



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI PRASANTA KUMAR MOHANTY
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 316/9/JPR/2019

(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:

M/s Adhunik Niryat Ispat Limited (P) Ltd.

CIN: U27105DL1992PLC048770

208-210, Sushma Tower, "D" Block, Central Market
Prashant Vihar, Delhi-110085

...Applicant / Operational Creditor

VERSUS

M/s Surya Irrigation Private Limited

CIN: U27100RJ1994PTCC010062

F-1088, Riico Industrial Area, Bhiwadi Phase 3rd
Bhiwadi, Rajasthan-301019

...Respondent / Corporate Debtor

For Petitioner (s) : Sanyam Jain, Adv.

For Respondent (s) : Prateek Kedawat Adv.
Vivek Sharma, Adv.

ORDER PRONOUNCED ON: 05.12.2022



ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Adhunik Niryat Ispat Limited ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') in the matter of M/s Surya Irrigation Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Applicant, M/s Adhunik Niryat Limited, supplied Aluminium scrap to Surya Alumex (a Unit of Surya Irrigation Private Limited). The registered office of the Applicant is in New Delhi. The alleged default on the part of the Respondent for the non-payment of operational dues amounts to Rs. 30,38,044/- (Rs. Thirty Lakh Thirty-Eight Thousand Forty-Four Only) is inclusive of interest of Rs. 5,38,012 (Rs. Five Lakh Thirty-Eight Thousand Twelve Only).
3. The Corporate Debtor, M/s Surya Irrigation Private Limited, is incorporated under the Companies Act, 1956 in 1994. The Corporate Debtor has an Authorised Share Capital of Rs. 2,00,00,000/- (Rs. Two Crore Only) and Paid-Up Share Capital of Rs. 88,60,700/- (Rs. Eighty-Eight Lakh Sixty Thousand Seven Hundred Only).
4. The Applicant supplied Aluminium scrap to Surya Alumex of Rs. 5,75,61,797 (Rs. Five Crore Seventy-Five Lakh Sixty-One Thousand Seven



Hundred Ninety-Seven Only) during the period from 01.04.2017 to 31.03.2018. After settling the above-mentioned amount, the balance on the account of default is Rs. 25,00,032/- (Rs. Twenty-Five Lakhs Thirty-Two Only).

5. The Corporate Debtor did not pay the Rs. 25,00,032/- (Rs. Twenty-Five Lakh Thirty-Two Only) and interest of Rs. 5,38,012/- (Rs. Five Lakh Thirty-Eight Thousand Twelve Only) till 20.11.2019. The Applicant issued a Demand Notice under Section 8 of the Code on 20.10.2019 for the payment of money alongside interest, totalling Rs. 30,38,044/- (Rs. Thirty Lakh Thirty-Eight Thousand Forty-Four Only) on with interest calculated till 20.11.2019, which is enumerated in Part IV of the Application:

Part IV

Particulars of Operational Debt

1.	Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.	Total Debt of Rs. 30,38,044/- (Rs. Thirty Lakh Thirty-Eight Thousand Forty-Four Only) which includes unpaid amount of Rs. 25,00,032 (Rs. Twenty-Five Lakh Thirty-Two Only) and Interest of Rs. 5,38,012 (Rs. Five Lakh Thirty-Eight Thousand Twelve Only) till 20.11.2019. The Debt has arisen due to non-payment of the invoices by the Corporate Debtor.
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2.	Amount claimed to be in default and the date on which the default occurred	Rs. 25,00,032/- and Interest of Rs. 5,38,012/- till 20.11.2019 (Interest @ 18% per annum) up to 20.11.2019. Rs. 30,38,044/- (Rs. Thirty Lakh Thirty-Eight Thousand Forty-Four Only). Date of default -20.06.2018
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6. The Respondent, in its reply, filed *vide* Diary No. 2590/2021 dated 06.12.2021, has stated that:

- a. The entire dealing of the Applicant was with Surya Alumex which is a proprietary firm of the Corporate Debtor. The Applicant has never transacted with the Corporate Debtor whereas the goods were purchased or supplied by the Applicant to the unit of the Corporate Debtor, Surya Alumex.
- b. It is submitted by the Corporate Debtor that there was no agreement or contract between the Corporate Debtor and Applicant for the alleged supply or purchase of the material.
- c. The Corporate Debtor contends that the goods which were purchased from the Applicant were defective material. The Applicant also handed over the note for the supply of defective material to the Corporate Debtor.
- d. Further, the Corporate Debtor has given two undated cheques to the Applicant for security however, the payment is already made by the



Corporate Debtor towards the said cheques by way of RTGS. The Applicant fraudulently presented the undated cheques on 17.10.2019 for encashment whereas the payment for the said amount in cheques is already done to Applicant therefore the Corporate Debtor has stopped the payment.

- e. The Demand Notice dated 20.10.2019 is not received by the Corporate Debtor therefore no objection/reply is made herein by the Corporate Debtor.
 - f. The Corporate Debtor submits that the ledger of the Applicant has been fudged and tempered further the Applicant falsely submits that the Debit Note is issued to the Corporate Debtor of Rs. 6,39,218 (Rs. Six Lakh Thirty-Nine Thousand Two Hundred Eighteen Only).
7. The Applicant *vide* Dairy No. 2045/2021 dated 05.10.2021 has filed its rejoinder that stated the following:
- a. The Applicant submits that Surya Alumex is a unit of Surya Irrigation Private Limited. Surya Alumex is a proprietorship firm owned and managed by Surya Irrigation Private Limited i.e. Corporate Debtor herein. Moreover, the Permanent Account Number ('PAN') and Goods and Services Tax ('GST') No. of the Surya Alumex and the Corporate Debtor are one and the same. Copy of the certificate dated 16.05.2018 issued by Mr. Siddharth Jain ('Director of Corporate Debtor'), PAN



and GST Registration Certificate are attached as Annexure-A, B & C of the rejoinder respectively.

- b. The Applicant contends that there was no dispute regarding the quality of the goods between the Corporate Debtor and the Applicant at any time before the service of the Demand Notice in accordance with the provisions of Section 8 of the IBC.
 - c. The Applicant submits that the Demand Notice dated 20.10.2019 has been served and the same has been delivered on 22.10.2019 and 24.10.2019 to the Corporate Debtor at the Registered Office of the Corporate Debtor Company.
8. The Applicant has filed written submissions *vide* diary No. 2937/2022 dated 06.10.2022 that state the following:
- a. The Demand Notice has been served to the Corporate Debtor on 19.10.2019. However, the date written on the demand notice is 20.10.2019 is a mere clerical error submitted by the Applicant.
 - b. The Applicant submits that the Application under Section 9 of the IBC fulfils all the criteria as required under Section 9(5)(i) of the IBC.
 - c. It is pertinent to note that the Applicant has issued a Debit Note on 08.07.2019 of Rs. 6,39,218/- (Rs. Six Lakh Thirty-Nine Thousand Two Hundred Eighteen Only) towards the poor quality of goods supplied.
 - d. Additionally, the Applicant has relied on the following Judgements:



- i. *M/s Sahaj Bharti Travels Vs M/s HCL Technologies Limited*
CP(IB)-2087(ND)2019
- ii. *Innovative Industries Ltd. vs ICICI Bank & Ors.- (2018) 1 SCC*
407

9. Further the Corporate Debtor filed an IA bearing IA(IBC) No. 469/JPR/2022 vide Diary No. 2857/2022 dated 27.09.2022 seeking rejection of the main application. Even though the said IA was filed pursuant to the stage of final arguments, in the interest of justice the same is being considered with this order.
10. The Corporate Debtor has filed a synopsis pursuant to the hearing dated 27.09.2022 vide diary No. 2939/2022 dated 06.10.2022 that state the following:
 - a. The Corporate Debtor submits that there was a pre-existing dispute between the parties as under section 9 (5) (ii) of the IBC.
 - b. The goods supplied by the Applicant were below the quality and standards.
 - c. It is submitted by the Corporate Debtor that the Applicant has filed the matter against an improper party.
 - d. The Corporate Debtor states that the Applicant stated in the pleading that the Demand Notice dated 18.10.2019 was sent on 19.10.2019



however the date written on the Demand Notice is 20.10.2019. The pleadings of the Applicant are at variance with the original documents annexed in the Application.

- e. The Applicant has not served the Demand Notice to the Corporate Debtor instead it was sent on the mail id of the Corporate Debtor's Chartered Accountant who passed away on 31.05.2021
- f. Additionally, the Corporate Debtor has relied on the following Judgements:
 - i. *Innoventive Industries Ltd. vs ICICI Bank and Anr. (2018) 1 SCC 407*
 - ii. *S.S. Engineers V. Hindustan Petroleum Corporation Ltd. & Ors. (2022) Comp. Case 95(SC)*
 - iii. *Bhandari Hosiery Exports Ltd. Vs In-Time Garments Pvt. Ltd. 2019(3) TMI 1642-NCLAT*
 - iv. *BD International vs Banswara Syntex Limited 2021(1) TMI 512-NCLT Jaipur*
 - v. *Sree Vinayaka Buildwell Projects Ltd. vs NHDPL South P. Ltd. (2022) 234 Comp Cas (NCLT)*

11. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Written Submissions, and the Documents enclosed with the Application.



12. The registered office of the Corporate Debtor is situated in the state of Rajasthan, therefor this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, the Applicant has alleged that the default occurred on 20.06.2018.
13. The Application was filed under Section 9 of the Code on 04.12.2019, therefore, in view of the same, this matter is filed within the prescribed limitation period. The Applicant has filed the present Application claiming the default of Rs. 25,00,032/- (Rs. Twenty-Five Lakh Thirty-Two Only) and Interest of Rs. 5,38,012/- (Rs. Five Lakh Thirty-Eight Thousand Twelve Only) till 20.11.2019.
14. To perceive the matter at hand, it is pertinent to note that Surya Alumex is a unit and proprietorship firm that is solely owned and managed by the Corporate Debtor. The Applicant has purchased and supplied the material to Surya Alumex.
15. Further, the PAN and GST No. are common for the Corporate Debtor and Surya Alumex. The unit is neither separately registered in any legislation nor owned by an independent entity. It is apparent from the records that the unit is owned and managed by the Corporate Debtor only.
16. A business unit is a separate division within a Company that often develops and implements its own processes independently from the Company however the Company has final control and authority over the operational/ functional status of the business unit.



17. Moreover, the unit of the Corporate Debtor has not any separate legal entity in the eyes of law. The business of the Surya Alumex ('Proprietorship Firm') is owned and managed by the Corporate Debtor stated in the declaration dated 16.05.2018 made by the authorized signatory of the Corporate Debtor. Copy of the declaration dated 16.05.2018 is attached as Annexure-A *vide* Diary No. 2045/2021 dated 05.10.2021 and on page no. 8 of the rejoinder filed by the Applicant.
18. The Proprietorship Firm of the Corporate Debtor is nothing but an additional place of the business of the Corporate Debtor. The Registration Certificate for the GST under Form GST REG-6 bearing the GST Registration No. 08AAACS1979D1ZC mentions that the Proprietorship Firm is an additional place of the business of the Corporate Debtor. Copy of the GST Registration Certificate is attached as Annexure-C *vide* Diary No. 2045/2021 dated 05.10.2021 and on page no. 10-12 of the rejoinder filed by the Applicant.
19. Taking the records available into consideration, it is established that the unit/proprietorship firm is no one else but the Corporate Debtor only, which is owned and managed by their own. Thus, the Doctrine of Lifting the Corporate Veil will show up in this case. Lifting of Corporate Veil means disregarding the corporate personality and looking behind the real person who has control of the Company. Hence the Corporate Debtor is the person who has control and charge over the deed/act of the proprietorship firm.



20. The first issue to decide is whether the goods are supplied to the Corporate Debtor. It is evident from the documents on the records that Surya Alumex is a unit of the Corporate Debtor which is owned and managed by the Corporate Debtor only.
21. The next issue for consideration is whether there is a dispute regarding the quality of the goods supplied by the Applicant to the Corporate Debtor. The Respondent / Corporate Debtor has filed a Reply and argued that they had been dissatisfied with the good's quality. However, they have not submitted any authentic communication to substantiate the same. Thus, as per the documents placed on record with the Adjudicating Authority, there is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.
22. The last issue to decide upon is whether the Demand Notice in Form – 3 dated 20.10.2019 was served upon the Respondent. The Demand Notice was sent *via* an email on 20.10.2019 and a physical copy through speed post to the Respondent and its Directors. The Demand Notice, Email, and postal tracking slips are attached as Annexure – F *vide* Diary No. 2841/2019 dated 04.12.2019 and on page no. 54-72 of the Application.
23. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -



“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

24. However, the defence must be plausible, and while not examining it on merits, it must not appear as a moonshine defence. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute does not seem to be confirmed.
25. We have gone through the contents of the Application filed in Form No. 5 and found the same to be complete. As discussed above, there is a total



unpaid operational debt (in Default) of Rs. 30,38,044/- (Rupees Thirty Lakh Thirty-Eight Thousand Forty-Four Only), including the interest @18% per annum. It is observed that the Operational Creditor has issued invoices (Annexure C on page no. 22-30 of the Application) for goods supplied to the Respondent/ Corporate Debtor. Applicant/ Operational Creditor has given Demand Notice in Form No. 3 dated 20.10.2019, duly served on the Respondent/ Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.

26. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the IBC stand satisfied. Moreover, the additional documents filed with the IA (IBC) No. 469/JPR/2022 are not of any relevance to support the grounds of the Corporate Debtor. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
27. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'), but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed the name of any person to be appointed as IRP. Hence, this bench will appoint the IRP from the pool of RPs



empanelled with the IBBI. Therefore, the bench is appointing Mr. Shyam Sunder Maheshwari, bearing Registration No. IBBI/IPA-001/IP-P02115/2020-2021/13321 with the e-mail address MHSWR.SHYAM@GMAIL.COM and phone number +91-9783368645 as the IRP in the present matter. The said IRP is directed to file the written consent to act as an interim resolution professional in Form – 2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

28. In this matter, the Interim Resolution Professional appointed herein Mr. Shyam Sunder Maheshwari, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.
29. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.
30. Consequences of initiation of CIRP shall be inter-alia as follows: -
 - a. The IRP appointed by the Adjudicating Authority, Mr. Shyam Sunder Maheshwari, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including the issue of a publication in widely circulated



Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

- b. Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
- c. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Sections 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- d. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating



Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

- e. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Interim Resolution Professional by all modes for information.
- f. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the IRP nominated herein on his e-mail id.
31. Accordingly, CP No. (IB)-316/9/JPR/2019 is admitted. Any pending Interim Applications are disposed off accordingly.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**