

Proceedings under Section 9 IBC

IN THE MATTER OF:

Gimatex Industries Private Limited

.....Applicant

V/s

Mafatlal Industries Limited

.....Respondent

Order delivered on 17/05/2023

Coram:

Mr. Deep Chandra Joshi, Hon'ble Member(J)

Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

SD/-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)



**THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 172/NCLT/AHM/2021

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Gimatex Industries Private Limited

**Applicant/
Operational Creditor**

Versus

Mafatlal Industries Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 17/05/2023

Coram:

DEEP CHANDRA JOSHI

HON'BLE MEMBER (JUDICIAL)

AJAI DAS MEHROTRA

HON'BLE MEMBER (TECHNICAL)



MEMO OF PARTIES

M/s. Gimatex Industries Private Limited

Having registered office at:

202, 2nd Floor, A-Wing

Ramji House 30, Jambulwadi Kalbadevi Road,

Mumbai 400 002

And

Corporate Office at:

Ram Mandir Ward,

Hinganghat,

Dist. Wardha 442 301

Maharashtra State

...

Applicant/Operational Creditor

Versus

Mafatlal Industries Limited

Having Registered Office at:

301-302, 3rd Floor

Heritage Horizon, Off. C.G. Road

Navrangpura,

Ahmedabad, Gujarat- 380 009

And

Corporate Office at:

Mafatlal House, 5th Floor,

H.T. Parekh Marg, Backbay Reclamation

Mumbai 400 020

...

Respondent/Corporate Debtor

Appearance:

For Applicant : Mr. Amit Agrawal, Advocate

For the Respondent : Mr. Apurva Vakil, Advocate



ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Rameshchand Gandhi, Director of **M/s. Gimatex Industries Private Limited** (for brevity 'Applicant') (CIN No. U17120MH1994PTC079863) authorised vide Board Resolution dated 15.05.2021, with a prayer to initiate the Corporate Insolvency Process (CIRP) against **Mafatlal Industries Limited** (for brevity 'Corporate Debtor').
2. The applicant is a private limited company incorporated on 26.07.1994 under the provisions of the Companies Act, 1956, having its Registered Office at 202, 2nd Floor, A Wing, Ramji House 30, Jambulwadi Kalbadevi Road, Mumbai, Maharashtra 400 002, engaged in the business of spinning, weaving and finishing of textiles.
3. The corporate debtor is a public limited company, incorporated on 20.01.1913 under the provisions of the Companies Act, 1882 having its registered office at 301-302, 3rd Floor, Heritage Horizon, Off. C.G. Road, Navrangpura, Ahmedabad 380 009, duly registered with
CP (IB) /172/NCLT/AHM/2021



Registrar of Companies, Ahmedabad, Gujarat State with CIN: L17110GJ1913PL000035. The authorised share capital of the corporate debtor is Rs. 100,00,00,000/- and paid up share capital of the company is Rs. 13,99,43,860/-. The corporate debtor is engaged in the business of spinning, weaving and finishing of textiles.

4. It is submitted by the applicant that various purchase orders were placed by the corporate debtor and accordingly goods were supplied by the applicant during the period from March 2020 till December 2020. Thus, the parties were in continuous trade transactions and the last invoice was raised on 25.12.2020. As per the terms of payment set out in the invoice, payment of the invoice dated 25.12.2020 had fallen due on 24.02.2021. The corporate debtor has made part payments of meagre sums in the month of May/June, 2021.

5. It is further submitted by the applicant that a sum of Rs. 4,46,52,598/- (Rupees four crores forty-six lacs fifty-two thousand five hundred ninety-eight only) towards principal debt against the goods that were supplied to the corporate debtor as on 03.06.2021 and Rs. 67,30,084/- (Rupees sixty-seven lacs thirty thousand eighty-four only) towards interest @ 18% per annum as on 31.07.2021 plus future interest at the



rate of 18% per annum till final realisation of the total unpaid operational debt is payable by the corporate debtor. As per part IV, Form 5 of the application, the debt fell due on 25.02.2021.

6. On not receiving the payment of the long outstanding, the applicant issued demand notice in form 3 dated 11.08.2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016. Applicant has produced a copy of track report evidencing delivery of the said notice as per the address in master data of the corporate debtor.
7. Thereafter, the applicant filed application on 22.09.2021 under Section 9 of the Insolvency & Bankruptcy Code, 2016.
8. In support of its claim, the applicant has produced on record copies of the documents tabled below:

Sr. No.	Particulars	Page number
01	Fabric sale contracts executed between the parties	54-127
02	Purchase orders placed by the corporate debtor	128-239
03	Invoices raised by the applicant in respect of the goods sold and supplied	240-320
04	E-way bills raised by the applicant in respect of the goods sold and supplied	321-401
05	Ledger statement maintained by the applicant in respect of the goods returned by the corporate debtor	402
06	Emails issued by the applicant to the corporate debtor	403-426
07	ledger statement maintained by the applicant from the year 2017 till the year 2021	427-457



08	Legal demand notice dated 18.05.2021 issued by the applicant	458-472
09	Reply dated 28.05.2021 issued by the corporate debtor	473-477
10	Rejoinder dated 15.06.2021 issued by the applicant to the reply issued by the corporate debtor	478-499
11	Legal demand notice dated 05.07.2021 issued by the corporate debtor	500-507
12	Reply dated 20.07.2021 issued by the applicant to the legal demand notice issued by the corporate debtor	508-539
13	Statutory demand notice under Section 8 of the IB Code dated 11.08.2021 issued by the applicant.	540-565
14	Reply to the notice dated 19.08.2021 issued by the corporate debtor	566-570
15	Rejoinder dated 23.08.2021 issued by the applicant to the reply issued by corporate debtor	571-587
16	Detailed sheet incorporating the details of purchase orders, invoices raised, due date and interest accrued for delayed payment	588-589
17	Master Data of the corporate debtor as available with RoC	590-591
18	Personal identities of applicant, GST Registration Certificate Master Data and Certificate of incorporation of applicant	592-599
19	Authority letter and Board Resolution of applicant for initiating CIRP against the corporate debtor	600-602
20	Proof of service	602a and 602b

9. The corporate debtor filed affidavit in reply inter alia stating that:
- There is a pre-existing dispute between the applicant and corporate debtor prior to issuance of the statutory notice dated 11.08.2021 and that the said as a suit was filed on 19.07.2021 by the corporate debtor against the applicant.
 - Various fabric sales contracts were governed by its respective terms and conditions, more particularly with regard to delivery, payment, interest etc. and in the course of execution of the



fabric sales contracts, there had been various issues with regard to quality, delivery etc. for which various negotiations and/or meetings had taken place and/or communications had been exchanged between the parties. The issues involved were of quality of fabric, weaving defects, delayed supply etc. which ultimately led to losses in the processing and selling of goods by the corporate debtor to its customers. For resolution of such issues, various representatives of the applicant visited the corporate debtor. Out of approximately 1160 transactions, approximately 885 transactions were not executed by the applicant in terms of the contract and the applicant had failed to adhere to the essential terms of the purchase order. Despite the aforesaid disputes the corporate debtor continued to make payment of the outstanding. The corporate debtor had addressed a letter dated 15.12.2020 to the Vice President of the applicant referring to the discussions on value loss on account of quality, late delivery, settlement of claim etc. The applicant had been promising settlement for past 2-3 years and the matter remained unresolved. Along with letter dated 15.12.2020, the corporate debtor had enclosed a copy of its claim. The ledger statement maintained by the applicant in respect of goods



returned by the corporate debtor had never been admitted by the corporate debtor.

- Applicant through its Advocate issued a notice dated 18.05.2021 to the corporate debtor for recovery of outstanding dues stated to be Rs. 4,57,36,325/- plus interest at the rate of 18% per annum of Rs. 2,11,79,938/- towards delayed payment charges. Thereafter, the corporate debtor, through its Advocate replied the notice dated 18.05.2021 vide reply dated 28.05.2021 denying the claim made by the applicant.
- The applicant, through advocate, issued rejoinder-cum-objection dated 15.06.2021 to the corporate debtor's reply dated 28.05.2021.
- The corporate debtor issued through advocate legal notice of demand dated 05.07.2021 calling upon the applicant to pay a sum of Rs. 4,61,54,255.55 towards value losses due to quality issues of the goods supplied by the applicant and late deliveries which resulted in damages/losses to the corporate debtor.
- On 19.07.2021, the Corporate debtor filed commercial Civil Suit No. 3435 of 2021 before the Commercial Court at the City Civil Court, Ahmedabad and prayed for the following reliefs:



- (a) A decree for the sum of Rs. 4,61,54,255.55 along with interest may be passed in favour of the corporate debtor;
 - (b) Pending hearing and final disposal of the suit and considering the facts and circumstances of the suite and application, injunct the defendant from initiating any proceeding;
 - (c) Cost of this summary suit may be awarded;
 - (d) Further reliefs as may be deemed fit and proper.
-
- Applicant issued statutory demand notice dated 11.08.2021 claiming principal debt of Rs. 4,46,52,598/- together with interest of Rs. 67,30,084/- as on 31.07.2021.
 - Corporate debtor through its Advocate replied to the notice vide reply dated 19.08.2021 specifically stating that Commercial Suit has already been filed on 19.07.2021, in first hearing thereof, notice has been issued by the Commercial Court and next date of the said Commercial Civil Suit is fixed on 24.08.2021.
 - The applicant had filed rejoinder dated 23.08.2021 to the statutory reply dated 19.08.2021 of the corporate debtor.
 - Within three days of the said rejoinder dated 23.08.2021, the applicant filed the present company petition on 25.08.2021



- The present company petition is liable to be dismissed solely on the ground that the applicant has made attempt to not disclose filing of the Commercial Suit.
- Pre-existing dispute is a disqualification to file an application under section 9 of the IBC.

10. The applicants filed rejoinder inter alia stating that:

- The applicant does not agree with and accept any of the statements, contentions and averments made out in the reply.
- Corporate debtor has failed to substantiate the averments made in the reply through documentary evidence and failed to furnish any record.
- The corporate debtor has failed to place on record any document to prove that the suit was filed on 19.07.2021 i.e. prior to receipt of statutory notice dated 11.08.2021.
- It is denied that there is any pre-existing dispute in the present matter.
- It is denied that in the course of execution of fabric sales contracts, there had been any issues with regard to quality of supplied goods, deliveries thereof etc.



- It is denied that on personal visits of the representatives of the corporate debtor on different dates had handed over the working of the corporate debtor's value losses and other losses on account of goods supplied by the applicant. In fact, as there was no positive response from the office of the corporate debtor, representatives of the applicant had visited the office of the corporate debtor demanding the operational debt.
- In view of huge outstanding debt due to the applicant, corporate debtor had issued balance confirmation on 17.12.2020 and as per the records of the corporate debtor, the amount due and payable to the applicant as on 30.11.2020 was Rs. 6,03,20,376/-. As there was discrepancy in the outstanding amount, applicant immediately responded to the email supported with ledger statement and clarified that as per records of the applicant, the amount due is Rs. 6,04,67,051/-. Email dated 17.12.2020 issued by corporate debtor and response dated 18.12.2020 issued by applicant were annexed.
- It is denied that corporate debtor had addressed any letter dated 15.12.2020 to the Vice President of applicant thereby making reference to various discussions on value loss on account of quality, late deliveries, settlement of claims etc. The letter dated 15.12.2020 has been unilaterally forged by the corporate debtor as it doesn't



bear seal or signature of the applicant and the letter is intended with sole intention to fabricate dispute in the subject matter

- It is an admitted and acknowledged fact on record that the applicant had accepted the returned goods amounting to approximate value of Rs. 34.00 lacs in respect of which grievances were raised by the corporate debtor and on acceptance of the returned goods, credit notes were issued by the applicant and a ledger statement for the same has been annexed with the petition.
- It is denied that the corporate debtor has not accepted the credit entries of the credit notes issued by the applicant.
- The applicant didn't want to overburden the corporate debtor and thus the applicant vide demand notice dated 18.05.2021 called for part payment of Rs. 3,00,00,000/- and the remaining balance amount shall follow. The corporate debtor is attempting to establish that part amount was called by applicant due to pendency of disputes which is completely baseless.
- In case if the corporate debtor was dissatisfied with the quality/grading of the goods that were sold and supplied by the applicant, corporate debtor could have severed the trade connection with the applicant long back.
- Reject the reply affidavit filed by corporate debtor.



- Initiate CIRP against the corporate debtor for committing default in payment of unpaid debt.

11. The applicant filed written submissions inter alia stating that:

- The applicant and corporate debtor were in continuous trade transactions since 2011-12 and during this long period the applicant has supplied goods to corporate debtor to the extent of Rs. 66.00 cores till December, 2020. The goods were supplied on execution of fabric sales contract from November 2019 till October 2020 bearing all the terms and conditions that would govern the trade transactions between the parties. The contracts expressly bear payment condition as Advance against proforma invoice /60 days post-dated cheque/through letter of credit. It also bears interest clause @ 18% per annum on delayed payment.
- In view of the terms and conditions set out in fabric sales contract coupled with purchase orders placed by corporate debtor, the applicant supplied goods and raised as many as 80 invoices bearing date of invoice as well as due dates and rate of interest @ 18% per annum on delayed payment. From 01.03.2020 till 25.12.2020, the corporate debtor purchased goods worth Rs. 6,80,84,368/- and also made



payment of Rs. 1,52,40,390 till December 2020 and further payment of Rs. 1,60,96,789/- from 01.01.2021 till June 2021.

- For delayed payments various reminder emails were issued by the applicant on 01.06.2020, 02.06.2020, 24.08.2020, 29.01.2021, 11.02.2021 and 03.03.2021. The corporate debtor vide reply emails dated 01.06.2020 and 02.06.2020 acknowledged the amount due to applicant and also requested to re-purchase the goods supplied by the applicant. The applicant duly responded to corporate debtor that specific quality of textiles and fabrics are not saleable in the market.
- The last invoice was raised on 25.12.2020 and as per the terms of payment set out in fabric sales contract and purchase orders, the due date was 24.02.2021 (Covid – 19 phase) which was duly approved by corporate debtor.
- After frequent reminder mails, verbal and telephonic conversations, when all the efforts went in vain, the applicant issued a legal demand notice dated 18.05.2021 calling upon the corporate debtor to remit atleast Rs. 3,00,00,000/- as part payment. In the legal notice, it was categorically intimated that in case of subsistence of default, the applicant will be constrained to resort to appropriate legal action and may also file an application before NCLT for initiating CIRP.



Corporate debtor replied to the legal notice vide reply dated 28.05.2021.

- Legal notice dated 05.07.2021 issued by corporate debtor was served upon the applicant via post on 09.07.2021 and thus period for counting limitation would commence from 10.07.2021. The demand notice, though not maintainable, calls for claims arising out of value losses, deliveries etc. (no proof has been produced to substantiate the same) speaks that the corporate debtor has incurred losses.
- The commercial suit filed by the corporate debtor before the Commercial Court at Ahmedabad which lacks territorial jurisdiction to try, entertain and take cognizance of the suit under question. Secondly, corporate debtor affirmed the suit on 16.07.2021 i.e. within 7 days and filed on 19.07.2021 i.e. within 10 days from the date of service of dispute notice dated 05.07.2021 which implies that the purposed suit is pre-mature in the nature as no Central Legislation speaks of institution of suits in such haste much less the minimum reasonable time accorded to refute is 10 days as provided under the IB Code and thirdly the suit is not tenable in the eyes of law as there is specific bar on institution of commercial suits without exhausting the remedy of Section 12A of the Commercial Courts Act, 2015 which mandates to take recourse of Pre-Institution Mediation in view of the



recent judgement dated 17.08.2022 of the Hon'ble Supreme Court in the matter between *Patil Automation Pvt. Ltd. & Others versus Rakheja Engineers Pvt. Ltd.*. Relevant extract of the said judgment is reproduced herein below:

“Para 84 Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of plaint under O. VII R. 11. This power can be exercised even suo moto by the court as explained earlier in the judgement.”

- As no response was forthcoming, the applicant issued statutory demand notice dated 11.08.2021 in consonance with the legal notice dated 18.05.2021 by virtue of which legal action was already initiated by applicant pursuant to which corporate debtor attempted to raise frivolous disputes in the subject matter. Emphasis is laid on the explanation as contemplated under Section 8 of the Code which says-

Explanation: *For the purposes of this Section, a “demand notice” means a notice served by operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.*

- After issuance of statutory demand notice, the corporate debtor responded vide its reply dated 19.08.2021 to bring the subject matter within the purview of Section 5 (6) of the Code. The applicant duly



refuted vide rejoinder dated 23.08.2021 to the reply dated 19.08.2021 for the frivolous objections raised by the corporate debtor.

- The applicant is strongly supported by the judgement of Hon'ble Supreme Court of India in the matter of *Kay Bouvet Engineering Ltd v. Overseas Infrastructure Alliance (I) P. Ltd.* dated 10.08.2021 wherein the Hon'ble Supreme Court categorically laid down the differentiation between what is a "dispute" and "genuine dispute".

The Hon'ble Apex Court opined-

In our view a 'genuine' dispute requires that:

- (i) *The dispute be bona fide and truly exist in fact;*
 - (ii) *The grounds for alleging the existence of a dispute are real and not spurious, hypothetical, illusory or misconceived.*
- Various formulations referred to above can be helpful in determining whether there is a genuine dispute in a particular case, so long as the formulation used does not become a substitute for the words of the statute.
 - On the date of issuance of statutory demand notice dated 11.08.2021, the corporate debtor stood creditor to the extent of Rs. 4,46,52,598/- towards principal and interest @ 18% per annum towards delayed payment amounting to Rs. 67,30,084/-.
 - The point of acknowledgement of a debt/outstanding liability due and payable to a creditor reached the Hon'ble Supreme Court in the matter



between *Asset Reconstruction Company (India) Limited versus Bishal Jaiswal & Another* dated 15.04.2021 whereby the Hon'ble Apex Court further laid down the precedent of acknowledgement of debt if the debtor duly makes an entry of the amount due in the audited balance sheets of the debtor company. Taking support of the aforesaid judgement, the applicant would request to direct the corporate debtor to furnish the balance sheets, financial statements and books of accounts of corporate debtor for preceding 3 years which have been duly filed with RoC as mandated under Section 137 of the Companies Act, 2013.

- In compliance of the directions given vide order dated 08.07.2022, the parties attempted to explore the possibilities of amicable resolution, however, the same couldn't be worked upon owing to inflexible condition imposed by corporate debtor of not documenting the meeting through any modes. Relevant extracts of emails are reproduced herein below:

a) Vide email dated 23.07.2022, the corporate debtor addressed the applicant that "neither party shall record the video meeting, much-less use the same in any manner whatsoever".

12. The corporate debtor filed written submissions stating that-



- There is a permanent jurisdictional bar in so far as initiation of CIRP against the corporate debtor is concerned. The date of default is 25.02.2021. Reliance is placed upon Section 10A of the IB Code, 2016 supported by the IB Code (Second Amendment) Act, 2020 with effect from 05.06.2020 together with notifications dated 24.09.2020 and 22.12.2020. Initial period of six months provided under Section 10A was extended vide notification dated 24.09.2020 for a further period of three months from 25.09.2020 upto 25.12.2020. Thereafter, vide notification dated 22.12.2020 the period was further extended from 25.12.2020 upto 25.03.2021. Thus, the “prohibited period” is the period between 25.03.2020 and 25.03.2021, during which if a default occurs, no application for initiation of CIRP of a corporate debtor can be filed. The proviso to section 10A creates a permanent bar in filing an application for initiation of CIRP of a corporate debtor for a default occurring during the prohibited period.
- Undisputedly, the alleged default of the corporate debtor falls during the prohibited period. The newly introduced section 10A and particularly the proviso thereto clearly and permanently prohibits the filing of any application under sections 7, 9 and 10 of the IBC for initiation of CIRP of a corporate debtor for a default occurring during the prohibited period. Section 10A does not provide for any



exceptions i.e. even if there is an admission of debt /balance confirmation issued by the corporate debtor during the prohibited period, even then the application under Section 7, 9 and 10 cannot be filed.

- Thus, assuming that there is a default by the corporate debtor, assuming without admitting that such default dated 25.02.2021 is an admitted default and assuming without admitting that the corporate debtor issued a balance confirmation, even then in terms of section 10A and the proviso thereto, no petition/application can ever be filed against the corporate debtor for such alleged default dated 25.02.2021.
 - The statutory demand notice under Section 8 of the IBC issued by the applicant on 11.08.2021 was replied vide letter dated 19.08.2021 and disclosed inter alia that above referred Commercial Civil Suit has been filed.
13. The corporate debtor filed sur-rejoinder reiterating the averments made in the written submissions.
 14. The applicant has produced copies of the following judgements of Hon'ble Supreme Court in support of its arguments:



Sr. No.	Judgements
1	Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.
2	Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (I) P. Ltd.
3	Dena Bank (Bank of Baroda) vs. C. Shivakumar Reddy & Another
4	Asset Reconstruction Company (I) Ltd. vs. Bishal Jaiswal & Others
5	Food Corporation of India vs. Assam State Co-operative Marketing

15 Registered office of the corporate debtor is situated in Ahmedabad, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

16.1 Heard submissions and perused the documents on record. The first and foremost objection raised by the corporate debtor is that there is a pre-existing dispute between the applicant and the corporate debtor prior to issuance of the statutory notice as a Commercial Civil Suit was filed on 19.07.2021 by the corporate debtor referring to various debit notes raised on the applicant by the corporate debtor on 14.06.2018, 01.02.2019, 17.08.2019, 25.09.2019, 24.12.2019, 25.01.2020 and 17.08.2020. The corporate debtor has brought on record copy of the Commercial Civil Suit filed and its present status which demonstrates that the Commercial Civil Suit was filed prior to issuance of statutory demand notice dated 11.08.2021.



16.2 In its reply to Section 8 notice dispute is raised and also in its submissions, corporate debtor has referred to the dispute regarding quality of fabric, weaving defects and delayed supplies which ultimately led to losses in the processing and selling of goods.

We are supported by the judgement by the Hon'ble Supreme Court in the matter of "Mobilox Innovative Private Limited vz. Kirusa Software Private Limited" (Civil Appeal No. 9405 of 2017), relevant portion of which is reproduced below:

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.

16.3 The Respondent Corporate debtor has also taken the plea that the debt pertains to prohibited Covid period and CIRP cannot be



initiated as per provisions of Section 10A of Insolvency & Bankruptcy Code, 2016, for ready reference, the provisions of Section 10 A of the Insolvency & Bankruptcy Code, 2016 are reproduced herein below :

10A. Notwithstanding anything contained in Sections 7, 9 & 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March 2020.

The initial period was extended vide notification dated 22.12.2020 upto 25.03.2021. thus, Corporate Insolvency Resolution Process (CIRP) cannot be initiated for defaults committed in the period 25.03.2020 to 20.03.2021. Admittedly, as per part IV, Form 5 filed with application, the date of default is 25.02.2021 which falls within the prohibited period. On this ground also, the application fails and CIRP cannot be initiated.

16.4 Under the facts and circumstances discussed above, we are of the considered view that the instant application deserves to be rejected.



Accordingly, CP (IB) 172/NCLT/AHM/2021 is dismissed and disposed of.

17. A copy of the order be communicated to the applicant and the corporate debtor. In addition, a copy of the order also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal to forward the compliance report to the Registrar, NCLT.

SD/-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

SD/-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)

nair/Abhishek LRA

CP (IB) /172/NCLT/AHM/2021