

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

C.P. No. 2143/IBC/MB/2019

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

**M/s J. Kumar Infraprojects
Limited**

16-A, Andheri Industrial Estate,
Veera Desai Road, Andheri East,
Mumbai- 400058

.....**Operational Creditor**
Vs

Pragmatic Infrastructure Limited

CIN: U45200MH2004PTC150228

Having registered office at: 103,
Gulmoharpoonam Complex, 90 Feet
Road, Kandivali (E), Mumbai 400101

.....Corporate Debtor

Order delivered on: 24.09.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Dinesh Masurkar, Advocate

For the Respondent: None present

Per: *Shri Chandra Bhan Singh, Member (Technical)*

ORDER

1. This Company petition is filed by M/s J. Kumar Infraprojects Limited (hereinafter called "Operational Creditor") seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against Pragmatic Infrastructure Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and sought Resolution of payment of Rs. 3,08,550/-.

BRIEF FACTS OF THE CASE:

- a. The Operational Creditor states that the Corporate Debtor Company is indebted to the Operational Creditor for a sum of Rs. 3,08,550/- (Rupees Three Lakhs Eight Thousand Five Hundred Fifty only).
- b. The Operational Creditor states that somewhere in October 2013, the Corporate Debtor had approached the Operational Creditor and expressed a wish to avail its services for supplying ready Mix Concrete (RMC) Commercial Building at your Wadala Site. On the basis of negotiations and discussions that followed, the Operational Creditor agreed to supply RMC to the Corporate Debtor as per the Corporate Debtor's requirement. The Corporate Debtor issued purchase orders for supply of RMC.
- c. The Operational Creditor states that as per you demand and the Operational Creditor accordingly supplied the Corporate Debtor RMC at the Corporate Debtor's site. The Operational Creditor states that the Operational Creditor was time to time raising R.A. for supply of RMC, the Operational Creditor four bills.
- d. The Operational Creditor further submits that as per these bills, the total amount due and payable to the Operational Creditor for supply of RMC was a sum of

Rs. 3,08,550/- The Operational Creditor states that to make payment of these bills, Corporate Debtor had issued a cheque dated 14.04.2014 for a sum of Rs. 3,08,550/- drawn on HDFC Bank, Kandivali (E), Mumbai. However, subsequently by letter dated 12.04.2014, the Corporate Debtor informed the Operational Creditor that the Corporate Debtor's account of HDFC Bank is closed due to some reasons and requested the Operational Creditor to hold the cheque for some time.

- e. As per the Corporate Debtor's instructions, the Operational Creditor did not deposit the said cheque. After expiry of validity of cheque, the Operational Creditor on number of occasions requested the Corporate Debtor to issue a new cheque however the Corporate Debtor asked the Operational Creditor to wait till January 2015. The Corporate Debtor would directly credit the amount in the Operational Creditor's account. However, this assurance turned to be fake as no payment was made to the Operational Creditor by January 2015.
- f. The Operational Creditor was constantly pursuing to get the bills cleared. The Operational Creditor's representative visited the Corporate Debtor's office many times to sort out the issue of unpaid bills. The Operational Creditor wrote letters requesting you to clear amount of bills but the Corporate Debtor just simply overlooked the letters for the reasons best known to the Corporate Debtor.
- g. That Operational Creditor further submitted that the Corporate Debtor has no reason any more to withhold

the outstanding payment of Rs. 3,08,550/- (Rupees Three Lakhs Eight Thousand Five Hundred Fifty only).

- h. The Operational Creditor issued a statutory notice dated 01.11.2018 bearing reference no. 210/11/TPD/18 to the Corporate Debtor.
- i. The Operational Creditor stated that in spite of receipt of the said notice dated 01.04.2018, the Corporate Debtor did no reply to the Operational Creditor's statutory notice within the period of 10 days nor did the Corporate Debtor pay the amount Rs. 3,08,550/- which is evince that the Corporate Debtor is not willing to pay the legitimate dues of Rs. 3,08,550/- to the Operational Creditor.
- j. The Corporate Debtor has filed and neglected to pay the amount due and payable to the Operational Creditor. In the circumstances, the Operational Creditor submits that the Corporate Debtor Company is unable to pay its debt and has commercially become insolvent. The Operational Creditor therefore, submits that the Corporate Debtor Company is liable to be wound-up under the Order and direction of this Tribunal.

FINDINGS

1. This Company petition is filed by M/s J. Kumar Infraprojects Limited (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Pragmatic Infrastructure Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Bench notes that this matter had come up for hearing on several occasions namely 24.06.2019, 24.07.2019, 22.08.2019, 23.09.2019, 23.10.2019, 19.11.2019, 20.12.2019, 20.02.2020, 09.02.2021, 02.03.2021, 15.07.2021 and finally on 29.07.2021. The Bench further notes that Mr. Sagar Batawa in the hearing on 23.09.2019 was present and undertook to file Vakalatnama and reply. However, subsequent to that also when this matter was taken up for hearing on 29.07.2021, nobody was present. Sufficient notice has been given to the Corporate Debtor and even though it shows, he chose not to file reply and be present in the hearing. Therefore, this Bench is deciding the petition based on the merits of the petition.
3. It is clear from the above petition that the invoices related to the period of 2013 for a total amount of Rs. 3,08,550/-. This petition has been filed on 06.06.2019. The amount of debt claimed is heavily time barred as it relates to period before more than 5 years. The Bench also notes that no document which would give effect of acknowledgement under Section 18 of the limitation Act has been filed by Operational Creditor with the petition to explain the limitation. Similarly, there has not been any payment from the time of default by way of principal or interest which may lead to commencement of fresh period of limitation.
4. In view of this and as mentioned earlier this petition is time barred and is fit to be dismissed.
5. Accordingly, this petition is dismissed.

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**