

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

C.P. 4632/IB/MB/2019

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

Creative Metal Industries

F-3, 1st Floor, Lodha Bhavan,
Lakkadpitha Road, Vadodara

**..... Operational Creditor/
Petitioner**

Vs

M/s Chinnar Projects Pvt Ltd.

(U35923MH2019PTC323685)

708, Haware Infotech Park, Plot No.
39/3, Sector No. – 30/A, Vashi, Navi
Mumbai, Thane – 400 706

..... Corporate Debtor

Order Reserved On: 12.01.2023

Order Pronounced On: 24.01.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Applicant: Mr. Rohan Shah (Advocate)

For the Respondent: None Present

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by Creative Metal Industries hereinafter called as the ("**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Chinnar Projects Pvt Ltd. herein after referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 19,84,747/-.
2. The Petitioner attached the following documents to demonstrate the existence of Debt:
 - a. Purchase order dated 30.05.2019
 - b. Tax invoices dated 01.06.2019
 - c. Copy of Cheque dated 19.07.2019
 - d. Copy of Email correspondences between the Petitioner and the Respondent
 - e. Copy of Bank Certificate
 - f. Copy of Certificated issued by Chartered Accountant
 - g. Copy of Demand Notice dated 12.11.2019

Facts of the case

3. The Petitioner submits that the Respondent had approached the Petitioner in May, 2019 and placed purchase order dated 30.05.2019, and against the said purchase order, the Petitioner supplied goods to the Respondent vide tax invoices dated 01.06.2019, referred to in Exhibit-1.

4. The Petitioner submits that the Respondent was required to make payments of the invoices. The Petitioner has also maintained a running account of the Corporate Debtor in its books. As per the books of accounts, the total outstanding against the supply of the goods was Rs. 20,84,747/-. In this regard, the Petitioner had made several reminders to the Respondent but to no avail.
5. The Petitioner submits that the Respondent had issued a cheque dated 19.07.2019, amounting to Rs. 15,00,000/- against the total outstanding of Rs. 20,84,747/-. However, when the cheque was presented for encashment, the same was returned dishonoured with remark as "Funds Insufficient".
6. The Petitioner submits that thereafter several email correspondences occurred between the parties wherein the Respondent had agreed to make the payments by 13.08.2019. However, the Respondent failed to make payments by 13.08.2019. The Respondent considering the delay in payment above, agreed to pay 1% penalty in its email dated 23.08.2019 and assured the Petitioner that the payments would be made by 31.08.2019. The Petitioner submits that it also issued a demand notice on 27.08.2019 to the Respondent.
7. The Petitioner submits that the Respondent had deposited an amount of Rs. 1,00,000/- in the account of the Petitioner. Therefore, the as per the running account maintained by the Petitioner an amount of Rs. 19,84,747/- is still outstanding. Thereafter, the Respondent assured the Petitioner that it will make the payments by 13.10.2019 and considering the recurring delay in repayment on the Respondent's part, the latter further agreed to pay 2% interest as penalty.
8. Considering the present scenario and failure of the Respondent to make the repayments towards the outstanding balance, the Petitioner issued another Demand Notice dated 14.11.2019 for Rs. 19,84,747/- along

with an interest of 24% from 24.09.2019. The Petitioner further submits that the Corporate Debtor has not responded to the said Demand Notice nor has disputed the claim in any manner. Hence the Petition.

9. The Respondent has not appeared before this Bench despite having been duly served and has been proceeded against **Ex-Parte**.

FINDINGS

10. We have heard the Ld. Counsel appearing for the Petitioner and perused the record.
11. The present Petition is filed under Section 9 of the Code, whereby the Petitioner is seeking to initiate CIRP against the Corporate Debtor, wherein the Petitioner contends that the Respondent has failed to repay total debt amount of Rs. 19,84,747/-. The Petitioner in the year 2019, had supplied goods to the Corporate Debtor worth Rs. 26,25,500/- against the Purchase order and invoices (exhibit-1). The said Tax Invoices mentions that upon failure of repayment of the amount, an interest at the rate of 24% will be payable.
12. The Ld. Counsel has argued that the amount in default is not disputed by the Respondents. The Ld. Counsel has thereafter stated that for the purpose of repayment of the Operational Debt, the Respondent had issued a cheque dated 19.07.2019 (exhibit-1) amounting to Rs. 15,00,000/- against the total outstanding of Rs. 20,84,747/-. However, when the said cheque was presented for encashment, the same was returned dishonoured with the remark 'funds insufficient'. Further it was stated that the Respondent by way of E-mail correspondences (Exhibit-1) has been repeatedly assuring for repayments of the due amount. The Respondent even after assurances kept delaying the said repayment. It is also important to note here that

by way emails dated 23.08.2019 and 28.09.2019, the Respondent itself voluntarily offered to pay a penalty of 1% and 2% of the outstanding amount respectively. Though, the Respondent was inclined to pay the outstanding amount, yet has not disputed the amount.

13. The record further reveals that the Petitioner obtained a Bank Certificate (Exhibit-2) under Section 9(3) (c) of the Code, wherein the Bank of the Petitioner had certified that no payments have been received from the Corporate Debtor in the account of the Petitioner during the period from 25.09.2019 to 25.11.2019 and further the Petitioner has also obtained a Chartered Accountant certificate dated 27.11.2019 (Exhibit- 2), which also certifies that the Petitioner has a sum of Rs. 19,84,747/- due from the Respondent.
14. After hearing the submissions and upon perusing the material available on record and considering the Corporate Debtor has been proceeded against ex-parte, the claim of Operational Creditor remains unchallenged. Hence, this Bench feels that the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor in this case.
15. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- A. The above Company Petition No. (IB) 4632 of 2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Chinaar Projects Pvt. Ltd.**
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench

hereby appoints **Mr. Jayanti Lal Jain**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01792/2019-2020/12845, having Email id jljain.ip@gmail.com and contact number-9870201926 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- C. The Operational Creditor shall deposit an amount of Rs. (2) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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.
- K. Accordingly, the **C.P.(IB) 4632 of 2019** is admitted.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)