

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AMRAVATI SPECIAL BENCH**

**Company Petition (IB) No. 111/09/AMR/2022**

*An application under section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with rule 6 of the Insolvency and  
Bankruptcy (Application to Adjudicating Authority) Rules,  
2016.*

*And*

*In the matter of M/s. FANS ASIA PRIVATE LIMITED*

**BETWEEN:**

Mr. Shiv Kumar Jain  
Proprietor of Panna Lal Jain & Sons  
Ganj Bans Tall, Railway Station Road,  
Raipur, Chhattisgarh  
Email: [pljiraipur@gmail.com](mailto:pljiraipur@gmail.com).

... Operational Creditor/ Petitioner

*Versus*

FANS ASIA PRIVATE LIMITED  
S.No. 128/1, F.No. 404 – Vinayak Paradise  
Autonagar, Visakhapatnam – 530012  
Email: [fabasia@fansct.com](mailto:fabasia@fansct.com)

... Corporate Debtor/ Respondent

**Date of Hearing: 30.08.2023**

**Date of Pronouncement: 20.10.2023**

**CORAM:**

**Hon'ble Smt. Bidisha Banerjee, Member (Judicial)**

**Hon'ble Shri. Charan Singh, Member (Technical)**

**APPEARANCE:**

**For the Operational Creditor :** Mr. Sanyam Jain, Advocate

**For the Corporate Debtor :** Mr. Nikhil Kumar Varma, Advocate

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

**1. Briefs facts of the case:**

- a) Heard the Ld. Counsels for the parties.
- b) The present application has been filed by the Shiv Kumar Jain/ operational creditor under Section 9 of Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against the corporate debtor "FANS ASIA PVT. LTD".

**2. Submissions of the applicant:**

- 2.1 The operational creditor (OC in short) is a proprietor of M/s Pannalal Jain & Sons and is engaged in business of welding equipments, welding machines, welding electrode and all kinds of projects items.
- 2.2 The Corporate Debtor (CD in short) is a company registered under the Companies Act of 1956, engaged to undertake turnkey EPC Contracting of Cooling Tower Packages, Retrofitting Services, supply of spares, and Civil Construction projects for Power plants and other process industries, having its registered office at S no-128/1, F no. 404-Vinayak paradise, Autonagar, Visakhapatnam, AP-530012.

- 2.3 Between 2016 to 2019, the operational creditor had supplied some materials namely GI Pipes, MS Pipes, TMT bars etc. to the corporate debtor as per specifications at different sites of corporate debtor in Meja in Uttar Pradesh, Nabinagar in Bihar and Simhadri in Vishakhapatnam (Andhra Pradesh).
- 2.4 The operational creditor had raised various invoices against the said supplies. The Operational creditor sent several mails to reconcile the particular balance statements but the corporate debtor never replied satisfactory to such E-mail and never pay heed to such request of the operational creditor.
- 2.5 The pendency of the amount clearly reflected from the statement of Books of account maintained by operational creditor and amount receivables in the bank account which is reflected from the bank statements. Thereafter operational creditor issued demand notice u/s 8 of the Insolvency and Bankruptcy code, 2016 dated 20.07.2021 postal receipts of Indian Speed post-dated 20.07.2021 and E mail dated 28.07.2021 through its advocate are annexed. Even after the expiry of 10 days of receiving the notice under section 8 of the code, the corporate debtor has failed to repay the debt to the extent of Rs 9,75,02,061/-(Rupee Nine Crore Seventy Five Lacs Two Thousand and Sixty One Only) inclusive of the interest to the operational creditor, the operational

creditor has filed the present application before this Adjudicating Authority to initiate a Corporate Insolvency Resolution Process under section 9 of the code. The copies of unpaid invoices are annexed as Annexure- I/C (Page 30-274 of main petition), Accounting ledger maintained by OC from the year 2016 to 2019 of different sites of CD forms Annexure-I/D (Page 275-314 of the Main petition), Detailed working computation forms Annexure-I/E (Page 315-320 of the main petition) and Bank Statement of the OC forms Annexure-I/F (Page 321-385 of the main petition).

- 2.6 The demand notice dated 20.07.2021 send through E mail dated 22.07.2021, through Indian speed post to the corporate debtor did get served on 03.08.2021 and 22.07.2021 respectively. The E mail never bounced back. The copy of Demand notice through speed post along with tracking reports is **Annexure I/G (Page-386-394)** and Demand notice through Email dated 22.07.2021 is **Annexure I/H (Page-395-397)**. Despite service of notice, the operational creditor never received any reply/notice of dispute of its demand notice u/s section 8 from corporate debtor.
- 2.7 The Total amount due from the corporate debtor as on the date of filing of the present application is Rs. 9,75,02,061/- (Rupee Nine Crore Seventy Five Lacs Two Thousand and Sixty-One Only) Inclusive of the interest (Page 9 of the main petition).

**3. Defence of the Corporate Debtor:**

- a) It has not received any demand notice under Section 8 of the IBC 2016.
- b) It has shifted office, hence the demand notice was sent to a wrong address.

**4. Response of the OC:**

**4.1 Service of notice:**

- 4.1.1 The CD has not used any reply to controvert the statements in the CP.
- 4.1.2 The Board Resolution dated 14<sup>th</sup> October 2021 was taken for Shifting of registered office along with Form no INC 22. The demand notice was sent by OC, by both the modes on 20.07.2021 and 22.07.2021 respectively long before the resolution.
- 4.1.3 Thus the above-mentioned Board Resolution passed on 14<sup>th</sup> October 2021, was subsequent to receipt of the demand notice under Section 8 which was three months prior to the date of shifting of registered office of CD i.e. 14<sup>th</sup> October 2021.
- 4.1.4 The CD is duty bound to inform OC regarding of changing address. Hence no question arises of service of demand notice to a wrong address. The OC filed Postal Receipts and Proof of service already filed before this Hon'ble Tribunal. Hence demand notice was properly served. The

BR dated 14<sup>th</sup> October 2021 along with form no INC 22 is annexed as Annexure 1.

**4.2 Whether the application is complete:**

The Application filed by the Operational creditor is complete in all respects. The operational creditor has annexed all the documents through which debt and default of the corporate debtor can be ascertained. The operational creditor has annexed “Form 5(Page 6-14)”, Memorandum of Appearance/ Vakalatnama(Page-398)”, “ Master data of CD (Page-22A)”,” Affidavits under 9(3)(B) & 9(3)(C) of IBC (Page 15 to 22)” “ working computation & Statement of accounts (Page 315 to 385) and “ Demand Notice along with proofs (386-397) with the present application. Hence, petitioner has fulfilled all the criteria as required under section 9(5)(1) of IBC.

**4.3 Whether present case is hit by limitation:**

The CD has argued that there is a issue of limitation in the present case, OC has submitted that on 30.03.2020, an amount of Rs.2,46,00,000/- was received by OC vide voucher no 984 which is reflected in page no 305 of the main petition and CD never disputed the same in their reply. The demand notice was sent on 23.07.2021 and present case was filed on 23.09.2022. That CD also paid some amount of Rs 20,00,000/- dated 03.01.2022, Rs 20,00,000/- 19.02.2022 & Rs 25,00,000/- dated 31.03.2022. Hence present case is well in the limitation period. Ledger of CD dated 01.04.2021 to

31.03.2022 maintained by OC along with extracts of bank statement clearly reflects Amounts of Rs.20,00,000/- dated 03.01.2022, Rs.20,00,000/- dated 19.02.2022 & Rs.25,00,000/- dated 31.03.2022 paid by CD.

Copy of extract of bank statement reflecting the amount is annexed as Annexure A2 and A3 respectively.

**4.4 Whether Fans Asia Pvt. Ltd. and Fans A.S both are different entities or debtors:**

The amount claimed in demand notice from corporate debtor i.e., FANS ASIA PRIVATE LIMITED are as follows:

Name of the Entity	Principal	Interest	Total
Fans Asia Private Limited	5,57,49,786	3,17,52,037	8,75,01,823
Fans A.S.	49,05,167	47,95,068	97,00,235
<b>Grand Total</b>	<b>6,06,54,953</b>	<b>3,65,47,105</b>	<b>9,72,02,058</b>

It is submitted that Fans A.S. holds 85% Equity share capital of Fans Asia Private Limited. During the time of supply, it was mentioned by CD to OC that Fans Asia Private Limited is a subsidiary of a foreign company and during the course of business goods will be supplied to Fans A.S. and Fans Asia Private Limited will be responsible/liable for the case of default by Fans A.S. Therefore dues of Fans A.S. has been included in the demand notice of Fans Asia Private Limited. It is further submitted that the claim against the Fans Asia

Pvt. Ltd itself is more than threshold limit hence the application is entertainable.

**4.5 Clubbing of Interest clause is through invoice or agreement:**

- a) The CD has not filed any supporting documents to demonstrate existence of pre-existing dispute between the parties. Interest clause is mentioned in each and every invoice of OC which is annexed with the petition.
- b) Once CD started to make payment to OC against some of the invoices it is deemed acknowledgement/acceptance of the interest clause mentioned in the invoices.

**4.6 Pre-existing Disputes:**

- a) CD never raised any dispute against dealings with OC because in reality no dispute exists between OC and CD.
- b) The CD has tried to mislead and take moonshine defence at the time of final arguments.
- c) The CD has not lodged any criminal complaint against OC neither filed any civil case for any recovery or fraudulent transaction dispute before any court till date.
- d) CD has not sent any E-mail regarding inferior quality goods supplied by OC nor replied to the section 8 demand notice.

Therefore, no defence towards the existing dispute is available with the debtor.

#### 4.7 Judicial Precedents:

In “**M/s Sahaj Bharti Travels vs M/s HCL technologies. Limited**”

the NCLT, New Delhi admitted an application under section 9 of the code and held that the adjudicating authority only needs to determine the existence of the debt and the default of the debt, and need not engage in determining the extent or details of the debt. The NCLT, New Delhi placed reliance on the decision of the Supreme Court in "**Innovative Industries Ltd. vs ICICI bank & Ors**", wherein it was held that the code is triggered the moment there is a default and the application must be admitted when the same occurs.

#### 4.8 Analysis and Findings:

- a) From the foregoing submissions the existence of debt and default is established.
- b) Service of Section 8 notice to a wrong address could not be established by the CD.
- c) There is no pre-existing disputes between the parties.
- d) The intermittent payments tendered till 13.3.2022 ought to be treated as acknowledgement of debt which cures the delay if any.
- e) Even in course of hearing it has on several occasions come to light that the OTS proposal talks were going on which establishes a debt, a default and acknowledgement of debt and default.
- f) The Memo filed by Corporate Debtor reads:

“The Corporate Debtor respectfully submits that during the course of oral submissions before the Honourable Special Bench, it was brought to the notice of the of Tribunal that the claim by the Operational Creditor is a disputed claim and that the same is also pending before the Hon'ble Madras High Court and that the Corporate Debtor has made payment of Rs.3.50 crores in the registry of the High Court, and that the Operational Creditor is entitled to withdraw the same by furnishing bank guarantee in favour of the registrar of the High Court.

This Hon'ble Tribunal has directed the Corporate Debtor file a copy of the High Court order in OA No. 30231 of 2023 and Arbitration Application Nos. 6 & 7 of 2023; and the same is accordingly filed herewith. Hence this Memo.”

The Arbitration Petition 334 of 2023 and the order passed in Arbitration proceedings is evidently subsequent to the CP 134/2022.

No stay order as the CIRP is evident.

5. Hence the CP is admitted.
6. In light of the above facts and circumstances, it is, hereby ordered as follows:-
  - a. The application bearing **CP No.(IB) 111/09/AMR/2022** filed by Shiv Kumar Jain, 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 CIRP against Fans Asia Pvt. Ltd, the Corporate Debtor, is *admitted*.

- b. There shall be a moratorium under section 14 of the IBC.
- c. 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.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Sesa Srinivas Malladi (IBBI/IPA-001/IP-P01130/2018-2019/11930), R/o.12-2-823/A-57, 3<sup>rd</sup> Floor, Sita Lakshmi, Santhosh Nagar Colony, Mehdipatnam ,Behind Arvind Eye Hospital, Asifnagar, Hyderabad, Andhra Pradesh ,500028 email: ip.malladi63@gmail.com, Mobile No:+91 9820157462** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India

(Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- i. The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
  - j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
  - k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies by all available means 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.
7. CP(IB)/111/09/AMR/2022 to come up on 27/11/2023 for filing the periodical report.
8. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

Sd/- Dated 20/10/23  
SHRI CHARAN SINGH  
MEMBER TECHNICAL

Sd/- Dated 20/10/2023  
Ms. BIDISHA BANERJEE  
MEMBER JUDICIAL