

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 846/IBC/MB/2020

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

President Engineering Works

Registered office at: Plot No.23.

Government Industrial Area,

Masat Village, Silvassa-396230

.....Operational Creditor

Vs

Kelvion India Private Limited

(CIN: U28129PN2005PTC140270)

Registered office at: Plot No. A-31/32

Nighoje, Chakan, Pune-410501

.....Corporate Debtor

Order delivered on: 08.09.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Advocate, Mr. S. K. Jain

For the Respondent: Mr. Sameer D Hatle

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. The above Company Petition is filed by President Engineering Works hereinafter called as Operational Creditor against the Kelvion India Private Limited hereinafter called as Corporate Debtor under section 9 of the Code for ordering initiation of Corporate Insolvency Resolution Process (CIRP) for Resolution an amount of Rs. 70,70,701/- due from Corporate Debtor towards Principal amount under 7 invoices and 14,64.171/- towards interest.
2. The Corporate Debtor filed Affidavit in Reply of Mr. Vinayak Dabri opposing the Company Petition on the ground that there are pre-existing dispute between the parties with regard to the quality of material supplied by the Corporate Debtor as a result of which the Corporate Debtor was compelled to engage in house manpower/labour outsourced machines and procured several other equipment necessary in order to rework defective goods within stipulated time and the Respondent raised upon the Petitioner a debit note dated 23 May 2019 for an amount of Rs. 31,96,135/-.
3. In the light of the above pleadings the issue that needs to be decided in the above Company Petition is:
 - i. *Whether there are pre-existing disputes between the parties?*
4. Heard both sides and perused the record. Dr. Jain, the Ld. PCA appearing for the Operational Creditor submits that the Corporate Debtor has used the material supplied by the Operational Creditor and willfully committed default in clearing the amounts due and payable to the Operational Creditor. Having used the material supplied by the Operational Creditor, the Corporate Debtor now cannot raise the issue of inferior quality of goods and the above

plea regarding the quality of goods is only an afterthought to avoid the liability. Dr. Jain further submits that the Corporate Debtor having confirmed the outstanding balance as on 31 March 2019 through letter dated 18 July 2019 to the Operational Creditor admitting an amount of Rs.56,06,530/- as on 31 March 2019 cannot argue that there are pre-existing disputes between the parties and prayed for admission of the above Company Petition.

5. Ld. Counsel Mr. Sameer D Hatle for Corporate Debtor except raising quality issue regarding the material supplied by Operational Creditor did not deny the confirmation of balance confirmed by the Corporate Debtor.
6. In this connection it is important to mention here that the Corporate Debtor has got issued a reply lawyer's notice dated 06 September 2019 in response to the demand notice dated 03rd August 2019. The following admission of the Corporate Debtor in para 2 of the said legal notice is important to clinch the issue of pre-existing dispute:

However, having gone through the contents thereto, at outset it is vehemently submitted that, the notice having addressed by you on behalf of your client, is without any such locus standi to your client to do so, as your client has allegedly demanded a sum of Rs. 56,06,530/- along with the interest @ 24% p.a. within a period of 15 days. As against the said demand, it is vehemently submitted that, my client is not liable to pay the same. Since it is not admitted. It is so because, the goods having dispatched by your client being the TBASS and STUDS, did not meet the quality as called for, therefore my client was unable to use the same. However as there were exigencies, as the time was essence of the contract having executed by my client with the client of my client and as a result of that my client was required to get the rework done from the local vendor and the said material came to be used

in the process, so as to deliver the final goods to the client of my client.

7. It is very clear from the above reply that the Corporate Debtor has used the material supplied by the Applicant and billed to its customers. Therefore, as rightly contended by Dr. Jain the Corporate Debtor having used the material supplied by Operational Creditor, cannot take the plea of inferior quality of the material. Counsel appearing for the Operational Creditor annexed copy of the letter dated 18 July 2019 addressed by the Corporate Debtor to the Operational Creditor confirming the outstanding balance of the Operational Creditor of an amount of Rs. 56,06,530/- as on 31 March 2019. The debit note is dated 23 May 2019. If the Operational Creditor really owes the amount of 31,96,135/- as per the debit note, the Corporate Debtor ought not have confirmed the balance by addressing the above letter in July 2019. Therefore, the claim of the Corporate Debtor under the debit note is only an after thought to avoid the debt.
8. It is very clear from the above refer documents and the reply notice sent by the Corporate Debtor that the plea of pre-existing dispute raised by the Corporate Debtor is not legally sustainable and is liable to be rejected as it is only an afterthought.
9. In view of the above observations and findings, this bench is of the considered opinion that there is a debt and default and the debt is within limitation and the above company petition is liable to be admitted.
10. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) 846(MB)/2020 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against Kelvion India Private Limited.

- b. This Bench hereby appoints Mr. Manoj Kumar Jain, Insolvency Resolution Professional, Registration No: IBBI/IPA-001/IP-P00535/2017-18/10960, email- manojj2102@gmail.com as suggested by Operational Creditor in the Company Petition.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central

Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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 corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)