IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

In CP No. (IB) 63/9/JPR/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

M/s Tushar Tradelink Private Limited
CIN:U52333GJ2009PTC056701
Regd. Office at: Plot No. 312, Umreth GIDC,
Umreth, Anand, Gujarat-388220

… Applicant / Operational Creditor

VERSUS

M/s Viratra Export Private Limited
CIN:U14107RJ2011PTC034180
Regd. Office at: A-190, Saraswati Nagar,
Basni, Jodhpur,Rajsthan-342001

… Respondent/Corporate Debtor

For the Applicant : Mr. Ronak Lodhawala, CS

For the Respondent : None Appeared

Order Pronounced on: 12.04.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Tushar Tradelink Private Limited through its authorised signatory Mr. Parshottambhai Meghjibhai Patel ('Operational Creditor' / 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Viratra Exports Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Tushar Tradelink Private has it's registered office at: Plot No. 312, Umreth GIDC, Umreth, Anand, Gujarat-388220. The Respondent's alleged default for the non-payment of operational dues amounting to Rs. 10,88,408/- (Rupees Ten Lakh Eighty Eight Thousand Four Hundred Eight Only).
3. The Corporate Debtor, M/s Viratra Export Private Limited, is a private limited company incorporated under the Companies Act, 1956 on 15.02.2011, having CIN: U14107RJ2011PTC034180. The Respondent has its registered office at – A-190, Saraswati Nagar, Basni, Jodhpur -342001. The Corporate Debtor has an Authorised Share Capital of Rs. 1,01,00,000/- (Rupees One Crore One

Lakh Only) and a Paid-Up Share Capital of Rs. 1,00,000/- (Rupees One Lakh Only).

4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 270/2020 dated 05.02.2020 are as follows:

    a. The Corporate Debtor has approached the Applicant to purchase Mango wood planks A, planks B, Planks C, Planks D, Planks E, Planks F, and Planks G on 12.06.2018 for an amount of Rs. 4,67,904/- (Rupees Four Lakh Sixty Seven Thousand Nine Hundred Four Only).

    b. Subsequent to the placing of the order the Applicant delivered the goods on 21.06.2018 and further on 26.06.2018. The Applicant received the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) on 17.07.2018 in consideration of the supply of the above-mentioned goods and additionally received post-dated cheques for the remaining payments. The details of the cheques as mentioned below:

Sr. No.	*Cheque No.*	*Date*	*Amount*
1.	*643211*	*17.08.2018*	*2,00,000/-*
2.	*643212*	*21.08.2018*	*2,17,905/-*
3.	*643212*	*27.08.2018*	*2,00,000/-*
4.	*643214*	*31.08.2018*	*2,44,403/-*

    c. However from the aforementioned cheques, Cheque No. 643211 dated 17.08.2018 and Cheque No. 643213 dated 27.08.2018 were presented before the bank and was returned with the remark ‘Fund Insufficient’.

d. Subsequent to that the Applicant received a payment of Rs. 50,000/- (Rupees Fifty Thousand Only) on 10.04.2019 and for the remaining amount made several reminders for the unpaid operational dues against the goods supplied.

c. The Applicant, in pursuance of the above cause of action, issued a Demand Notice dated 12.08.2019 ('Demand Notice') to the Respondent through speed post at the registered office of the Respondent. The Demand Notice under Section 8 of the IBC stated unpaid Operational Debt as Rs. 10,88,408/- (Rupees Ten Lakh Eighty Eight Thousand Four Hundred Eight Only). The notice called for the immediate payment of the operational due within ten days from receipt of the Demand Notice failing which proceedings to initiate CIRP against the Respondent's company was stated to start. Copy of the Demand Notice dated 12.08.2019 annexed as Annexure A1 of the Application.

e. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 10,88,408/- (Rupees Ten Lakh Eighty Eight Thousand Four Hundred Eight Only).

2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 10,88,408/- (Rupees Ten Lakh Eighty Eight Thousand Four Hundred Eight Only). Date from which Debt fell Due: 10.09.2018

5. In spite of the service of notice on the Corporate Debtor, there was no representation. The Applicant was directed to issue fresh notices to the Respondent *vide* Order dated 11.01.2023. The compliance for the same is done by the Applicant *vide* Diary No. 609/2023 dated 06.03.2023. In the interest of justice, the last opportunity was provided to the Corporate Debtor, and the Registry was also directed to send notices *vide* Order dated 11.01.2023; the same has complied *vide* Sr. No. 06/2023.
6. On the next date of hearing dated 10.02.2023 is stated that it is seen despite the service of several notices Respondent/Corporate Debtor is not appearing in the proceedings. It is noted that the Respondent has not filed any reply to this application in the face of having numerous opportunities provided by this Authority in the matter and wilfully avoiding appearance in the present case. Thus, the Respondent has forgone its right to file a reply, and *ex-parte* proceedings are being initiated against it.
7. During the hearing, the learned counsel for the Applicant relied on the Application filed and stated that the requirements of Section 9 of the Code

were satisfied. We have carefully considered the submissions of learned counsel for the Applicants and have perused the record.

8. The Applicant also filed written submissions *vide* Dairy No. 610/2023 dated 06.03.2023 whereby the Applicant has given a tabular chart of the transaction and reiterated the same as mentioned in the petition and additionally relied on the following case laws:

   A. *Sun Infinity Devices Through its Proprietor Mr. Harish Sahni Vs Sunstrike Telecom Private Limited in Company Petition No. (IB) 295/(ND)/2022, (NCLT New Delhi) dated 10.02.2023*

   B. *Erectors and Materials Hanndlers Private Limited Vs LSML Private Limited in Company Petition No. CP/IB/25/CHE/2022(NCLT Chennai) dated 14.10.2022*

9. This Adjudicating Authority having perused all the relevant papers and finding them in the order notes that the Registered Office of the Respondent is situated in the state of Rajasthan, and therefore Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the time period of default is in the year 2018 and the Application has been filed before this Adjudicating Authority on 05.02.2020, hence the period of three years after the default occurred had not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.

10. In the present case, the occurrence of default is evidenced by the details furnished by the Applicant. Further, the copies of the tax invoices, E-way bills, and the copies of signed and sealed ledger accounts by the Corporate Debtor in the books of the Applicant, and the copy of the Demand Notice dated 12.08.2019 are attached to the Application.

11. In *M/s S.S. Engineers versus Hindustan Petroleum Corporation Ltd. & Ors. Civil Appeal No. 4583 OF 2022*, in para 16, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 16 is as follows:-

> *"16. When examining an application under Section 9 of the IBC, the Adjudicating Authority would have to examine (i) whether there was an operational debt exceeding Rupees 1,00,000/- (Rupees One Lac); (ii) whether the evidence furnished with the application showed that debt exceeding Rupees one lac was due and payable and had not till then been paid; and (ii) whether there was existence of any dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute. If any one of the aforesaid conditions was not fulfilled, the application of the Operational Creditor would have to be rejected."*

12. The application filed in the prescribed Form No. 5 is complete.

13. The Operational Debt and further default in the debt payment should be established to initiate proceedings under Section 9 of the IBC. The Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the

Adjudicating Authority has come to the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated.

14. The Applicant has named one Mr. Sachin Naveen Sinha with Registration No. IBBI/IPA-002/IP-N00939/2019-2020/12985, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record. A copy of the Written Consent of the IRP is annexed as Annexure – C (Colly) of the Written Submissions filed by the Applicant.

15. Consequences of initiation of CIRP shall be inter-alia as follows:

   a. The Insolvency Resolution Professional proposed by the Applicant, Mr. Sachin Naveen Sinha, is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issuance of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same shall be done.

b. Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.

c. The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor.

d. In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

e. In terms of Section 9 of IBC, 2016, this Order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, and the IRP appointed by this Adjudicating

Authority to carry out the CIRP. A copy of this Order shall also be communicated to IBBI for its records.

16. Accordingly, CP No. (IB) 63/9/JPR/2020 is admitted in the abovementioned circumstances.

DEEP CHANDRA JOSHI

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

PRASANTA KUMAR MOHANTY

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PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER