



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI**

**CP (IB) No. 2892/MB/2019**

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

**MOONLIGHT METAL INDUSTRIES PRIVATE LIMITED**

[CIN: U27200MH1983PTC030412]

**Registered Office:** 147, Government Industrial Estate  
Charkop, Kandivali (West)  
Mumbai-400067, Maharashtra.

**...Operational Creditor**

V/s

**FIREFLY LED PRODUCTS PRIVATE LIMITED**

[CIN: U31902MH2013PTC248325]

**Registered Office:** Nirav No. 6, Gaondevi Industrial Estate  
Near Gaondevi Temple, Sativali Road  
Vasai (East), Thane-401208, Maharashtra.

**...Corporate Debtor**

**Pronounced: 18.03.2025**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

Operational Creditor: Adv. Jeetendra Ranawat a/w. Adv. Gaurav Gupta i/b.  
A.B. Rathod and Co.; Mr. Anil Patel, Representative of  
Operational Creditor

Corporate Debtor: None (*ex-parte*)

**ORDER****[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. BACKGROUND**

1.1 This Company Petition bearing C.P. (IB) No. 2892/MB/2019 (Application) was filed on 13.06.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Moonlight Metal Industries Private Limited, the Operational Creditor (OC), through Mr. Kunal Lalitmohan Pande, Joint Managing Director of the OC, authorised *vide* Board Resolution dated 12.06.2019 for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Firefly Led Products Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.48,41,972/- (Forty-Eight Lakh Forty-One Thousand Nine Hundred Seventy-Two Rupees), which comprises of the principal amount of Rs.36,55,838/- along with the amount of Rs.11,86,134/- as interest calculated at the rate of 24 (Twenty-Four) per cent per annum from respective due dates of invoices till 26.04.2019. The alleged default amount is based on 5 unpaid invoices issued by the OC in lieu of supplying goods to the CD during the period of October 2017.

1.3 The date of default is not expressly mentioned in Part-IV of the Application. However, the OC placed invoices dated 12.10.2017 to 30.10.2017 on record showing due dates of payment for each unpaid invoice. Since the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.



1.4 The Application was dismissed for non-prosecution *vide* order dated 15.12.2020 on account of non-appearance of the OC. Aggrieved by the said order, the OC filed the IA (IBC) No. 676/2022 for restoration, which was allowed by order dated 09.06.2023, subject to payment of costs of Rs.1,00,000/- payable to Bharat Kosh. The OC complied with the same and filed the Compliance Affidavit on 11.07.2023, which was taken on record in the order dated 28.08.2023.

## **2. CONTENTIONS OF OC**

2.1 The OC is involved in the business of manufacturing Aluminium Alloy Ingots and other Aluminium products, while the CD is a Mumbai-based private company, engaged in the production of Light Emitting Diode (LED) products. For business purposes, the CD sought supply of alloy raw materials from the OC, pursuant to which the OC supplied the said goods at the CD's request and orders. The said goods were duly received by the CD without raising any dispute over the quality or quantity of the supplied goods.

2.2 Against supply of goods, the OC raised invoices. As per the invoices, interest would be charged at the rate of 24% per annum, in the event of non-payment on the due date of payment, and the due date of payment for each invoice was 60 (Sixty) days from the date of invoice.

2.3 It is submitted that the CD made a part-payment of Rs. 84,367/- for paying the OC's dues against the invoice No. MM/00379/2017-18 dated 26.10.2017. However, the CD failed to make payment against the OC's invoices from 12.10.2017 to 30.10.2017.



- 2.4 On account of CD's failure in clearing the outstanding dues, the OC issued demand notice dated 26.04.2019, through its advocate, demanding payment of operational debt for Rs.48,41,972/-. The said demand notice was sent at the CD's registered address as per its Master Data as well as addresses of its directors. The demand notice sent to some of the CD's directors went unserved with remarks "*Addressee Left*" and "*Left*" on the return packets of the said demand notice.
- 2.5 The OC's banker, Bank of Baroda issued letter dated 05.07.2019 to the OC certifying that the OC had received payments from the CD on 28.04.2018 and 12.05.2018 for Rs. 2,00,000/- each in its overdraft account. Barring the payments made on the aforesaid dates, the OC did not receive any amount from the CD in its overdraft account during the period of 01.04.2018 to 05.07.2019. To support its contention, the OC also placed its ledger record and Bank Statements by its Additional Affidavit dated 24.06.2024. The OC also contended in another Additional Affidavit dated 19.02.2020, that the CD made the aforesaid part payments of Rs. 2,00,000/- each and also issued Post Dated Cheques (PDCs) in its favour but later requested the OC not to deposit the same and gave assurance of clearing the payments in 2-3 weeks by emails dated 23.11.2017 and 14.12.2017.
- 2.6 The OC placed the Affidavit under Section 9(3)(b) of the IBC on record to show the absence of any notice from the CD regarding the existence of dispute over the operational debt.
- 2.7 The OC further submitted that the service of demand notice to the CD and its directors was valid and relied upon the decision of Hon'ble Bombay High



Court in *M/s. Medi Carriers Pvt Ltd Vs. M/s. Frontiago Life-Sciences Pvt. Ltd.*,  
[Company Petition No. 295 of 2015].

### **3. CONTENTIONS OF CD**

3.1 The OC placed the Service Affidavits dated 28.09.2019; 17.10.2019 and 08.02.2024 on record, wherein it was stated that the notices were issued to the CD on 20.08.2019; 01.10.2019 and 18.01.2024, but it did not make any appearance. The OC, through its advocate, also sent email dated 18.01.2024 to the CD's email address as per its Master Data available with the Ministry of Corporate Affairs. Additionally, substituted services were made by publishing in two newspapers, namely, *Free Press Journal* (English) and *Navshakti* (Marathi) on 07.01.2020. Despite the above, no one appeared on behalf of the CD.

3.2 We also observe that since the CD remained unrepresented in spite of the above, it was set as *ex-parte* on 14.05.2024. Hence, we proceed to deal with the matter based on the available material on record.

### **4. ANALYSIS AND FINDINGS**

4.1 We have perused all the documents and pleadings and heard the Ld. Counsel for the OC.

4.2 We find that the OC issued five invoices amounting to Rs.36,55,838/- for the goods supplied to the CD from 12.10.2017 to 30.10.2017, pursuant to which the CD made part-payments on 14.02.2018; 30.04.2018 and 14.05.2018, to the OC, as evident from the Bank Letter dated 05.07.2019 and Bank Statement produced by the OC in its Additional Affidavits. The CD also issued



PDCs to clear the dues but later requested the OC not to encash them citing untimely receipt of its collections and delay in bank facilities by its emails dated 23.11.2017 and 14.12.2017, which indicate acknowledgement of debt and default by the CD. However, 14.05.2018 was the last date of payment made by the CD to the OC. There is nothing to show that the CD has ever fulfilled the commitment to pay off the OC's debt since then.

4.3 It is also seen that the OC issued the demand notice dated 26.04.2019 to the CD through its advocate. Upon perusal of available documents, we find that the said demand notice was not sent in the prescribed format on the lines of Form 3 or 4 of AAA Rules. However, the said demand notice clearly indicates the demand of operational debt and opening paragraph of the demand notice clearly states *"on behalf of our client MOONLIGHT METAL INDUSTRIES PVT.LTD"*, which clearly shows that it was on the instructions of the OC that the demand notice under Section 8 of the IBC was sent by the advocate. The Hon'ble Supreme Court in *Macquarie Bank Vs. Shilpi Cable Technologies Ltd.* [Civil Appeal No. 15135 of 2017] clearly stated that a notice sent on behalf of an operational creditor by a lawyer is a valid demand notice. Further, the service of the said demand notice at the CD's registered addresses and its directors was valid despite such notices being returned with remarks viz., *"Addressee Left"* and *"Left"* as held by Hon'ble Bombay High Court in *Medi Carriers (supra)*.

4.4 The date of default as mentioned by the OC in Part-IV of the Application is not clearly expressed. The Demand Notice also does not state any specific date of default. However, considering the part-payments made by the CD, we consider 14.05.2018, being the date of last payment as the date of default.



We find that the present Application was filed on 13.06.2019, i.e., within three years from the date of default. Hence, it is maintainable to be adjudicated by us under Section 238A read with Article 137 of the Limitation Act, 1963.

4.5 We find that despite several opportunities granted by this Adjudicating Authority to the CD to be represented; file its reply; and present its case on merits, it chose not to avail itself of the opportunities. As a result, the CD was set *ex-parte*.

4.6 We, therefore, hold that the debt in respect of the goods and materials provided by the OC to the CD falls within the meaning of “operational debt” under Section 5(21) of the IBC. The default amount in the present application is Rs.48,41,972/-, which far exceeds the threshold limit of One Lakh Rupees under Section 4 of the IBC, as the law then was. The Application was filed on 13.06.2019, which is prior to the Notification of the Government of India in the Ministry of Corporate Affairs, No. S.O. 1205 (E) dated 24.03.2020, wherein the threshold limit to trigger CIRP was increased from One Lakh Rupees to One Crore Rupees under Section 4 of the IBC, in order to avoid bringing more corporates into insolvency, in the aftermath of COVID-19 Pandemic. For the purpose of this Application, it is clear that the operational debt of more than One Lakh Rupees is due and payable by the CD to the OC and is not paid. Therefore, this Application under section 9 of the IBC is maintainable.

4.7 The OC has thus successfully demonstrated and proved the debt and default in this case. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 9 of the IBC. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.



4.8 The FC has proposed the name of Mr. Vimal Kumar Agarwal, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P00741/2017-2018/11247 as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. The proposed IRP has provided his written consent in Form 2 as required under Rule 9(1) of the AAA Rules.


### **ORDER**

This Application bearing C.P. (IB) No. 2892/MB/2019 under Section 9 of the IBC, filed by Moonlight Metal Industries Private Limited, the OC, for initiating CIRP in respect of Firefly Led Products Private Limited, the CD is **admitted.**

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the



Securitisation 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 possession of the CD.

- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Vimal Kumar Agrawal**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-001/IP-P00741/2017-2018/11247** and e-mail- **vimal@vpagrwal.in.**, having valid Authorisation for Assignment up to **31.12.2025** as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.



- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-  
SANJIV DUTT  
MEMBER (TECHNICAL)**

**Sd/-  
K. R. SAJI KUMAR  
MEMBER (JUDICIAL)**

//Tanmay Jain//