

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No. 404/MB-IV/2022**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Deceuninck Profiles India Private Limited**

[CIN-U36999TN2017FTC118611]

...Operational Creditor/Applicant

V/s

**Oriel Windows Private Limited**

[CIN: U36109PN2009PTC135073]

...Corporate Debtor

Order Dated: 25.08.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Kush Gala, Advocate.

For the Corporate Debtor(s) : None Present.

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an Application being C.P. (IB) No. 404/MB/C-IV/2022 filed on 27-02-2022 by Deceuninck Profiles India Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency &

Bankruptcy Code, 2016 (I&B Code) against Oriel Windows Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor has filed Authority Letter dated 21.02.2022 in support of authorization in favour of Mr. Dev Chandwani, employee of the Operational Creditor firm authorising him to file the present company application on behalf of the Operational Creditor.

2.1 The amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 2,25,99,284/- (Rupees Two Crores Twenty-Five Lacs Ninety-Nine Thousand Two Hundred Eighty -Four only) as the principal outstanding amount plus 18% interest calculated from 28/02/2019 till the date of realization.

2.2 The date of default as mentioned in the petition is 28/02/2019.

2.3 The Operational Creditor made routine supplies of UPVC profiles to the Corporate Debtor as per their requirements at mutually agreed rates and raised the 40 Invoices from the period 23.10.2018 to 03.09.2021 out of which 20 invoices were raised from the period 25.03.2020 to 24.03.2021.

2.4 There has been no dispute raised by the Corporate Debtor with regard to the quality or quantity of the goods supplied. Despite this the Corporate Debtor failed to pay the Operational Creditor for the materials supplied.

2.5 The Corporate Debtor had issued Cheque No. 062660 of Rs. 17,00,000/- dated 08.08.2020 but the same was returned unpaid

- 2.6 The Operational Creditor states that Corporate Debtor offered to mortgage property pursuant to which both the parties entered into an MOU dated 31.07.2021 in an attempt to clear the outstanding dues, wherein a schedule of payment was specified. However, the Corporate Debtor failed to abide by the terms of the MOU by neither carrying out the mortgage nor honouring their cheques. In order to recover the outstanding dues, the Applicant deposited Cheque No. 78069 dated 30.11.2021 of 50,00,000/- under intimation to Corporate Debtor but the same was returned unpaid for reason "insufficient funds" on 05.01.2022.
- 2.7 The Operational Creditor issued Demand Notice dated 22/01/2022 vide email dated 24.01.2022 for the claim of Rs. 2,25,99,284/- plus 18% interest. Additionally, a copy of the same demand notice was dispatched vide registered post on 24.01.2022 and was delivered on 27.01.2022. However, the Corporate Debtor has neither replied to the said notice nor repaid the same.
3. The Corporate Debtor has not filed any reply against the said petition and was also not represented on the date of last hearing as well as on last seven hearings when this matter was listed on board.
4. We have perused the documents and pleadings available on record and considered the arguments of both the sides.
- 4.1 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no dispute as regards the existence of the debt in the absence of any response from the Corporate Debtor either to the demand

notice or to the petition. The Operational Creditor has annexed the ledger statement of the Corporate Debtor for the period of 01.04.2016 to 18.11.2021 to the present petition in which the outstanding amount is reflected.

- 4.2 This Bench vide order dated 23.06.2023, directed the Ld. Counsel for the Petitioner to file invoice wise statements of due date and to inform this Bench, out of the 40 invoices claimed in default, how many fell due during the period stated in Section 10A of the Code. The Operational Creditor filed the same vide document dated 10.07.2023. We find that 20 invoices fall within the 10A period notified u/s 10A of the Code, and even after exclusion of these 20 invoices, the aggregate value of remaining 20 invoices is still more than Rs. 1 crore, i.e. threshold limit prescribed under Section 4 of the Code.
- 4.3 This Bench finds that there exists a debt and default of the said debt on the part of the Corporate Debtor as admitted by the Corporate Debtor, which is evidenced from the MOU dated 31.07.2021.
- 4.4 We find that the debt against the goods supplied with respect to the invoices raised by the Operational Creditor falls within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*”.

- 4.5 This Bench is of the considered view that there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.
5. On perusal of the documents submitted by the Applicant, it is clear that an 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 Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.

**ORDER**

6. This Application being C.P. (IB) No. 404/NCLT/MB/C-IV/2022 filed under Section 9 of I&B Code, 2016, filed by Deceuninck Profiles India Private Limited, Operational Creditor/ Applicant against Oriel Windows Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:
- I. That this Bench as a result of this prohibits:
- a) 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;

- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) 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 Operational Assets and Enforcement of Security Interest Act, 2002;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Mr. Umesh Balaram Sonkar, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02619/2021-2022/14043] and Email Id.- rosonkar1603@gmail.com; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees Five Lakh 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 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).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar  
Member (Technical)

Sd/-

Kishore Vemulapalli  
Member (Judicial)