

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -V**

C.P. (I.B) No. 135/MB/2022

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

In the matter of

M/s. Prism Johnson Ltd.

Having its registered address at 305 Laxmi Niwas Apartments, Ameerpet, Hyderabad 500 016 (Telangana)

...Operational Creditor/Applicant

Vs

M/s B E Billimoria & Co Ltd.

Shiv Sagar Estate, 'A' Block 2nd Floor Dr. A.B Road, Worli, Mumbai 400 018

...Corporate Debtor/Respondent

Order Dated: 23.02.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances: (Physical)

For the Operational Creditor: Adv. Sagar Wagle

For the Corporate Debtor: Adv. Bhavana Dubepatil

ORDER

Per:Madhu Sinha, Member (Technical)

1. This Company Petition is filed by M/s. Prism Johnson Ltd. (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against M/s B E Billimora and Company Ltd. (hereinafter called “**Corporate Debtor**”) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs.2,84,82,642 /-** including interest of Rs.88,99,349/- at the rate of 18% p.a. till 30.06.2021.

Brief Facts :-

1. The Corporate Debtor approached the Operational Creditor for supply of ready-mix concrete to the project site of the Corporate Debtor named ‘*North Eye Project*’ in Noida. Accordingly, the Corporate Debtor issued a Purchased Order dated 26.08.2011 bearing reference number *BEBL/1380* to the Operational Creditor for the supply of approximate quantity of 90,000 ready mix concrete for a period of 39 months. Thereafter, the purchase order was further extended by the Corporate Debtor vide letter dated 23.05.2018 bearing reference number *BEBL/208*.

2. Subsequently, the Operational Creditor has supplied 1,57,481.76 cubic meters of mixed concrete to the Corporate Debtor from 30.04.2010 to 25.10.2019.
3. Thereafter, several Tax Invoices from 20.06.2019 to 31.05.2020 were raised by the Operational Creditor to the Corporate Debtor containing the due date of the payment. However, the Corporate Debtor since 24.10.2019 defaulted in making payment.
4. It is further submitted that the Corporate Debtor issued Reconciliation Statement dated 05.03.2020 to the Operational Creditor, thereby acknowledging the debt payable by the Corporate Debtor to the Operational Creditor.
5. Pursuant to the above, the Operational Creditor through its Advocate served a demand notice on 29.07.2021 in Form- 3 under Section 8 of the Insolvency and Bankruptcy Code 2016, to the Corporate Debtor. The Advocates of the Corporate Debtor replied to the said Demand Notice on 03.09.2021. However failed to make the payment to the outstanding dues. Hence this Petition.

Submission by Corporate Debtor.

6. The Corporate Debtor had filed their Affidavit in Reply (“**Reply**”) and denied each and every statement, contention and allegation made by the Petitioner.
7. It is submitted that vide purchased order dated 26.08.2011 bearing reference number *BEBL/1380*, the Operational Creditor failed to perform its obligations and several discrepancies were noted in the

quantity and quality of the ready mix concrete supplied by the Operational Creditor. The Corporate Debtor vide email 14.04.2015 had called upon the Operational Creditor to provide written explanation qua the difference in the excess quantity of micro concrete batches versus the actual theoretical quantity as identified on the project site. In furtherance of the same the Corporate Debtor vide Email dated 10.08.2015 brought to the notice of the Operational Creditor that the '*North Eye site*' was not working due to no concrete at the project site.

8. The Corporate Debtor thereafter once again, vide its email dated 30.08.2015 informed the Operational Creditor that there was lower amount of concrete (50 to 55 cubic meters) compared to the required quantity of 155 cubic meters which has resulted in delays and disruptions at the project sites.
9. In continuation to the aforesaid conduct, the Corporate Debtor vide its email dated 08.09.2015 brought to the notice of the Operational Creditor that there was no cement in its batching plant at the project site which has directly impacted the progress at the project site.
10. The Corporate Debtor submitted that vide email dated 10.09.2015, 20.01.2016 and 05.03.2016 informed the Operational Creditor that due to the non-availability of concrete at the project site, 550 numbers of labors were sitting idle and the progress at sites getting hampered.
11. In response thereof, the Operational Creditor vide its email dated 8th March, 2016, intimated that all cement companies have

reduced their supplied for Delhi-NCR Market by 30-40% thereby admitted the defaults on its part and stated that no debit note would be acceptable which makes it clear that there exists a dispute. Therefore, the present Petition deserved to be dismissed.

12. It is further submitted that despite continuation of the aforesaid Work Order, revised Work Order with the Operational Creditor for providing Pumpable ready-mixed Concrete for its projects at North Eye and ORB vide its Letter being Ref No, BEBL/208 dated 23 May, 2018 was executed, expecting a more professional approach this time. However, the lackadaisical approach, defective work, substandard quality of material and non-committal operations of the Operational Creditor persisted and therefore the same caused irreparable losses to the Corporate Debtor.
13. It is submitted that the Corporate Debtor is entitled to recover from the Operational Creditor a sum of Rs. 54,16,856,82/- towards difference in quantity of readymix concrete supplied. The Corporate Debtor through its advocate has issued a Legal Notice dated 21st February, 2022 calling upon the Operational Creditor to pay a sum of Rs. 54,16, 856.82/- to the Corporate Debtor.
14. The Corporate debtor with reference to PART- IV of the Petition submitted that a sum of Rs. 1,95,83,294 is due and payable to the Operational Creditor as on 30.06.2021, since the entire amount is thoroughly disputed. The disputes have arisen between the parties since the year 2015 itself and therefore such claim of the Operational Creditor cannot base being free of any dispute.

15. The Corporate Debtor has further submitted that in absence of any agreement between the Operational Creditor and Corporate Debtor. The Operational Creditor is in no position to levy interest @18% p.a. and denied the interest of Rs. 88, 99,349/- is due and payable.
16. The Corporate Debtor further submitted that with reference to the date of default the Operational Creditor has mentioned 25.09.2019 in the Demand Notice however, the same has been changed to 24.10.2019 in the captioned Petition. Therefore, this Petition deserves to be rejected on the ground of different dates on which debt fell due.
17. Furthermore, the Corporate Debtor submitted in its reply to the demand notice vide letter dated 03.09.2021, that the Corporate Debtor has called upon the Operational Creditor to treat the said Letter as a 'Notice of Dispute'. Therefore, the present petition deserves to be dismissed on the ground that there is a pre-existing dispute between the parties.

Findings

18. We have heard the Counsel for the parties and perused the documents available on the record.
19. The present petition reveals that the Corporate Debtor issued a Purchased Order dated 26.08.2011 bearing reference number *BEEL/1380* to the Operational Creditor which was further extended the purchase order vide letter dated 23.05.2018 bearing reference number *BEEL/208* for the supply of ready mix concrete

to the Corporate Debtor. Subsequently, several Tax Invoices were raised from 20.06.2019 to 31.05.2020 by the Operational Creditor to the Corporate Debtor. However, the counsel for the Petitioner submits that the Corporate Debtor failed to make the payment and the Part IV of the Company Petition reveals the date of default as 24.10.2019.

20. In response to the above submission, the counsel for the Respondent raised the contention that there exist a pre-existing dispute between the parties as the Operational Creditor has failed to perform its obligations vide purchased order dated 26.08.2011 bearing reference number *BEBL/1380* and several discrepancies were noted in the quantity and quality of the ready mix concrete. The discrepancies were communicated to the Operational Creditor vide Email dated 14.04.2015, 10.08.2015, 30.08.2015, 08.09.2015, 10.09.2015, 20.01.2016 and 05.03.2016.
21. However, considering the above contention raised by the Corporate Debtor, this Bench observes that the Corporate Debtor had relied on the emails from 14.04.2015 to 05.03.2016. This bench has further observed the Corporate debtor had issued a Reconciliation Statement dated 05.03.2020 to the Operational Creditor, wherein the Corporate Debtor had acknowledged the debt payable to the Operational Creditor, thereby implies that the previous disputes if any raised by the Corporate Debtor were settled. Furthermore, the Corporate Debtor had also extended the purchase order to the Operational Creditor vide letter dated 23.05.2018 bearing reference number *BEBL/208* for the supply of ready-mix concrete to the Corporate Debtor. Thereafter no contention of Pre-existence of dispute was raised by the Petitioner. However, The Corporate

debtor after receiving the Demand notice dated 29.07.2021 from the Petitioner, replied after 10 days of receiving the Demand notice through their Advocates on 03.09.2021 raising the contention of the Pre-existence of dispute and calling the reply to the demand notice as notice of dispute. However, considering the above facts and circumstances the Corporate Debtor intentionally raises the contention of the Pre-existence of dispute to dodge the Admission under Section 9 of the IBC. Since, the Corporate debtor had itself vide its Reconciliation Statement dated 05.03.2020 had acknowledged the debt payable to the Operational Creditor and not raised any dispute with respect of the same thereafter. It is only at the time when the Respondent received the Demand Notice dated 29.07.2021, the Corporate Debtor decided to raised the issue of pre-existence of dispute. Therefore, in the Considered opinion of this Bench, the issue with respect to the existence of dispute is mere a moon shine defense.

22. The another contention raised by the Respondent is that the Operational Creditor in absence of any agreement between the Operational Creditor and Corporate Debtor is in no position to levy interest @18% p.a. and denied the interest of Rs. 88, 99,349/- as mentioned in the Part IV of the Company Petition. In respect of the above contention this Bench observes the invoices issued by the Petitioner to the Respondent which are signed by both the parties are annexed as "*Exhibit D Colly*" to the Company Petition which reveals that "**Interest @24% p.a. will be levied in case payments are delayed beyond the agreed terms of payment**". The relevant extract of the note of the invoice is reproduced herein : -

Note

1. In case of any discrepancy or any complaint we request you to get back to Our Concerned Dept/ Officer at the phone nos given above, within 48 hours.
2. Interest @24% p.a will be levied in case payments are delayed beyond the agreed terms of payment. ■

23. After considering the above invoices, the Petitioner in the Part IV of the Company Petition has levied 18% p.a. interest on the default amount. The Petitioner during the submission has submitted that owing to the business relations and in order to continue the business with the Respondent the Petitioner has levied less interest on the Respondent at the rate of 18% p.a. Therefore, the contention of the Respondent that there exists no agreement between the Operational Creditor and Corporate Debtor to levy interest @18% p.a. is false and cannot be relied upon.
24. As a result of the foregoing discussion, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” and “**default**” admission under Section 9 of the IBC.
25. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
26. The Operational Creditor has not proposed any Resolution Professional. Therefore, this Tribunal is to appoint a Resolution Professional from the panel approved by the IBBI.
27. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- a. The above Company Petition No. 135/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s B E Billimoria & Co Ltd.**

- b. **Umesh Chand Goyal**, having registration No. IBBI/IP-001/IP-P-01876/2019-2020/12974, having email Id-goyaluc.ip@gmail.com, having address - Flat No. A-603, Wing-A Tower-4, "Enchante" Lodha New Cuffe Parade Wadala (East),Mumbai - 400037, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

Accordingly, CP 135 of 2022 is **admitted**.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

/Abhay/

SD/-

REETA KOHLI
MEMBER (JUDICIAL)