

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI SPECIAL BENCH, COURT-I

C.P. (IB) No. 690/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016).

**In the matter of**

Balaji Formalin Private Limited

CIN: [U24116GJ2002PTC040401]

T.F. - 302, Dev Arc, Opp. Big Bazar,

Nr. Fun Republic, S.G. Highway, Satellite,

Ahmedabad, Gujarat, India, 380052

**... Operational Creditor/Petitioner**

Versus

Mega Process Technology Private Limited

CIN: [U74999PN2014PTCI 51090]

Flat No.401 & 402, 4th Floor, Bavdhan

S.No.-20/3/2/5 & 20/3/2/6,

Anubhuti Apartment,

Pune, Maharashtra, India- 411021

**... Corporate Debtor/Respondent**

**Order Delivered on: 30.10.2024**

**Coram:**

Shri. Prabhat Kumar

Justice V. G Bisht



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Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances:***

For the Operational Creditor : Adv. Gurdeep Singh Salhar  
For the Corporate Debtor : Adv. Arusha Bapat

**ORDER**

***Per: Sh. Prabhat Kumar, Hon'ble Member (Judicial)***

1. The instant application is filed by **Balaji Formalin Private Limited** ("Petitioner"/"Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against **Mega Process Technology Private Limited** ("Respondent/Corporate Debtor") for non-payment of Operational Debt of Rs. **1,26,96,800/-** (Indian Rupees One Crore Twenty-Six Lakhs Ninety Thousand Eight Hundred Only), inclusive of IGST of 18% payable.

**Brief facts about the case:**

2. The **Operational Creditor, Balaji Formalin Private Limited** is a Non-Government, Private Company, Limited by shares incorporated on 29.01.2002 under Companies Act, 1956 having registered office at T.F. - 302, Dev Arc, Opp. Big Bazar, Nr. Fun Republic, S.G. Highway, Satellite, Ahmedabad, Gujarat, India, 380052. The Operational creditor is involved in providing services such as project identification and local assistance for specialized projects.
3. The **Corporate Debtor, Mega Process Technology Private Limited** is a Non-Government, Private Company, Limited by shares incorporated on 20.03.2014 under Companies Act, 2013 having registered office at Flat No. 401 & 402, 4th Floor, Bavdhan S.No.20/3/2/5 & 20/3/2/6, Anubhuti Apartment, Pune, Maharashtra, India, 411 021. The Corporate Debtor is engaged in the designing, engineering and supplying of process plant and machinery.



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Submissions made by the Petitioner:

4. The Corporate Debtor had engaged the Operational Creditor for services of project identification and local assistance for a diary project of Panchmahal District Co-operative Milk Producers Union Limited (PDCMPUL) vide association agreement dated 03.10.2015. As per the association agreement the Operational creditor would be paid a 5% commission of the order value as consideration for the services provided.
5. The Operational Creditor asserts that the said services were duly rendered and invoices against the same were duly raised on 23.01.2018. The Operational Creditor submits that the Corporate debtor assured the payment of the said outstanding commission from time to time, however till date, the Corporate Debtor hasn't paid the amount. Hence according to the invoice dated 23.01.2018, the aggregate amount of **1,26,96,800/-** (Indian Rupees One Crore Twenty-Six Lakhs Ninety Thousand Eight Hundred Only) remains unpaid.
6. The Operational creditor submits that the default has occurred on 23.01.2018. The Operational creditor asserts that the amount has been acknowledged by the Corporate debtor by giving a Balance confirmation of the years 2017-18, 2020-21 and 2021-22. The Corporate debtor upon continued default of payment had served a Demand Notice under Sec. 8 of the Insolvency and Bankruptcy Code ("Code") by way of Form 3 & 4 provided in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 22.03.2024. The Corporate debtor in reply to the Demand Notice shared email correspondence on 01.04.2024 requesting for an extension of the payment deadline to repay the outstanding amount which is given as follows:

*"We have informed you that there were internal management problems in our company and we are unable to function properly as a result.*

*We assure you we are fully committed to you and recognize our responsibilities. But please understand that due to prolonged internal problems we have faced significant*



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*financial constraints that have severely impacted our ability to fulfil our payment obligations within the previously expected time frames.*

*The current financial crisis, caused by unforeseen circumstances, has put a strain on our liquidity and has compelled us to reassess our immediate financial commitments.*

*We have done business with you for long time and we urge you in recognition of the long standing mutual trust and understanding, to kindly refrain from any legal actions which will spoil our long standing relationship.*

*We kindly request your understanding and support during this challenging period. We request an extension of the payment deadline, allowing us additional time to stabilize our financial situation and fulfil our obligations to you.*

*We assure you of our sincere intention to resolve this matter. We believe that through mutual understanding and cooperation, we can overcome this temporary setback.”*

7. The Operational Creditor submits that the Corporate Debtor has not disputed its obligation to pay the remaining outstanding dues till date. Additionally, the response to the Demand Notice dated 22.03.2024 shared by the Corporate Debtor stating the inconvenience to repay the outstanding amount and the letter dated 14.04.2021 shared by the Corporate debtor to the Operational Creditor requesting for an extension for the repayment period citing financial instability during COVID lockdown period serves as an acknowledgment of the debt.

**Submissions made by the Respondent:**

8. The Corporate debtor have filed their affidavit in reply, which was submitted before this Bench as hard copy on 22.10.2024 wherein the Respondents have submitted that the Corporate Debtor has been facing severe internal financial difficulties over an extended period which have arisen due to operational and management disruptions resulting in the company's liquidity being seriously impacted. Even so, the Corporate debtor has consistently maintained transparent communication with the Operational Creditor assuring that the all the outstanding amounts would be repaid as soon as the



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financial situation improves. The Corporate debtor asserts that these assurances were given in good faith with the full intention of resolving the outstanding obligations.

9. The Corporate Debtor citing the global pandemic COVID-19 reports that the financial situation of the Corporate Debtor aggravated leading to significant decline in their ability to meet its financial obligations. During the continuance of these financial constraints the Corporate debtor had shared a letter dated 14.04.2021 requesting the Operational Creditor from refraining from taking any legal proceedings had seek extension for the repayment of the outstanding amount.
10. The Corporate Debtor further submits that despite their assurances and requests the Operational creditor had issued the Demand notice dated 22.03.2024 seeking immediate payment of the outstanding amounts. The Corporate debtor had through email correspondence dated 01.04.2024 informed the Operational Creditor about their financial crisis again along with a request to extend the repayment timeline to one and half years but the Operational Creditor not heeding to their request have moved forward with this company petition.

**Findings:**

11. Heard learned Counsel for Petitioner and Respondents. Perused the documents on record.
12. This Bench vide order dated 03.10.2024, had directed the Respondents to file and place on record Affidavit in Reply before the adjourned date that is on 23.10.2024. The counsel for the Respondents had appeared on 23.10.2024 and placed on record the hard copy of the affidavit in reply. During the hearing the counsel for the respondent stated that *"they aren't shying away from payment of the amount to the Operational creditor and require one and half years for the repayment"*. This Bench heard the Counsel for Petitioner and Respondent and proceeded to adjudicate this Petition in terms of the material available on record.



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13. This Bench in the same order dated 03.10.2024 had directed the Operational creditor and Designated Registrar to serve Notice upon the Corporate Debtor intimating the next date of hearing and to place Compliance Report & Affidavit of service respectively before the adjourned date.
14. The Bench vide order dated 03.10.2024 had also directed the Operational Creditor to ensure that the copy of the present Company Petition be served upon the Insolvency and Bankruptcy Board of India ("IBBI") and Affidavit of Service with regard to the same is also available on record. In compliance to the same and perusal of the material on record, the Operational Creditors have served IBBI and a document containing the screenshot of the same is provided along with the Company Petition.
15. Upon perusal of the records it is seen that the date of default is not explicitly stated in the IU certificate or provided in Part 4 of the Company petition. While, the first date of default as per the Company petition is 23.01.2018, which is the date of default when the payment of the invoice was due. The amount has been acknowledged by the corporate debtor by giving a balance confirmation in 2017-18 and again in 2020-21 and 2021-22. Additionally, the Operational creditor has placed on record 2 ledger accounts of the Operational Creditor in the books of the Corporate Debtor for the year ending 31.03.2021 and 31.03.2022 which can alone be taken as an acknowledgment of debt by the Corporate debtor. Thereafter, on 14.04.2021 the Corporate debtor had shared a letter requesting the Operational Creditor for extension of repayment of the outstanding amount. Hence, upon the combined reading of the letter dated 14.04.2021, the ledger accounts for the financial year ending March 2021 and March 2022, the Balance confirmation and the reply email to the Demand Notice by the Operational creditor dated 01.04.2024 it clearly shows that there is an acknowledgement of debt by the Corporate Debtor.
16. It is trite law that that the default date for invoice is to be taken into consideration and limitation with reference to date of default is to be ascertained for the purpose of Limitation. The invoice raised for payment was of the outstanding amount due on



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23.01.2018 and so is the first date of default, but since there is an acknowledgement in the books of account of the Operational creditor by way of ledger statements provided until March 2022, the period to be calculated under Limitation extends for a period of 3 years from that date. Therefore the petition is maintainable and not barred by limitation.

17. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

18. The Petition bearing CP (IB) No. 690 of 2024 filed by Balaji Formalin Private Limited, the Operational Creditor, under section 9 of the Code read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against Mega Process Technology Private Limited, the Corporate Debtor, is Admitted.

19. 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.*



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*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 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;*

20. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.

21. 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.

22. Ms. Dipti Amit Thite, having Registration No. IBBI/IPA-002/IP- N0 1087 /2021-2022/ 13629 and Email Id: [staffdiptithite@gmail.com](mailto:staffdiptithite@gmail.com) is hereby appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

23. 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. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh



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only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses shall be treated as interim advance to fund the CIRP cost which shall be subject to approval by the Committee of Creditors (CoC). However, it is clarified that this amount shall be treated as interim finance for treatment under CIRP.

24. 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.
25. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra, 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/-

**Sh. Prabhat Kumar**  
**Member (Technical)**

/JJ/

Sd/-

**Sh. Justice V.G Bisht**  
**Member (Judicial)**



**Certified True Copy**

Copy issued "free of cost"

On 12/11/2024

*[Handwritten Signature]*  
12/11/2024

Deputy Registrar

**National Company Law Tribunal Mumbai Bench**