



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 163/JPR/2022

&

CP No. (IB)- 12/9/JPR/2022

(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:

**SUSHIL KUMAR AGARWAL PROPRIETOR
OF M/S BANGANGA MINERALS**

..... OPERATIONAL CREDITOR

VERSUS

M/S GOTAN LIMES PVT. LTD.

.....CORPORATE DEBTOR

CP No. (IB)- 12/9/JPR/2022 & IA No. 163/JPR/2022:

MEMO OF PARTIES

Sushil Kumar Agarwal Proprietor of

M/s Banganga Minerals

Office at: Haweli Raja Udai Singh,

Tripolia Bazar, Jaipur- 302002

...Applicant / Operational Creditor

VERSUS

M/s Gotan Limes Pvt. Ltd.

CIN: U14101RJ1978PTC001775

Registered office at : Plot No. 3, C-2,

Saboo Sadan Manji Ka Hatha,

***IA (IBC) No. 163/JPR/2022 &
CP No. (IB)- 12/9/JPR/2022***



Paota C Road, Jodhpur- 342001 IN (Rajasthan)

...Respondent / Corporate Debtor

For the Operational Creditor : Javed Khan, Adv.

For the Corporate Debtor : Aditya Vijay, Adv.

Order Pronounced On: 29.07.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application has been filed Mr. Sushil Kumar Agarwal Proprietor of M/s Banganga Minerals ('Applicant') to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Gotan Limes Private Limited ('Corporate Debtor') under Section 9 of the Insolvency and Bankruptcy code, 2016 ('IBC') for alleged default on the repayment of Operational debt amounting to Rs. 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only).
2. The present application has been filed by the Operational Creditor namely Shri Sushil Kumar Agarwal, who is the Proprietor of the Proprietary Firm in the trade name of M/s Banganga Minerals, engaged in the business of trading of minerals and pet coke. The principal place of the business of the same is located at Haweli Raja Udai Singh, Tripolia Bazaar, Jaipur, Rajasthan- 302002.
3. The Corporate Debtor namely M/s Gotan Limes Pvt. Ltd. is a company incorporated on 20.02.1978 holding CIN: U14101RJ1978PTC001775 having authorised share capital of Rs. 1,50,00,000/-. The registered office of



the Corporate Debtor is situated at Plot No. 3, C-2, Saboo Sadan Manji Ka Hatha, Paota, C Road, Jodhpur- 342001 IN (Rajasthan)

4. The details of the transactions leading to the filing of this application averred by the Applicant are as follows:

a. The Corporate Debtor had approached the Operational Creditor requesting for supply of Pet Coke, Steam Coal and other allied minerals in response to which, the Operational Creditor had supplied Pet Coke, Steam Coal and other allied minerals to the Corporate Debtor from time to time. The said supply was made during the period starting from 02.04.2021 to 17.11.2021. Various invoices of different dates spanning across the aforesaid period were raised by the Operational Creditor upon the Corporate Debtor. The total consideration of which was Rs. 2,42,52,913/- (Rupees Two Crores Forty-Two Lakhs Fifty-Two Thousand Nine Hundred and Thirteen Only) .

b. Apart from the aforesaid amount of consideration, there was an outstanding opening balance of Rs. 26,56,467/- (Rupees Twenty-Six Lakhs Fifty-Six Thousand Four Hundred and Sixty-Seven Only) as on 01.04.2021 due from the last financial year ending on 31.03.2021. Hence, the total of supplies made during the period from 02.04.2021 to 27.11.2021 amounting to Rs. 2,42,52,913/- (Rupees Two Crores Forty-Two Lakhs Fifty-Two Thousand Nine Hundred and Thirteen Only) and opening balance as on 01.04.2021 amounting to Rs. 26,56,467/-



(Rupees Twenty-Six Lakhs Fifty-Six Thousand Four Hundred and Sixty-Seven Only) brings out a total of Rs. 2,69,09,380/- (Rupees Two Crores Sixty-Nine Lakhs Nine Thousand Three Hundred and Eighty Only).

- c. The Corporate Debtor during the period from 07.04.2021 to 08.10.2021 made certain payments against different invoices on different dates spanning across the aforesaid period which amounts to a total of Rs. 1,67,09,871/- (Rupees One Crore Sixty-Seven Lakhs Nine Thousand Eight Hundred and Seventy-One). Therefore, the outstanding debt which is due and payable by the Corporate Debtor amounts to Rs. 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only). For ease of reference the breakup of the total amount is tabulated below:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Total</i>
A.	Opening Balance as due from the Financial Year ending on 31.03.2021	Rs. 26,56,467/-
B.	Total amount of invoices raised between 02.04.2021 to 17.11.2021	Rs. 2,42,52,913/-
C.	Total amount due by the Corporate Debtor (A +B=C)	Rs. 2,69,09,380/-
D.	Amount paid by the Corporate Debtor	Rs. 1,67,09,871/-
E.	Final Amount due by the Corporate Debtor (C –D = E)	Rs. 1,01,99,509/-



- d. The aforementioned details as reflected in Part IV of the application are as follows:

PART IV
PARTICULARS OF OPERATIONAL DEBT

1.	A. Total amount of debt	INR 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only)
	B. Details of transactions on account of which debt fell due, and the date from which such debt fell due	Operational Creditor is entitled to receive the abovementioned outstanding debt of Rs. 1,01,99,509/- along with interest @ 14% from the date of default till the date of sending notice u/s 8 of IBC, 2016 and further, interest thereon till the date of actual realisation.
2.	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and date of default in tabular form)	Amount Claimed to be in default is Rs. 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only) and the date of default is 08.10.2021.

5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply vide Dairy No. 1337/2022 dated 04.05.2022 stating as follows:

- a. The Corporate Debtor has submitted that the application filed by the Applicant is not maintainable under the eyes of law as the Applicant has not come before this Tribunal with clean hands. It is also submitted



that the entire application is nothing but a gauntlet of lies falsehood, suppression etc to conceal material facts.

- b. The Corporate Debtor has submitted that the said amount as alleged by the Applicant does not fall under the definition of Operational debt as stated under Section 5(21) of IBC, 2016. It is also submitted that this application is a classic dispute between the parties, there were no commitments and deliverables on part of the Corporate Debtor at any point of time. Going by the tests 'existence of dispute' laid down by the Hon'ble Supreme Court of India in catena of judgments, it is clear that without going into the merits of dispute if a plausible contention requiring further investigation which is patently feeble argument or as assertion on facts unsupported by evidence is raised then the petition deserves to be dismissed.
- c. The Corporate Debtor has further submitted that the Applicant does not fall within the definition of Operational Creditor as the invoices raised by the Operational Creditor were never acknowledged by the Corporate Debtor on account of the fact that the material that was supplied was defective. Therefore, the Applicant is wrong to say that there was a valid default against the payments which were due to him. The Applicant cannot claim money in the present matter as it is completely illegal claims for which they are not legible.



- d. The Corporate Debtor has submitted that they would be initiating appropriate legal proceedings before the competent Court of Law against the Corporate Debtor for breaching the conditions of a contract in view of the existing dispute and further submitted that this authority is not the appropriate forum for adjudicating the present dispute as the Applicant may prefer a civil suit in respect of the dispute between the parties.
6. During the pendency of main CP an interim application numbered as IA (IBC) No. 163/JPR/2022 was filed by the Applicant whereby the name of the Interim Resolution Professional u/s 16 (3) and 16 (4) was proposed which was inadvertently not proposed while filing the petition. Mr. Chand Prakash Bhatia having Registration No. IBBI/IPA/001/IP-P-02629/2021-22/14034 has been suggested as IRP. Vide order dated 12.04.2022, it was observed that the same will be considered at the time of passing of any order with regard to admission of the petition.
7. The Applicant vide Diary No. 1632/2022 dated 27.05.2022 filed written submissions whereby the following has been averred:
- a. It is submitted that a huge consideration was due against the supplies made by the Applicant to the Corporate Debtor in the period from 02.04.2021 to 27.11.2021 and further, as on 01.04.2021 an opening outstanding balance of Rs. 26,56,467/- (Rupees Twenty-Six Lakhs Fifty-Six Thousand Four Hundred and Sixty-Seven Only) was due in



respect of the supplies made during the preceding financial year. This fact is apparent from the copy of the ledger account of the Corporate Debtor in the books of account of the Applicant which has been placed on record as Annexure- 8 at page No. 208-209.

- b. It is also submitted that the Operational Creditor served a demand notice dated 14.12.2021 u/s 8 of IBC, 2016 in Form 3 (Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) demanding payment of unpaid operational debt amounting to Rs. 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only) within 10 days from the receipt of the aforesaid notice failing which the Operational Creditor shall and would initiate a CIRP. The said demand notice was sent and delivered by a postal and Email services on the registered address and registered email address as appearing in the Master Data of the Corporate Debtor.
- c. The Applicant has submitted that the allegations regarding defect in quality of goods supplied by the Applicant is clearly an afterthought inasmuch as no notice of such defect was even given to the Applicant. Further, no supporting evidence or material has been placed on record by the Corporate Debtor in support of such defect. The Corporate Debtor has also not disputed the operational debt being claimed by the Applicant. The Applicant on the other hand has duly filed an affidavit



u/s 9(3)(b) of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 deposing that no notice has been given by the Corporate Debtor relating to the dispute of the unpaid operational debt.

8. We have heard the learned counsels for the parties and perused the averments made in the application, reply, written submissions and the documents enclosed with this application.
9. This Adjudicating Authority having perused all the relevant papers and finding them in order notes that the Registered office of the Corporate Debtor is situated in Jodhpur, Rajasthan and therefore this Adjudicating Authority has jurisdiction to entertain and try this application. Further, this matter is within the purview of the law of limitation, as the date of default is 08.10.2021, which is within the period of 3 years after the default occurred and the same has not been exhausted at the time of filing of this petition i.e. 04.01.2022. Therefore, the present application has been filed well within the prescribed period of limitation.
10. It is seen from the documents that a demand notice under Section 8 of IBC was given to the Corporate Debtor dated 14.12.2021 whereby the total debt of Rs. 1,09,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only) was called upon to be paid by the Corporate Debtor. The said notice was served upon the Corporate Debtor by post as



well as email; the postal receipt along with the copy of e-mail has been placed as Annexure 4 & 5 of the application.

11. The Operational Creditor i.e. the Applicant has placed a computation/working of unpaid Operational Debt as Annexure 1 of the Application at page 26 whereby it is clear that from a total of bill amount raised between 02.04.2021 to 27.11.2021 amounting to Rs. 2,69,09,380/- (Rupees Two Crores Sixty-Nine Lakhs Nine Thousand Three Hundred and Eighty Only), the amount received till date is Rs. 1,67,09,871/- (Rupees One Crores Sixty-Seven Lakhs Nine Thousand Eight Hundred and Seventy-One Only). Thereby the due amount against which this Application has been filed is Rs. 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only). It is also seen from Annexure 9 at page 210 that the Applicant had maintained the ledger account with the Corporate Debtor which was sent to the Corporate Debtor and the same was duly received and acknowledged by the Corporate Debtor on 01.12.2021. In the said ledger, the closing balance showing on the credit side is Rs. 1,01,99,509/- (Rupees One Crore One Lakh Ninety-Nine Thousand Five Hundred Nine Only). Therefore, there is no iota of doubt that the Corporate Debtor has defaulted in repayment of the aforesaid amount.
12. Bare perusal of Section 5 (21) of IBC makes it clear that Operational Debt means a claim in respect of the provisions of goods of services arising in respect of dues arising under any law for the time being enforced. From the



facts of the case it is clear that the Applicant was supplying Pet Coke, Steam Coal etc. to the Corporate Debtor against which it had also raised invoices which have been annexed at Annexure 2 of the Application. Copy of E-way bills have also been annexed at Annexure 3 of the petition which show the supply of goods. There is no proof given by the Corporate Debtor disputing the supply or quality of the aforementioned goods. Rather, the Corporate Debtor has given a confirmation of the accounts by giving acknowledgement on the ledger maintained by the Applicant. This itself negates the contention of the Corporate Debtor that there was a dispute with respect to the supply of the goods mentioned in the invoices.

13. In view of the aforementioned, it is clear that the Applicant falls under the category of an Operational Creditor under Section 5(20) of the IBC and therefore has rightly filed this application claiming the amount of debt which is due to be paid by the Corporate Debtor.
14. It is evident from the reasons stated hereinabove that Corporate Debtor has clearly defaulted in payment of debt due to the Operational Creditor. The Corporate Debtor has raised the contention of dispute just to flout the applicability of the provisions of IBC which states that if there is a pre-existing dispute between the parties, an application filed under Section 9 of the Code is not maintainable.
15. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the



Adjudicating Authority has to examine in an Application under Section 9.

Para 34 is as follows:-

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

However, the defence has to be plausible and while not examining it on merits, it must not appear as a moonshine defence.

16. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor and there appears to be no pre-existing dispute between the parties. Any allusion to such dispute appears to be confirmed.
17. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional (‘IRP’) but it is not obliged to do so. In view of the IA (IBC) No. 163/JPR/2022, Mr. Chand Prakash Bhatia, duly



registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA/001/IP-P-02629/2021-22/14034 (email: prachicpb@gmail.com), is hereby appointed as the IRP. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.

18. Consequences of initiation of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Chand Prakash Bhatia, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.



- (iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

19. Accordingly, CP No. (IB)- 12/9/JPR/2022 is admitted and IA (IBC) No. 163/JPR/2022 is disposed of.

DEEP CHANDRA
JOSHI

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**