



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
*[Through Physical hearing/VC Mode (Hybrid)]*

**CP (IB) No. 145/BB/2024**  
**U/s. 9 of the IBC, 2016**  
**R/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s. Pani Trading Corporation,**  
Proprietor: Mr. RITESH M JAIN  
# 1202 Abbey Prestige West woods  
Binnypet, Bangalore -560023.

... Petitioner/Operational Creditor

**Versus**

**M/s. P & M Associates LLP**  
#No: 78/6, Shankarappa Grade,  
C-Block, 8 Cross, Magadi Road,  
Bangalore – 560023.

... Respondent/Corporate Debtor

**Order delivered on: 20/11/2024**

**Coram:** Hon'ble Shri. K.Biswal, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri S. Narendra Kumar  
For the Respondent : Shri Ashok A. Despande

**ORDER**

**Per: Shri K. Biswal, Member (Judicial)**

1. The present petition is filed on 30/05/2024 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **M/s Pani Trading Corporation** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate



Insolvency Resolution Professional Process (“CIRP”) against **M/s. P & M Associates LLP** (hereinafter referred as ‘Corporate Debtor’/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs.2,74,87,326/- (Rupees Two Crore Seventy Four Lakh Eighty Seven Thousand Three Hundred Twenty Six only).The date of default mentioned in the Part IV of Form 5 is 04/01/2017. In Part IV of Form No.5 filed with Petition, the following information is given:

| PART-IV                         |  |   |
|---------------------------------|--|---|
| Particulars of Operational Debt |  |   |
| 1.                              | Total amount of Debt.<br>Details of Transactions on account of which debt feel due.  | Rs, 2,74,87,326/-<br><br>First invoice debt fell due on 04/01/2017 and for rest of the invoices debt fell due is mentioned in Annexure –A to the petition   |
| 2                               | Amount claimed to be in Default and date on which the Default occurred (Attach the workings for computation of amount and dates of Default in Tabular Form | Rs. 2,74,87,326/- ( Two Crore Seventy Four Lakhs Eighty Seven Thousand Three Hundred and Twenty Six only<br><br>Date of default occurred on 04/01/2017 and rest of the invoices default date is mentioned Annexure-B, to this Petition. |

2. It is also submitted that. Affidavit U/s 9(3) (b) is placed at page 71-77 of the petition, while Demand Notice under Section 8(1), Form 3 was attached at Page 95-98. Onwards. It is further stated that the Record of Default in Form D issued by NESL is attached at Pg 124-128 of the Petition.
3. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
  - a) The Petitioner/Operational Creditor is a Proprietorship firm and is engaged in trading of Mill-scales which is used in product of Steel Rolling Mills and used by Primary Steel Manufacturer for sintering and the Respondent is an entity incorporated under the



Companies Act, 2013 by name M/s **P & M Associates LLP** is also engaged in Trading of Mill-scales.

- a) The Operational Creditor supplied Mill-scales, to the Corporate Debtor against purchase order dated 01/07/2016 for supply of 3750MT at the rate of Rs.2450/- Per MT with payments being 180 days after the supply of Mill-scale. Further, the Corporate Debtor placed additional order of 6500 MT of Mill-Scale to Respondent. Thus, the Petitioner in total received five purchase orders from M/s **P & M Associates LLP** for the supply of 10,250 MT of Mill scale amounting to Rs. 3,40,02,847 (Rupees Three Crores Forty Lakhs Two Thousand Eight Hundred and Forty Seven Only. (This includes payment on behalf of the M/s. P & M Associates LLP amounting to Rs.30,030,000 in the above amount). The said purchase order was delivered to M/s SONA ALLOYS PRIVATE LIMITED (“Consignee”/ “SAPL”).
- b) Thereafter, the Corporate Debtor had paid an amount of Rs. Rs.65,15,521/- (Rupees Sixty Five Lakhs Fifteen Thousand Five Hundred and Twenty One Only) but defaulted on payment of the balance amount due i.e. Rs 2,74,87,326 (Two Crore Seventy Four Lakhs Eighty Seven Thousand Three Hundred and Twenty Six Only).The Operational Creditor on several occasions called the officials of the Respondent and demanded payment for Balance amount but the Corporate Debtor did not heed to the requests of the Operational Creditor.
- c) Thus, due to Non-Receipt of the amount, Demand Notice under Section 8 of the Code was issued by the Operational Creditor on 04/03/2024. The Respondent replied to the said demand notice on which was received by the Petitioner on 15/03/2024 and stated the following:-
  - i. The Respondent denies the liability and discrepancies in goods supplied by the Petitioner.
  - ii. Issues with Quality and quantity of goods supplied by the Petitioner.



- iii. Time barred debt.
  - iv. Not acknowledged the debt
  - v. Quality of goods supplied by quality of goods supplied by the Petitioner not addressed.
  - vi. There is substantial quantity difference supplied goods and invoiced goods.
- d) The Petitioner states that, Respondent/ Corporate Debtor did not raise any dispute as mentioned in the section 5(6) of the Code and Corporate debtor has not filed any suit or arbitration proceeding relating to existence of amount of debt or quality of services rendered by the Petitioner or breach of warranty before receipt of notice in Form-3 from the Operational Creditor. Further the Corporate Debtor has not furnished any pendency of suit or arbitration proceedings in relation to dispute filed before the receipt of notice under Section 8 of the Code.
- e) The Petitioner submits that since the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and not yet been paid & there is no existence of dispute between the parties or the record of the **pendency of a suit or arbitration proceeding filed before the receipt of the demand notice** Thus the Petitioner submits that, he is an Operational Creditor within the meaning of section 5(20) of the Code, 2016 since there is operational debt due and exceeding Rupees One Crore due from the Corporate Debtor and Respondent is the Corporate Debtor within the meaning of section 3(8) of the Code, 2016.
4. On 21/08/2024, the Respondent filed its statement of objection, vide Diary No: 4895 and contended as under:
- a) The Respondent states that the Petitioner had supplied materials in huge quantities and there was substantial difference in the quantities alleged to be supplied by the Petitioner and those reflecting in the Respondent's records. It was therefore considered necessary to reconcile the records and only then the amount



payable (if any) could be determined. It is submitted that there were even issues with regards to the quantity and quality of the goods, which were not addressed by the Petitioner.

- b) The Respondent submits that SAPL was their regular buyer and owed the Respondent a sum of Rs.14,92,46,153. It is further submitted that SAPL was admitted into CIRP but the amount offered and credited to Respondent was Rs.95,409. Thus due to the said loss, the Respondent was unable to clear the dues of the Petitioner.
  - c) Thus the Respondent submits that they are presently not in a position to clear any dues and hence acknowledge and accept the liability due and are not wilful defaulters and that this default has arisen as they have suffered huge financial losses for the reasons cited in above.
5. The Learned Counsel for the Petitioner filed its rejoinder vide Diary No:4945 dated 22/08/2024 contended as under:
- a. The Petitioner submits that, the Respondent in Para 11 of its response has admitted, acknowledged and accepted the liability due to the Petitioner and it had also mentioned that, they are not wilful defaulters and the default had occurred due to huge financial losses amounting to Rs.14,92,46,163, due to non-payment of the amount by the SAPL and the SAPL was admitted into CIRP under section 9 of the Code.
  - b. The Petitioner submits that the Respondent had pointed out the quantity and quality issues supplied by the Petitioner, without any basis nor any it was bought to the notice of the Petitioner, therefore, all these are baseless allegation and after thought by the Respondent.
6. Heard the Learned Counsels for the Petitioner and the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made under.
7. The Record of Default issued by NESL in Form D dated 25.04.2024, mentions the date of Default as 06.01.2017. However vide order dated



18.10.2024 the Counsel for the Petitioner had explained the issue of limitation relying upon the various acknowledgements given by the Respondent from 31.03.2019 upto 30.06.2022 and upon perusal of the material on Record and considering the date of filing of the present Petition i.e. 30.05.2024, we are of the opinion that the limitation issue is taken care of.

8. The Petitioner had supplied Mill-scales to the Corporate Debtor amounting to Rs.3,40,02,847. However, the Corporate Debtor failed to make payment of the invoices amounting to Rs. 2,74,87,326 raised by the petitioner. Demand notice dated 02.03.2024 was duly served on the Corporate Debtor and reply was also received by petitioner.
9. It is not in dispute that the Operational Creditor supplied goods to the Corporate Debtor and a sum of Rs. 2,74,87,326 was outstanding to the petitioner against the aforesaid supply goods to the Corporate Debtor
10. Moreover, the Corporate Debtor in its reply to petition has itself admitted, acknowledged and accepted the liability due to the Petitioner as they are facing huge financial losses amounting to Rs.14,92,46,163.
11. Further in accordance with the ratio of the judgment of Hon'ble Apex Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2017) ibclaw.in 01 SC***, if there is no record of dispute in the information utility, nor any documents submitted to show any dispute, it cannot be held that there is a pre-existing dispute.
12. The Corporate Debtor has admitted that there is a debt and obligation to pay. The reasons for inability to pay including of recovery of pending payments cannot be a valid ground for non-payment of debt and obligation to pay.
13. Accordingly, this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing **CP (IB) No. 145/BB/2024 is admitted** against the Corporate Debtor **M/s. P & M**



**Associates LLP** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:-

- a. The institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in;
  - b. any court of law, tribunal, arbitration panel or other authority;
  - c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - d. 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;
  - e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
  - f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
  - g. 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 financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
  - h. 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
14. In Part-III of Form No.5, Mr CA Pramod Sri Hari bearing Registration IBBI/IPA-001/IP-P-02286/2021-2022/13674 has been proposed as Interim Resolution Professional (IRP) and Form No.2 dated 16<sup>th</sup> May,



2024 has been filed at Page Nos.60-66B of the Petition. This bench appoints **Mr CA Pramod Sri Hari** bearing Registration No.- **IBBI/IPA-001/IP-P-02286/2021-2022/13674** having registered address at #16-1/2, 19" "B" Cross, Jayanagar 3<sup>rd</sup> Block, Bangalore, Karnataka, 560011, e-mail: **pramod@capad.in**, and Contact No.- **9620075048** as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs 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.
16. The Interim Resolution Professional shall after collation of all the claims received against **M/s. P & M Associates LLP** and the determination of the financial 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 for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
17. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

**-Sd/-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd/-**

**(K.BISWAL)  
MEMBER (JUDICIAL)**