IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.193/BB/2020
U/s. 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

N. Jayaraj
Power of Attorney holder of
S. Nagarajan
Sole Proprietor
M/s. Vijaya Paper Mart,
167-1, Jawahar Bazaar,
Karur - 639001 - Petitioner/Operational Creditor

And

M/s. Riteway Packaging Private Limited
No.3/8-1, 4th Cross,
Someswara Temple Road,
Opp. M.G.School,
Bilekahalli,
Bannerghatta Road,
Bangalore – 560 076 - Respondent/Corporate Debtor

Date of Order: 2nd September, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Petitioner	:	Shri PS Suman
For the Respondent	:	None

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.193/BB/2020 is filed by N. Jayaraj ('Petitioner/ Operational Creditor), U/s. 9 of the IBC, 2016, R/w Rule 6 of the

I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Riteway Packaging Private Limited (Respondent/Corporate Debtor) on the ground that it has committed default for total amount of Rs.17,91,483/- (Rupees Seventeen Lakhs Ninety One Thousand Four Hundred and Eighty Three only) which includes Principal amount of Rs.10,30,104/- and interest @ 24% p.a. of Rs. 7,61,379/-.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

(1) N. Jayaraj, Power of Attorney holder of S. Nagarajan, Sole Proprietor of M/s. Vijaya Paper Mart. ("Petitioner/Operational Creditor").

(2) M/s. Riteway Packaging Private Limited ("Respondent/ Corporate Debtor"), is a Private Limited Company, was incorporated on 17.04.2012, under the provisions of the Companies Act, 1956, bearing CIN: U21000KA2012PTC063 590. Its Authorized Share Capital of Rs.20,00,000/- and Paid-up Share Capital of Rs.20,00,000/-. The Company is engaged in the business of Manufacturing Paper Carton Boxes.

(3) The Operational Creditor had provided the service of Duplex Board Reel Materials against several invoices and of which 5 invoices along with 1 Debit Note was due and payable as on the date of sending of Demand Notice. After a long wait to recover the dues, the Operational Creditor had sent a Demand Notice dated 27.12.2019 to the Corporate Debtor, U/s.8 of the Code vide Speed Post along with the Annexure. However, despite several attempts at trying to deliver, the Speed Post was returned unclaimed for. He has also sent email dated 27.12.2019 to the Key Managerial Personnel of the Corporate

Debtor. Thereafter, the Corporate Debtor has not sent any response to the Demand Notice.

(4) During the course of events, the Corporate Debtor sent a cheque for Rs.10,23,604/- but requested the Operational Creditor to wait for confirmation to encash the same. However, when it was presented to his Banker for realisation on 10.12.2018, it was returned due to insufficient funds. On 14.12.2017, prior to the Operational Creditor sending out the Demand Notice, the Corporate Debtor sent a letter acknowledging to paying the dues owed by them along with interest @ 24% before 05.01.2018, but has not made any payment till date. The Corporate Debtor has failed to make the balance outstanding dues, and thus has committed a 'default' in making payments to the Operational Creditor, thus within meaning of Section 2(12) of the IBC, 2016.

(5) Hence, the instant Petition is to initiate CIRP against the Corporate Debtor.

3. Heard Shri PS Suman, learned Counsel for the Petitioner, **through Video Conference** and none appeared for the Respondent. We have carefully perused the pleadings of the Party and extant provisions of the Code, the Rules made thereunder and the law on the issue.

4. Shri PS Suman, learned Counsel for the Petitioner, while pointing out various averments made in the instant Petition, has further urged the Adjudicating Authority that since debt and default in question are not in dispute, the case may be admitted by initiating CIRP as prayed for. He has relied also upon the following judgements, in support of his case:

a) *M/s. Arrowline Organic Products Pvt. Ltd. Vs. M/s. Rockwell Industries Pvt. Ltd.*[1]

[1] I.A./341/2020 in IBA/ 1031/2019

b) Bee Athletic Pvt. Ltd. Vs. DSK Shivajians Football Club Pvt. Ltd.[2]

c) Om Logistics Ltd. Vs. Servel India Pvt. Ltd. [3]

d) Foseco India Limited Vs. Om Boseco Rail Products Limited [4]

e) Isgec Heavy Engineering Ltd. Vs. Cane Agro Energy India Ltd.[5]

5. As detailed supra, there are 2 (two) Purchase Orders dated 21.10.2016 and 03.02.2017, wherein it is mentioned that 60 days credit from the date of receipt of material. In pursuant to the above mentioned Purchase Orders, the Operational Creditor stated to have supplied goods, in various consignments, and raised several invoices viz., (1) Invoice dated 10.11.2016, Invoice No.SS 61, amount of Rs.2,95,365/-; (2) Invoice dated 10.11.2016, Invoice No.SS 62, amount of Rs.26,311/-; (3) Invoice dated 10.11.2016, Invoice No.SS 63, amount of Rs.83,464/-; (4) Invoice dated 27.02.2017, Invoice No. SATTUR 214, amount of Rs.4,32,518/-; (5) Invoice dated 27.02.2017 – Invoice No. SATTUR 215, amount of Rs.4,35,946/- and one Debit Note of Rs.6,500/-.

6. As per the statement filed by the Petitioner, the Respondent has paid Rs.2,50,000/- on 17.02.2017, and the balance amount stated to be due is Rs.10,30,104/-. The Corporate Debtor has also addressed a letter dated 14.12.2017 to the Petitioner, by stating that they would clear the dues before 5th January, 2018. They have also issued post-dated Cheque No.891574 dated 21.09.2018 for payment of Rs.10,23,604/-. The Petitioner has filed Affidavit dated 17.02.2020, U/s. 9 of the IBC, 2016, by inter alia stating that the Operational Creditor is entitled to recover a sum of Rs.17,91,483/- together with interest @ 24% p.a. from the due date of respective invoices. The Cheque issued was returned by the Bank due to insufficient funds, vide Memo dated 11.12.2018. However, the

[2] C.P(IB)No.3976 of 2018
[3] C.P.(IB)No.2728 of 2019
[4] C.P(IB)No.1735/KB/2019
[5] C.P.(IB)No.3010 of 2019.

Petitioner has not initiated any action for the dishonour of Cheque under provisions of Negotiable Instrument Act till date except the instant Proceedings under the provisions of Code by issuing Statutory Demand Notice dated 27.12.2019, by demanding the Respondent, to pay the unpaid Operational Debt of Rs.17,91,483/- in full within ten (10) days of receipt of this letter failing which they will initiate CIRP in respect of the Corporate Debtor. However, the instant Petition is filed only on February, 2020.

7. As stated supra, instant Company Petition is filed to recover the outstanding amount in question. As per the Purchase Orders, the terms of payment is 60 days credit from Date of receipt of material and cause of action started to arise from the year 2016. The provisions of the Code cannot give any cause of action and cause of action rise with reference to facts of given case. Therefore, demand notice issued under the provisions of Code would not give cause of action to file the instant Petition. The Respondent has addressed a letter dated 14th December, 2017 to the Petitioner by inter alia confirming that they would clear the dues before 5th of January, 2018 with 24% interest Per annum. In consonance with their commitment, the Respondent has issued post-dated (21.09.2018) Cheque for Rs. 10,23,604./ vide letter dated 21.08.2018. Though the cheque was dishonoured as early as on 11.12.2018, the Petitioner has failed to invoke provisions Negotiable Instrument Act.

8. The Petitioner has filed an affidavit 25th July, 2020, by inter alia stating that notice as ordered by the Adjudicating Authority was duly served on the Respondent. However, none appears for the Respondent the alleged outstanding amount.

9. It is to be stated that the provisions of Code can be invoked to initiate CIRP on justified reasons, and it cannot be invoked with an attempt to recover outstanding amount. The Petitioner has not

averred and substantiated that the Corporate Debtor has become insolvent. It is a settled position of law that the provisions of Code cannot be invoked for recovery of outstanding amount. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private* Limited *Vs. Kirusa Software Private Limited,*[6] has inter alia, held that IBC, 2016, is not intended to be substitute to a recovery forum. Therefore, mere debt and default cannot be sole basis to initiate CIRP and the Corporate Debtor proved to be insolvent. The Adjudicating Authority should be satisfied that case should be fit initiate CIRP basing on various parameters, which include objects of Cade under the provisions of Code and the law on the issue. The Petitioner has only made out that Debt and default in question are not disputed. However, the Adjudicating Authority could not hear the version of Corporate Debtor. We have carefully perused the facts of case in the cited judgements by the Learned Counsel for the Petitioner, and found that those facts and circumstances would not be applicable to instant case, as every case filed under Provisions of Code, should first establish facts subject to satisfaction of Adjudicating Authority, as per law and, thereafter, they can rely on judgements, wherein ratio of law is laid down.

10. For the aforesaid reasons and circumstances of the case, we are of the considered opinion that the instant Company Petition is filed with an intention to recover the outstanding amount rather than to initiate CIRP in respect of the Corporate Debtor, which is against the object of the Code and the Petitioner also failed to substantiate the insolvency of the Corporate Debtor. Though the instant Petition is not a fit case to initiate CIRP for the aforesaid reasons, the Respondent is prima facie liable to be pay the admitted outstanding amount, and thus it would be just and proper for the Corporate Debtor to settle the admitted debt, instead of forcing the Petitioner again to approach judicial forum.

[6] (2018) 1SCC 353

11. In the result, C.P.(IB)No.193/BB/2020 is disposed of as not maintainable, by granting liberty to the Petitioner to invoke appropriate remedy available to it under any other law, to recover the outstanding amount. The Registry is directed to forward a copy of this order to the Respondent to take necessary action to settle the issue in the light of above observation. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi