



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV

C.P. (IB) No. 82/MB/2024

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**J. D. Impex through its proprietor Mr.
Hemang Mehta**

...Operational Creditor

v/s.

Novatech Projects (I) Private Limited
(CIN: U28100MH1984PTC033793)

...Corporate Debtor

Order Delivered on: **13.11.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Adv. Yahya Batatawala i/b
Adv. Manish Jha, Ld. Counsel
for Petitioner.

For the Corporate Debtor:

None present.



ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) on 25.11.2023 by **J. D. Impex Through its proprietor Mr. Hemang Mehta** (“Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against **Novatech Projects (India) Private Limited** (“Corporate Debtor”) for the amount(s) payable to the Operational Creditor.
2. The Operational Creditor *viz.* Applicant in the captioned petition is a proprietary firm who is in the business of trading of Ferrous and Non – Ferrous materials. The Corporate Debtor is a private limited company, having its Registered Address at 601, Balaji Infotech, Plot No. A/278, Road No. 16/A, Wagle Industrial Estate, Thane (West) 400604, Maharashtra, India.

Submissions of the Operational Creditor

3. The present petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹1,03,35,558/- (Rupees One crore, three lakhs, thirty-five thousand, five hundred and fifty-eight only). The date of default as specified in Part-IV of the Application is 26.10.2023.
4. The Operational Creditor submits that, the Operational Creditor is in the business of trading of Ferrous and Non –Ferrous materials and has been trading with the Corporate Debtor for many years. The Operational Creditor further submits that the Operational Creditor made regular supply of materials to the Corporate Debtor pursuant to Purchase Orders issued by the Corporate Debtor and delivered the goods in timely manner.



5. The Operational Creditor states that the Corporate Debtor had made some part payments for invoices raised up to the 25.09.2022, however all payments were late. The Operational Creditor further states that in spite of late payments the Operational Creditor continued the supply of goods as and when the required by the Corporate as a matter of trust and also to get payment of old dues.
6. The Operational Creditor submits that the Operational Creditor continued the supply goods till 26.09.2023 and hence the date of default can be considered as the 30 days from the date of last invoice i.e. 26.10.2023. The Operational Creditor further submits that the last payment received from the Corporate Debtor was on 20.09.2023.
7. The Operational Creditor claims that the Corporate Debtor had stopped making further payments in spite of repeated reminders by the Operational Creditor. The Operational Creditor further submits that the Operational Creditor sent a letter dated 06.11.2023 along with a copy of the Ledger statement for confirmation of accounts. The Corporate Debtor confirmed the balance of amount of Rs. 1,03,35,558/- on 31.10.2023 through the letter of confirmation.
8. The Operational Creditor claims that the Corporate Debtor assured to pay the outstanding amount to the Operational Creditor at the earliest. However, in spite of firm commitment the Corporate Debtor failed to clear the outstanding amount.
9. The Operational Creditor states that on failure of payment from the Corporate Debtor the Operational Creditor has issued the Demand Notice



in Form 3 on 10.11.2023. However no reply received from the Corporate Debtor. Hence, the present petition.

Findings

10. Heard the Learned Counsel for the Operational Creditor and the Corporate Debtor.
 - i. This Bench has taken note that the Corporate Debtor has received the notice vide Order dated 20.02.2024 and granted an opportunity for filing a Reply with regards to the present petition. On account of inaction by the Corporate Debtor in this regard, this bench forfeited Corporate Debtor's right to file reply vide Order dated 24.04.2024.
 - ii. The Bench has taken note of the Additional-Affidavit filed by the Operational Creditor in compliance of the Order dated 10.07.2024, whereby the Operational Creditor was directed to submit the item-wise list of invoices with respect to the date of default and amount received by the Operational Creditor. The same is taken on record.
11. This bench observes that, the Operational Creditor in Part IV of the application has specified date of default 26.10.2023 and the present petition filed on 25.11.2023 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor.
12. Upon perusal of the record files, we are of the considered view that there exists a debt of ₹1,03,35,558/- being amount due under the invoices and there is a default in payment thereof.




13. In so far as the Applicant herein *viz.* Operational Creditor is concerned, the records reveal that on account of non-payment by the Corporate Debtor; the Operational Creditor sought to issue payment reminder to the Corporate Debtor *vide* Letter *dated* 06.11.2023, and we note that the receipt of the said letter has further not been denied by the Corporate Debtor hereto. We also note that the Corporate Debtor confirmed the balance of amount of Rs. 1,03,35,558/- on 31.10.2023 through the letter of confirmation. Pursuant to inaction by the Corporate Debtor apropos the same, the Operational Creditor was constrained to issue the Demand Notice under Form 3 *dated* 10.11.2023, containing particulars of the (unpaid) Operational Debt, mandating the Corporate Debtor to pay the disputed amount and the receipt of the same has not been disputed by the latter herewith.
14. In the present circumstances, we are of the shared view that there exists an 'operational debt' in terms of Section 5(21) of IBC, 2016, to the tune of INR ₹1,03,35,558/- (Rupees One crore, three lakhs, thirty-five thousand, five hundred and fifty-eight only).being an amount due as afore-established and further validated by the Ledger of Accounts maintained by the Operational Creditor in respect of the Corporate Debtor for F.Y. 2022-23, and that there exists a 'default' in payment thereof in terms of Section 5(12) of IBC, 2016.
15. This Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Operational Creditor. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has



jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, 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.

16. The Operational Creditor has proposed the name of **Neha Jain Nemani**, having Registration No. IBBI/IPA-001/IP-P-02465/2021-2022/13927, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form-2 dated 24.11.2023 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Authorisation for Assignment.
17. In light of the afore-stated aspects in relation to existence of 'debt' and 'default' in so far as the captioned petition is concerned, and in absence of any pre-existing dispute to render the same repudiated hereto, coupled with the dictum laid down in law in this regard; We opine that the captioned petition is complete in all aspects and deserves to be Admitted, and that Corporate Insolvency Resolution Process ought to be initiated in respect of the Corporate Debtor herein.
18. It is accordingly hereby ordered as follows:
 - a The captioned Company Petition bearing **C.P. No. (IB) 82/MB/2024** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process is ordered **Novatech Projects (I) Private Limited**, viz. the Corporate Debtor herein.
 - b In consonance with the afore-stated, this Tribunal deems it fit to appoint Neha Jain Nemani, Registration No IBBI/IPA-001/IP-P-



02465/2021-2022/13927 (Address: 2404B Parthenon Building, ,JP Road, 4 Bungalows, Andheri West, Mumbai City, Maharashtra,400053) Email Id: nehavkjain@gmail.com, as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC, 2016. The fee payable to the IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

- c 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, 2016. 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 **two weeks** from the date of receipt of this Order, in default of which coercive steps will effectively follow.
- d The Operational Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Two-lakhs only) with the IRP to meet the initial CIRP cost, **if** demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be Interim Finance and paid back to the Operational Creditor viz. Applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- e 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;
 - 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.
- f** Notwithstanding the above, during the period of moratorium:
- i** 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;
 - ii** That the provisions of sub-Section (1) of Section 14 of the IBC, 2016, shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;



- g** 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, 2016, or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- h** The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post **and** E-mail 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)