

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-1770/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Pioneer Formwork Private Limited,

Having registered address at

D-147, Okhla Industrial Area, Phase-1

New Delhi-110020

...Operational Creditor/Petitioners

Versus

B L Kashyap & Sons Limited

Regd. Office:

409, 4th Floor, DLF Tower-A,

Jasola, New Delhi-110025

...Corporate Debtor/Respondent

Delivered on 15.03.2022

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Narender Kumar Bhola

Hon'ble Member (Technical)

Appearances:

Operational Creditor : Adv. Bhuvan Arora

Corporate Debtor: Adv. Rakesh Kumar & Adv. Ankit Sharma



ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-1770/ND/2019 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, Pioneer Formwork Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of the Corporate Debtor viz., M/s B L Kashyap and Sons Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

- a. The corporate debtor is a public listed company limited by shares mainly engaged in the civil construction business and Operational Creditor is a Private Limited Company mainly engaged in the business of supplying civil construction equipments on demand basis. It is the case of the Operational Creditor that the Corporate Debtor approached the Operational Creditor in the year 2011 and placed Purchase Order for supply of 5000 units of Acrow Span, SO — SI of 4.15 mt. at the rate of Rs. 1867 per unit at their Bangalore based site vide Purchase Order No. POD/1112/00004383 dated 10.08.2011 and based on the said Purchase Order, the Operational Creditor supplied materials at the project site of B L Kashyap & Sons Limited from 08.11.2011 to 17.12.2011 as per the specifications of the Purchase Order which were duly accepted and acknowledged by the Corporate Debtor.
- b. It is submitted that after supply of the goods as per the specification of the purchase Order and to the satisfaction of the Corporate

Debtor, the Operational Creditor raised Invoices for the materials supplied by it. The Corporate Debtor made on account payment to the Operational Creditor and therefore, the Operational Creditor was constrained to maintain a running account. It is not out of context to mention here that certain ad-hoc payments were made by the Corporate Debtor with respect to the invoices raised by the Operational Creditor. However, with effect from 06.11.2018, the Corporate Debtor stopped making payments for the goods supplied by the Operational Creditor. It is stated that the Operational Creditor sent various reminders/e-mails/made verbal communications to the Corporate Debtor requesting for release of the outstanding payment of the unpaid operational debt. However, all the request of the Operational Creditor fell on the deaf ears of the Corporate Debtor as it failed to make payment against the invoices raised by the Operational Creditor.

- c. It is further submitted that due to continued default, the Operational Creditor sent a Demand Notice dated 10.05.2019 in prescribed Form 3 demanding payment of an unpaid Operational Debt as per the provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. It is stated that the Corporate Debtor failed to reply to the Demand Notice dated 10.05.2019 within the statutory period of 10 days. However, the Corporate Debtor sent alleged reply dated 10.06.2019 to the Demand Notice dated 10.05.2019 partially admitting un-paid operational debt to the tune of Rs. 31,37,925/- and expressed their intention to make the payment in five equal installments. However, till date no payment has been made against the un-paid operational debt.
- d. It is averred that the Corporate Debtor is liable to pay an outstanding principal amount of Rs. 44,07,265/- and an amount of

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Rs. 1,30,80,7651- as interest calculated up to 10.05.2019 aggregating to Rs. 1,74,88,030/-along with future interest after 10.05.2019. That the Operational Creditor received last payment of Rs. 1,00,000/- as part payment towards the outstanding dues on 05.11.2018 and therefore, the present application is being filed within the period of limitation for initiation of CIRP of Corporate Debtor u/s 9 of IBC, 2016.

3. The Corporate Debtor has filed the reply to the present petition and questioned the calculation of outstanding amount and further submitted that the respondent with all bona fide intention honored its part of the business relation and has till date paid an amount of Rs. 24,50,000/- and amount outstanding as of now is Rs.31,37,295/-. It is further stated that the interest on the outstanding is wrongly calculated as per the provision of MSMED Act. The Corporate also argued regarding the status of the Corporate Debtor. It is further stated that the Corporate Debtor is ready to pay the outstanding amount i.e., Rs. 31,37,295/- and same evident from the reply dated 10.06.2019 to the section 8 notice, where the corporate debtor showed intention to amicably settle the lawful outstanding. However, the Operational Creditor did not revert back to the said reply and filed the Petition under section 9 of IBC, 2016 and placed its reliance on the judgment passed by the hon'ble Apex Court in the matter of **Mobilox Innovations Private Limited vs Kirusa Software Private Limited (AIR 2017 SC 4532)**. It was held that once notice regarding existence of dispute is established then the petition u/s 9 of IBC has to be dismissed. It is stated that the reply to the notice u/s 8 of IBC, 2016 remains unanswered, therefore, existence of dispute, hence, the present petition shall be dismissed on the ground that there is existence of dispute with respect to the calculation of interest.



4. The Operational Creditor also filed the written submission and reiterated all the fact as stated in the petition and further submitted that the principal amount is admitted by the corporate debtor, however, it remains unpaid which is more than the threshold in terms of the section 4 of IBC, 2016, therefore, the petition deserves to be admitted.
5. The Corporate Debtor also filed the written submission and raised all the contentions as raised in reply and further submitted that the Corporate Debtor has tendered a Demand Draft dated 09.12.2021 bearing No. 364121 drawn on State Bank of India for an amount of Rs. 31,37,294/- i.e., the complete principal amount in the present petition. The said demand draft was also shared with the counsel of the Operational Creditor vide an email dated 09.12.2021 on its email id. It is stated that the copy of the aforesaid Demand Draft along with the copy of the email dated 09.12.2021 has been filed before the Hon'ble Tribunal on 5.03.2022. The Corporate Debtor in the additional document filed has also given an undertaking to substitute the aforesaid demand draft with the fresh demand draft in case the Operational Creditor does not honor it and the same gets expired. As on the dale the Demand Draft is completely valid and good to be honored if the Operational Creditor wishes to present it to its banker
6. We have perused the Pleadings and arguments advanced by both the parties. It is clear from the pleadings that the corporate debtor has admitted its liability towards the operational creditor. However, it failed to discharge its liability as the admitted amount remains unpaid as on date. It is further noted that during hearing before this Tribunal the Operational Creditor has declined the offer of Corporate Debtor about making payment through a fresh demand draft stating that its claim



against the CD is more than 3 years old. The case laws relied upon by the CD are not found to be of much help in as much as the CD has admitted its liability towards the principal amount of debt due. It is worthwhile to mention here that this authority has to only satisfy itself regarding default in payment by the corporate debtor towards the operational creditor and there is no pre-existing dispute, the moment above conditions are fulfilled, this Adjudicating Authority has to admit the section 9 petition and in the present petition both the conditions are fulfilled as discussed above. Therefore, the Petition deserves to be admitted. It is also pertinent to mention that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor was much before that, since any notification issued by the Government is generally Prospective in nature unless specifically expressed, hence the notification is not applicable to the present case. Hence, this authority is inclined to initiate the CIR Process of Corporate Debtor, therefore, the captioned petition is **admitted**.

7. The Applicant has also proposed the insolvency resolution professional. This Tribunal, hereby, appoints Insolvency Professional namely, **Mr. Deepak Kumar Agarwal** having Registration Number IBBI/IPA-002/IP-N00584/2017-18/11778 (Email ID-dkagarwal.ip@gmail.com) as Interim Resolution Professional as proposed by the Operational Creditor. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

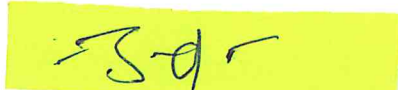


8. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.
10. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.



11. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
12. The Registry is directed to serve a copy of this order on Registrar of Companies, Delhi & Haryana for appropriately updating the status of Corporate Debtor on M/o Corporate Affairs website for information of general public. The RoC as aforesaid shall then file a compliance report in this regard with this Adjudicating Authority.
13. The order is pronounced by this Adjudicating Authority in virtual Hearing.


(Bachu Venkat Balaram Das)
Member (Judicial)


(Narender Kumar Bhola)
Member (Technical)