33,04,721/- (Rupees Four Crores Thirty-Three Lakhs Four Thousand Seven Hundred Twenty-One Rupees Only). The default occurred on 06.08.2018 i.e. the date on which the last purchase order was raised. Copy of Purchase Orders (Annexure A-3), Invoices (Annexure A-4), Details of Transportation (Annexure A-6), Ledger Account (Annexure A-7), Letter dated 11.01.2021 (Annexure-A10), and Bank Account Statement (Annexure-A11) are attached with the main petition.

5. A demand notice dated 16.04.2022 in Form 3 is stated to be issued by the operational creditor. In the demand notice dated 16.04.2022 the petitioner has made a demand of the unpaid operational debt amounting to Rs.4,33,04,721/-. It is further stated that the demand notice was issued at the registered address of the corporate debtor along with three other addresses. The original postal receipts along with a tracking report has been attached as Annexure-A-9 of the petition. However, the said post was

received back with the remarks "Addressee Cannot Located". No response or any notice of dispute was received from the Corporate Debtor.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of service has been filed vide Diary No. 01756/01 dated 18.11.2022. The operational creditor has served the copy of the petition at the registered office of the corporate debtor, however the same has been returned back. Thereafter, the petitioner has made a newspaper publication in 'Kashmir Times' and 'Dainik Sawera' in Jammu Edition. But, neither any reply was filed nor anyone appeared on behalf of the corporate debtor. Several opportunities were granted but no appearance has been made by the corporate debtor. Hence, the respondent was proceeded ex-parte.

7. The short written submissions were filed by the petitioner vide Diary No. 01756/2 dated 15.03.2023.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 16.04.2022 was properly served. The original postal receipts along with the tracking reports are attached as Annexure A-9 of the petition. It is seen that the demand notice was returned back with the remark "Addressee Cannot Located". The operational creditor has also served the demand notice at three other addresses known to the petitioner. However, all posts were returned back with the same aforesaid remarks. The operational creditor has also attached the photocopy of the envelope returned back.

10. This Adjudicating Authority vide its order dated 04.05.2023 had directed the learned counsel for the petitioner to clarify about the service of the notice to the corporate debtor. In compliance of the aforementioned administrative order dated 04.05.2023, the learned counsel for the petitioner has filed a compliance affidavit vide Diary No. 01756/4 dated 01.08.2023. As per the affidavit, the report of Senior Postmaster GPO, Chandigarh has been annexed as Annexure-C. As per report, the notice has been delivered to the addressee JK Cements Sanat Ghar Bemina which is stated to be the registered office of the corporate debtor and the tracking report is at Page 9. It is further clarified by learned counsel for the petitioner that actually the registered post was received back as un-delivered from the corporate offices situated in District, Pulwama, Srinagar and Trikuta Nagar, Jammu. However, the notice has been delivered with the registered office of the Respondent-Corporate debtor so it may be taken as the service of the notice to the corporate debtor. Therefore, it can be safely said that 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 submitted by the applicant that there is notice given by the corporate debtor to the dispute relating to the unpaid operational debt and there is no dispute pending between the parties in the court of law. In view of the above, it is held that the operational debt was not disputed by the corporate debtor. Moreso, none appeared on behalf of the respondent/corporate debtor to rebut the claim of the petitioner/operational creditor as the respondent/corporate debtor proceeded against ex parte vide order dated 02.02.2023.

12. The other issue for consideration is whether this application is filed within limitation. The operational creditor was having a running account of the corporate debtor and was issuing invoices on day to day basis. The last invoice was issued on 06.08.2018. The last payment was received from the corporate debtor was on 19.06.2020. Therefore, the period of limitation would begin from 19.06.2020 i.e. date on which the last payment was made. This application was filed on 27.07.2022 vide Diary No. 01756. Therefore, this Adjudicating Authority finds that this application is filed within three years of prescribed period of limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.4,33,04,721/- (Rupees Four Crores Thirty-Three Lakhs Four Thousand Seven Hundred Twenty-One Rupees Only) is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

14. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner has proved the debt and the default, which is above the 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

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, Jammu and Kashmir Cements Limited, 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. Harmanjit Singh and there is nothing adverse against him. In view of the above, we appoint Mr. Harmanjit Singh, Registration No. IBBI/IPA-001/IP-P-02034/2020-2021/13080, E-mail:ipcaharmanghai@gmail.com, Mobile No. 9988445464 from the list provided by Insolvency and Bankruptcy Board of India, panel valid from 1st July 2023 to 31st December, 2023 (AFA Certification is valid upto 18.04.2024), the Interim Resolution Professional with the following directions:-

i) The term of appointment of Mr. Harmanjit Singh 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 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. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”

As per the Standard of Auditor (SA-230)

“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report , or, if later, the date of the group auditor's report.”

In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

vii) 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.

viii) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with 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.

ix) 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 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

x) 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 ₹1,00,000/- (Rupees One Lakh 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 the 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 admitted accordingly.

sd/-

(Subrata Kumar Dash)
Member (Technical)

August 22, 2023
SD

sd/-

(Harnam Singh Thakur)
Member (Judicial)