



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.3138/MB-IV/2019

Under Section 9 of the IBC, 2016

*In the matter of*

M/s. JMC METALS PRIVATE  
LIMITED

[CIN: U51101MH2013PTC249817]

...Operational Creditor

v/s.

M/s. JANS COPPER PRIVATE  
LIMITED

[CIN: U27310MH2011PTC215149]

...Corporate Debtor

**Order Delivered on: 24.02.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner:

Mrs. Kalyani G. Parmar, Ld. Counsel

For the Respondent:

Ami Jain/S.R. Jariwala, Ld. Counsel

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) JMC Metals Private Limited, ("the Operational Creditor"),



seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Jans Copper Private Limited, (“the Corporate Debtor”).

1.1. The petition is filed on 20.08.2019 claiming an amount of Rs.2,13,93,104 (Rs. 2,02,14,140/- towards principal and Rs.11,78,964/- towards interest till 30.06.2019). The Part IV of Form 5 specify the date of default as “*Rs.2,13,93,104/- along with interest @ 15 % p.a. from the respective dated of bills submitted and default committed in remittance of the amount, as on 30.06.2019 amounting to Rs.45,95,177/- against Rs.2,02,14,140/- outstanding and Rs.35,853/- against Rs.11,78,964/- aggregating to a total of Rs.46,31,030/-*”. No specific date of default is given in the petition. Instead, the Operational Creditor has filed a copy of ledger account of the Corporate Debtor in its books for the period till 30.06.2019 showing closing balance of Rs.2,50,13,582.40 receivable from the Corporate Debtor.

2. The Operational Creditor has submitted that it supplied Copper Rod, which was purchased from M/s. S.R Metals, Colombo, and raised Commercial Invoice(s) upon the Corporate Debtor for the goods supplied to it on 26.05.2018, 7.9.2018 and 23.12.2018. The amount claimed in default by the Operational Creditor also includes a sum of Rs.11,78,964, being an amount due under Invoice No ST/1819/0000810 dated 08.03.2019, on account of goods supplied to the Corporate Debtor as consignee while the invoice names M/s Jans Overseas as the buyer.

2.1. The applicant has filed a copy of the Ledger account in the name of applicant as appearing in the books of Corporate Debtor (shared by Corporate Debtor vide email dated 04.06.2019) and this statement reflects an amount of Rs.2,02,14,367 as payable to the applicant by the Corporate Debtor. The Corporate Debtor had issued cheques aggregating to a total amount of Rs.1,60,00,000/- during the period 01/04/2019 to 02/04/2019



and dated 05.06.2019, towards on account payment, but these cheques got dishonoured with reason “account closed”. Thereafter Corporate Debtor issued another cheque for 2,13,93,331/- in favour of the applicant and same was dishonoured with reasons “funds insufficient”.

- 2.2. The Operational Creditor served a Demand Notice dated 30.06.2019 to the Corporate Debtor in terms of section 8 of the IBC,2016. The Demand Notice was duly served and delivered on Corporate Debtor dated 05.07.2019. The Corporate Debtor replied to the said Demand Notice on 25.07.2019 denying the debt on the ground that it cannot be maid liable to pay for the transaction with M/s Jans Overseas and also denied issuance of fresh cheques of Rs.2,13,93,331.
3. The Corporate Debtor in its affidavit -in-reply dated 24.02.2020 has stated few more grounds to contest the present application i.e. date of default is not clearly mentioned in Part IV; Applicant has failed to attach the correspondence exchanged with the Corporate Debtor; and there is an ongoing dispute between the applicant and the Corporate Debtor with regard to quality of material supplied by the applicant relying on letters dated 15.10.2018 and 15.07.2018 stated to be issued by Corporate Debtor to the applicant.
4. The Operational Creditor has filed *Affidavit-in-Rejoinder* on 04.03.2020 stating that the documents attached by the Corporate Debtor to the affidavit in reply are forged and fabricated documents. The Operational Creditor has never received any of the letters dated 15.7.2018 ,11.09.2018, 15.10.2018 and 04.06.2018 from the Corporate Debtor.



5. We have heard both the parties and perused the material on record.

5.1. It is observed from the ledger account in the books of Corporate Debtor that a sum of Rs.202,14,367.65 is payable to the Operational Creditor as on 08.06.2019. This ledger account was shared with the applicant by the Corporate Debtor email dated 04.06.2019. Further, the amount due under Invoice No ST/1819/0000810 dated 08.03.2019, which is disputed by the Corporate Debtor is only Rs.11,78,964/-. On perusal of Ledger account in the name of applicant, in the books of Corporate Debtor, it is further observed that this invoice amount has not been credited by the Corporate Debtor even then its books are showing an amount of Rs Rs.2,02,14,367.65 as payable to the applicant. It follows from this discussion that there is no dispute as to the existence of debt in excess of threshold limit as prescribed u/s 4 of the Code. Further, it is not disputed that this amount was not due for payment and this is supported by dishonour of four cheques amounting to Rs,40,00,000/- each aggregating to Rs.1,60,00,000/-. The contention of Corporate Debtor that these cheques were given as security cheques further validates the existence of the debt.

5.2. As regards contentions of Corporate Debtor as to existence of prior dispute and reliance upon letters dated 15.10.2018 and 15.07.2018 filed by the Corporate Debtor in its reply to support its contentions, we find that the Corporate Debtor has not filed any document evidencing the service/delivery of these letters to the applicant. Further, the applicant has alleged these letters are forged documents and denied existence of it. Accordingly, we are of the considered view that these defence(s) are not maintainable in the absence of any cogent material to support the existence of dispute.



- 5.3. The applicant has appended copy of invoice(s) along with relevant documents showing the amount of debt and its payment terms. The absence of specific date of default in part IV is not relevant on the facts of present case as the date of default is otherwise determinable from the averments made in the Part IV to this effect read with the documents referred in such averment and annexed to the application.
- 5.4. In view of the forgoing we find that the debt and default exist, and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.

### ORDER

The petition bearing CP (IB) No.3138/MB-IV/2019 filed by **M/s. JMC METALS PRIVATE LIMITED**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/s. JANS COPPER PRIVATE LIMITED** (“the Corporate Debtor) is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



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- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- b) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) The bench hereby appoints Mr. Hitesh Kothari, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00324/2017-2018/10929 Email hiteshkotharics@gmail.com Mb No 9702246060. He is appointed as IRP for



conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR  
MEMBER (TECHNICAL)  
24.02.2023.

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)