

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT-III**

**IB – 453/ND/2022**

Order 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.

**IN THE MATTER OF:**

**M/S JPM INDUSTRIES LIMITED**

*Having Its Registered address at:*

GI-48, G T Karnal road,  
Industrial area, Azadpur,  
Delhi-110033

**..... Applicant/Operational Creditor**

**VERSUS**

**M/S ORKUS PVT. LTD.**

*Having Its Registered address at:*

C-483, Yojana Vihar,  
New Delhi-110092

**..... Respondent/Corporate Debtor**

**Order Pronounced On: 07.12.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by **M/s. JPM Industries Limited** the Operational Creditor under Section 9 of the Insolvency and Bankruptcy

Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”) against **M/s. Orkus Private Limited**, the Respondent/Corporate Debtor, who has failed to pay the Operational debt amounting to Rs. 4,96,15,567.26/- (Four Core Ninety-Six Lakhs Fifteen Thousand Five Hundred Sixty-Seven and Twenty-Six Paise Only) which includes Principal amount of Rs. 2,88,36,791/- (Rupees Two Crore Eighty-Eight Lakhs Thirty-Six Thousand Seven Hundred and Ninety-One Only) and total interest of Rs. 2,07,78,776.26/- (Rupees Two Crore Seven Lakh Seventy-Eight Thousand Seven Hundred Seventy-Six and Twenty-Six Paise Only).

**2.** The Applicant namely, **M/s. JPM Industries Limited** (Operational Creditor) is a Company having its office at GI-48, G T Karnal road, Industrial area, Azadpur, Delhi-110033 and is in the business of manufacturing of Auto parts, Solar Lamps, LED bulbs, energy meters etc.

**3.** The Respondent Company namely, **M/s. Orkus Private Limited** (Corporate Debtor) is a private Limited Company incorporated under Companies Act, 2013 on 06.03.2017 [CIN-U7499DL2017PTC313952], having its registered office at C-483, Yojana Vihar, New Delhi-110092. The Corporate Debtor has Authorised Share Capital of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) and Paid up Share Capital of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only).

#### **4. Submissions of the Operational Creditor**

- i) The Operational Creditor and the Corporate Debtor were engaged in business dealings from past 3 years. The Operational Creditor used to supply LED Bulbs to the Corporate Debtor.
- ii) The Corporate Debtor issued 11 purchase orders between the month of April 2019 and February 2020 to the Operational Creditor for supply of LED Bulbs of different watts. Accordingly, the Operational Creditor supplied 1431881 LED bulbs to the Corporate Debtor which were duly

delivered. The following table shows the purchase orders issued by Corporate Debtor to Operational Creditor: -

S.No.	Purchase Order No.	Date	Quantity (in no. of Pieces)	Net total Amount of Purchase orders	Grand Total of purchase orders including GST
1.	770.030	27.04.2019	255000	11210000	12555200
2.	770.081	29.05.2019	355000	16770000	18782400
3.	770.090	31.05.2019	60000	2550000	2856000
4.	770.111	24.06.2019	10000	390000	436800
5.	770.113	26.06.2019	155000	6862500	7686000
6.	770.178	04.09.2019	160000	8562500	9590000
7.	770.178	04.09.2019	117000	4930500	5522160
8.	770.192	21.09.2019	155000	788700	7361200
9.	70.255	13.12.2019	53881	2321135	2599671.20
10.	70.255	14.12.2019	91000	3627000	4062240
11.	70.342	04.02.2020	20000	940000	1052800
TOTAL			1431881	58952335	72504471.2

iii) The Operational Creditor raised invoices between June 2019 to February 2020 against the supply of goods for an amount of Rs. 2,88,36,791/-. The Corporate Debtor vide e-mail dated 20.03.2020 sent the Ledger account maintained by the Corporate Debtor in the name of the Operational creditor admitting the liability of Rs.2,87,57,265/- (Rupees Two Crore Eighty-Seven Lakh Fifty-Seven Thousand Two Hundred and Sixty-Five Only). In spite of admitting the liability, the Corporate Debtor defaulted in paying the outstanding amount.

iv) The Operational Creditor sent a Demand Notice on 05.10.2021 under Section 8 of the Code to the Corporate Debtor. No response was received from the Corporate Debtor to the Demand Notice. Hence, the application under Section 9 of IBC, 2016.

5. The Corporate Debtor in its reply affidavit submitted that there were certain disputes regarding the quality of goods. The Operational Creditor didn't supply the good in time which lead to heavy loss of the Corporate Debtor. Further due to covid-19 lockdown, the business was affected and the financial position of the Corporate Debtor became very fragile and it suffered heavy losses.

## **6. Analysis and Findings**

- i) We have heard the Ld. Counsels appearing for both the parties and also perused the records.
  
- ii) It is an admitted case that the Operational Creditor issued invoices amounting to Rs. 2,88,36,791/- to the Corporate Debtor, pursuant to the work order issued by the Corporate Debtor for supply of LED Bulbs. The Corporate Debtor submitted that there were some issues with regard to the quality of goods supplied but couldn't substantiate the same by placing on record any evidence to that effect. The Corporate Debtor in its reply affidavit has clearly admitted the default and has stated that he is not in a position to make the payment. The relevant paras of the Reply are reproduced hereunder-

“Para 8- It is expected that these efforts for recovery of dues from the market put in the last one year will start yielding results, but as of now Corporate Debtor /Orkus Pvt Ltd is not able to meet its obligations to creditors, including JPM/Operational Creditor.”

“Para 9- However, we accept that we are not able to pay the amount due to JPM/Operational Creditor as of now because of the operations having stopped and recovery of book debts from the market taking time.”

In view of the clear admission made by the Corporate Debtor we are constrained to admit the present application.

## **7. Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fulfils the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i.** The Application bearing **IB-453/ND/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
  
- ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
  - i. "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;*
  - ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
  - iii. 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;*
  - iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by*

*the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”*

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- iv.** Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Bimal Kumar Sharma, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI. The registration number of the IRP is IBBI/IPA-001/IP-P00542/2017-2018/10967, and the e-mail id of the IRP is [sharma\\_bimal@rediffmail.com](mailto:sharma_bimal@rediffmail.com) . Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order. Accordingly, Mr. Bimal Kumar Sharma is appointed as IRP.

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, 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 opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x.** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana,

by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

- xi.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

**Sd/-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**