

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**DIVISION BENCH**  
**COURT-1**

ITEM No.134  
CP(IB) 439 of 2018

**Order under Section 9 IBC**

**IN THE MATTER OF:**

JFE Shoji Steel india Pvt Ltd  
V/s  
Danke Technoelectro Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on ..09/02/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Ajai Das Mehrotra, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.



**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**



**MADAN B GOSAVI  
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
COURT-1**

**CP (IB)No.439/9/NCLT/AHM/2018**

*(A Petition under section 9 of the Insolvency and Bankruptcy Code, 2016  
for initiation of Corporate Insolvency Resolution Process)*

**In the matter of:**

**M/s. JFE SHOJI STEEL INDIA  
PRIVATE LIMITED,**

Plot No. F-42, Ranjangaon MIDC,  
Ranjangaon Industrial  
Area, Village Karegaon, Taluka  
Shirur, Pune 412220

..... Petitioner  
(Operational Creditor)

**Versus**

**M/s. DANKE TECHNOELECTRO  
PVT. LTD.**

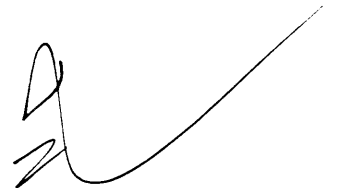
Plot No. 244/8, GIDC Estate  
Waghodia District, Vadodara,  
Gujarat-391760

..... Respondent  
(Corporate Debtor)

**Order Reserved on : 10.01.2022  
Order Pronounced on : 09.02.2022**

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)  
Ajai Das Mehrotra, Member (Technical)**

**Appearance:** Mr. Salil M. Thakore, Advocate for the Operational Creditor and Mr.  
Kunal P Vaishnav, Advocate for Corporate Debtor.



**ORDER**

**[Per: Ajai Das Mehrotra, Member (Technical)]**

1. The present petition is filed under Section 9 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Code, 2016 (hereinafter referred to as “**I & B Code**”) by the Operational Creditor, M/s. JFE Shoji Steel India Pvt. Ltd., seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/s. Danke Technoelectro Pvt. Ltd. (hereinafter referred to as “Corporate Debtor”) for committing the default in paying the operational debt of Rs. 76,68,747.70 (Rupees Seventy-Six Lakh Sixty-Eight Thousand Seven Hundred and Forty-Seven and Seventy Paise only).
2. The Petitioner Company, M/s. JFE Shoji Steel India Pvt. Ltd. is a private company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Plot No. F-42, Ranjangaon MIDC, Ranjangaon Industrial Area, Village Karegaon, Taluka Shirur, Pune-412220, vide CIN:U28113PN2011FTC138267. The Petitioner Company is engaged in the business of producing CRGO Slit coils.
3. The Corporate Debtor Company, M/s. Danke Technoelectro Pvt. Ltd., is a company which is registered under the Companies Act, 1956 and having its registered office at Plot No. 244/8, GIDC Estate, Waghodia 391760, District Vadodara, Gujarat, vide CIN:



U31900GJ2009PTC058250, date of incorporation 7<sup>th</sup> October, 2009, hence, this Authority has jurisdiction to adjudicate the present petition.

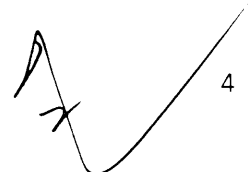
4. The claim of the Petitioner is in respect of unpaid amounts for goods (CRGO Slit coils) supplied by the Operational Creditor to the Corporate Debtor pursuant to the purchase order nos. 234 dated 21.07.2017, 251 dated 31.07.2017 and 252 dated 31.07.2017(pages 24 to 28 of the petition) placed to the Operational Creditor by the Corporate Debtor. Eight invoices were raised by the Operational Creditor for the total amount of Rs. 70,70,289.78/- All the invoices are annexed at pages 30 to 37 of the petition.
5. It is submitted by the Operational Creditor that the Corporate Debtor accepted the delivery of the goods as and when delivered without any protest and without any dispute or complaint as to quality or quantity of goods.
6. It is submitted by the Operational Creditor that despite various oral reminders, the Corporate Debtor did not make the payments. Thereupon, the Operational Creditor sent several emails calling upon the Corporate Debtor to clear the dues of outstanding amount. On 05.02.2018 the Corporate Debtor proposed for making payment of outstanding amount through Minutes of Meeting in three instalments along with interest to the Operational Creditor.



The minutes of the meeting between the parties which are duly signed by the Operational Creditor and Corporate Debtor are at page 76 of the petition. Despite this assurance, the Corporate Debtor did not pay the outstanding amount.

7. It is further submitted by the Operational Creditor that the demand notice dated 06.04.2018 under Section 8 of the IBC was sent to the Corporate Debtor on failure for making the payment of outstanding amount even after aforesaid meeting and assurance. The said Demand Notice was delivered to the Corporate Debtor on 10.04.2018. The corporate Debtor has replied to the demand notice on 18.04.2018, wherein the Corporate Debtor denied the existence of outstanding amount towards the Corporate Debtor and also stated that there is a pre-existing dispute in respect to the supply of goods.
8. It is submitted by the Operational Creditor that during the pendency of the present petition, parties had settled the matter, and the Corporate Debtor handed over the five cheques of Rs. 72,00,000/-. The details of cheques issued by the Corporate Debtor to the Operational Creditor are as under ;

<b>Sr. No.</b>	<b>Cheque No. and date</b>	<b>Amount (In rupees)</b>
1.	128325 dated 19/11/2019	10,00,000
2.	128327 dated 1/12/2019	15,00,000

3.	128328 dated 1/1/2020	15,00,000
4.	128329 dated 1/2/2020	14,00,000
5.	128330 dated 19/3/2020	18,00,000
<b>Total</b>		<b>72,00,000</b>

9. In view of aforesaid settlement, between the parties and making the payment of outstanding amount through cheques by the Corporate Debtor, the present petition was disposed as Dismissed as Withdrawn vide order dated 20.11.2019 passed by this Authority. Since all five cheques except one cheque of Rs. 10,00,000/- issued by the Corporate Debtor for making the payment of outstanding amount were dishonoured, the Operational Creditor initiated proceedings under section 138 of Negotiable Instrument Act, 1882. The Operational Creditor filed an application bearing No. IA 873 of 2020 before this Authority for revival of the present petition. This Authority vide order dated 17.03.2021 restored the present petition at its original stage and disposed of IA 873 of 2020.
10. The Corporate Debtor appeared and contended that no liberty was granted by this Authority to the Operational Creditor to revive the petition while allowed to withdraw and dispose the main petition vide order dated 20.11.2019. It is also submitted that this Authority has no power to review its order.




11. The Corporate Debtor has further submitted that the Operational Creditor has suppressed the material facts from this Authority. The cheques handed over by the Corporate Debtor to the Operational Creditor must be signed by two directors, however, all the cheques have been signed by only one director, hence, the cheques handed over to the Operational Creditor is not a valid instrument in the eye of law. Moreover, the Corporate Debtor has requested to the Operational Creditor to provide Bank details for initiating the RTGS for the said cheques amount. The Operational Creditor intentionally did not hand over the bank details for making the RTGS of cheques amount. This proceeding is nothing but merely to put a pressure on the Corporate Debtor since the Operational Creditor has initiated the proceeding under Section 138 of Negotiable Instruments Act in the Pune Court and approached this Authority after 15 months for revival of the present petition.
12. The Operational Creditor during the course of hearing submitted that the Corporate Debtor has not challenged the order dated 17.03.2021 passed by this Authority against the revival of the present petition. Hence, this contention of the Corporate Debtor does not sustain that no liberty was granted to the Operational Creditor for revival of the instant application if the settlement fails. It is further submitted by the Operational Creditor that the settlement agreement dated 19.11.2019 states that in case

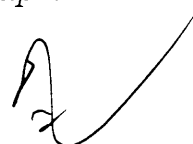


settlement fails, the Operational Creditor can initiate legal proceedings including the revival application. The Operational Creditor has reproduce the relevant para hereunder;

*“In case of any default or non-payment of any of the amounts or part thereof mentioned in paragraph (2) above for any reason whatsoever (including by reason of dishonour of cheque or request for its deferment) by the Respondent, on or before its relevant due date set out therein or any moratorium, restrain or injunction order or direction is issued against the Respondent, then Petitioner shall be entitled to file legal proceedings (including proceedings under the provisions of the Code) without any restriction or limitation of any nature whatsoever...”*

13. The Operational Creditor has stated that this Adjudicating Authority can revive the petition if settlement agreement fails to be executed by the parties. In the matter of **Sree Bhadra Parks and Resorts Ltd. Vs. Sri Ramani Resorts and Hotels Pvt. Ltd.** the Hon'ble NCLAT has confirmed the order dated 28.01.2021 passed by the Kochi Bench wherein the Hon'ble Bench has taken view that technicalities cannot come in the way of justice. The Operational Creditor referred the relevant para of the aforesaid judgment hereunder:

*“...55. Dealing with the aspect of the Appellant's contentions that as per Rule 10 etc., of the Insolvency & Bankruptcy (Application to 'Adjudicating Authority) Rules, 2016, under the caption 'Filing' of application and application fee' that, "till such time the Rules of Procedure for conduct of proceedings under the Code are notified, the application made under Sub-section (1) of Section 7, Sub-Section (1) of Section 9 or Section (1) of Section 10 of the Code shall be filed before the 'Adjudicating Authority' in accordance with Rules, 20, 21, 22, 23, 24 and 26 of Part III of the National Company Tribunal Rules, 2016" etc., this 'Tribunal' pertinently points out that the decision of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. V. Union of India dated 25.1.2019 reported in MANU/SC/0079/2019 squarely applies to the facts of the present case and in fact, the Hon'ble Supreme Court at*



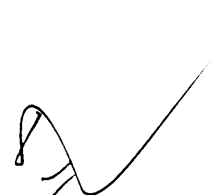


*Paragraph 52 of the Judgement in Swiss Ribbons had made it clear that at any stage where the 'Committee of Creditors' is not yet constituted, a party can approach National Company Law Tribunal directly, which 'Tribunal' may in exercise of its 'inherent powers' under Rule 11 of the National Company Law Tribunal Rules, 2016 allow or disallow an application for withdrawal or settlement and as such, it cannot be said by any stretch of imagination that the 'Adjudicating Authority'(National Company Law Tribunal, Kochi Bench, Kerala) cannot pass an order to restore and revive the application in IBA/13/KOB/2020 by way of an Interlocutory Application filed by the 'Respondent'/ 'Financial Creditor'/ 'Applicant'. Consequently, the contra plea taken on behalf of the 'Appellant' is not acceded to by this 'Tribunal'.*

14. We have heard learned counsels for the Operational Creditor as well as the Corporate Debtor and have gone through the records. It appears that invoices were raised by the Operational Creditor for the amount of Rs. 70,70,289.78/- which were duly confirmed by the Corporate Debtor by settlement proposal through minutes of meeting dated 05.02.2018. The demand notice was also served to the Corporate Debtor on 10.04.2018. In response to said demand notice the Corporate Debtor replied to the Operational Creditor raising a pre-existing dispute on the ground that the Corporate Debtor had to sustain the loss due to delay in supply of goods, thereby the payments from the clients of the Corporate Debtor have been withheld and the contracts have been terminated by the government agencies. This plea of the Corporate Debtor is not sustainable as the Corporate Debtor proposed through minutes of meeting dated 05.02.2018 for payment of Rs. 72,00,000/- by three instalments including interest on the default amount.



15. It is an admitted fact that 5 cheques were issued for the payment of default amount in favour of the Operational Creditor, and the present petition was disposed as “dismissed as withdrawn” by this Authority vide order dated 17.03.2021. But, all except one cheque issued by the Corporate Debtor for adherence to the settlement terms were dishonoured. The Corporate Debtor has further admitted the default amount by stating that he has demanded the bank details of the Operational Creditor for the initiation of RTGS.
16. The contention of the Corporate Debtor that revival of the petition cannot be allowed as no such liberty for revival of the present petition was given by this Authority is also not sustainable. If, there is settlement agreement between the parties and on that basis the petition is disposed of as “Dismiss as Withdrawn” the parties are bound to adhere to their obligations as per the agreed terms of condition of settlement. In the present case the Corporate Debtor had issued the cheques, but all the cheques were dishonoured except one cheque of Rs. 10,00,000/-. The technical error cannot be a ground for evading from the liability. Moreover, this Authority already restored this petition vide order dated 17.03.2021 at its original stage. If Corporate Debtor was not satisfied from the said order, it could have been challenged before the Appellate Authority.
17. The Hon’ble NCLAT in ***Sree Bhadra Parks and Resorts Ltd. (supra)*** in para 56 stated that this Authority can use the inherent



power to render justice to the litigant, the power enshrined under Rule 11 of the National Company Law Tribunal Rules, 2016 enables this Tribunal to allow or disallow an application for withdrawal or settlement and also to allow for restoration or revival of the application.

*“56. It is to be mentioned that an 'inherent power' of the 'Tribunal' has its gross root in necessity and the said power can be exercised by a 'Tribunal' based on the rudimentary principle that an 'act of Court shall prejudice no person'. Further, to meet the ends of justice an 'inherent power' of a 'Tribunal' being 'Co-extensive with need' can be exercised to render justice to the litigants. Also that, I A No. 02/KOB/2021 filed by the Respondent/Financial Creditor/Applicant to restore and Revive the Application IBA/13/KOB/2020 (filed under Section 7 of the Code) is not to be termed as one of 'Review Application' or to be confused with, in the considered opinion of this 'Tribunal'. Undoubtedly, the 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala) had rightly allowed IA No. 02/KOB/2021 in IBA/13/KOB/2021 on 28.01.2021 (filed under Rule 11 of National Company Law Tribunal Rules, 2016 by the 'Respondent'/Financial Creditor) of course, based on proper material before it and the same requires no interference in the hands of this 'Appellate Tribunal' sitting in 'Appeal'. Looking at from any angle, the 'Appeal' sans merits”.*

18. In view of the aforesaid judgment, we are of the considered view that the present petition, which has already been restored on 17.03.2021, is well within the jurisdiction of this Authority. Hence, no question arises at this stage that this Authority has no jurisdiction to restore or revive the main petition in the absence of liberty given in the withdrawal order dated 20.11.2019.
19. It is also noted that there is a due and default and Corporate Debtor is liable to pay the amount of Rs. 72,00,000/-. The petition was filed on 04.09.2018 and date of default is 03.11.2017 which is



well within the threshold limit as given under Section 4 of IBC, 2016.

20. The present petition is defect free and liable to be admitted. Accordingly, we allow the present petition with the following directions:

**ORDER**

- 1) The Corporate Person, viz., M/s. Danke Technoelectro Private Limited, is admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
- 2) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
  - 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 Securitisation and Reconstruction of Financial 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 the possession of the corporate debtor.
- 3) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

- 4) We hereby appoint Mr. Amul Maheshchandra Gandhi, having Insolvency Professional Registration. No. IBBI/IPA-001/IP-P02415/2021-2022/13770, (E-mail ID:amulgandhi@yahoo.com, to act as an IRP under Section 13(1) (c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:
- 5) The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, does not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- 6) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- 7) It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be

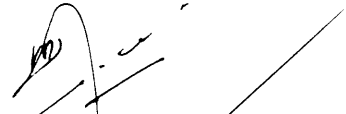


terminated or suspended or interrupted during moratorium period. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

- 8) The Registry is directed to communicate a copy of this order to the Corporate Persons and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
21. Accordingly, CP(IB) No.439/9/NCLT/AHM/2018 is allowed. Insolvency Resolution Professional / Resolution Professional to file progress report through IA.
22. In view of the above, the CP (IB) No.439/9/NCLT/AHM/2018 stands admitted.



**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**



**MADAN B GOSAVI  
MEMBER (JUDICIAL)**