



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

**CP (IB) No.3853/NCLT/MB-IV/2019**

Under Section 9 of the IBC, 2016

*In the matter of*

**VS & B Domestic Container Solutions  
Private Limited**

[CIN: U63030TN2008PTC067304]

...Operational Creditor

v/s.

**Opal Asia (India) Private Limited**

[CIN: U74999MH2007PTC174028]

...Corporate Debtor

Order Delivered on: 24.08.2022

*Coram:*

Mr. Manoj Kumar Dubey  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner : Ms. Payoja Gandhi, Advocate.

For the Respondent : None.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by VS & B Domestic Container Solutions Private Limited, ("the Operational Creditor"), seeking to initiate Corporate



Insolvency Resolution Process (CIRP) against Opal Asia (India) Private Limited (“the Corporate Debtor”), [CIN: U74999MH2007PTC174028].

2. The Corporate Debtor is a company incorporated on 11.09.2007 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U74999MH2007PTC174028. Its registered office is at 603, Sabari Samridhi, opp. Union park, Sion - Trombay Road, Chembur, Mumbai, Maharashtra-400071. Therefore, this Bench has jurisdiction to deal with the present Petition.
3. The present petition was filed on 25.10.2019 by Mr. Sheshank Sharma, Associate Manager of the Operational Creditor vide its Board Resolution dated 22.07.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.1,68,93,874.05/- (Rupees one crore sixty-eight lakh ninety-three thousand eighty hundred seventy-four and five paise only).
4. The date of default as mentioned in the Petition is 30.09.2017. The Petition is filed on 25.10.2019.
5. The case of the Operational Creditor is as under:
  - a) Operational Creditor is in the business of renting and leasing of Containers. Operational Creditor and the Corporate Debtor entered into a Rental Lease Agreement dated 01.12.2013 for renting of certain marine cargo container equipment since 01.12.2013.
  - b) The Operational Creditor raised numerous invoices out of which 7 invoices are outstanding for renting of Containers and 1 outstanding Interest Invoice which accounts for interest till 31.03.2018 being raised in



the name of Corporate Debtor which was unpaid by the Corporate Debtor. The details of the Invoices are as follows:

- i. Invoice No. DOM2736R dated 30.09.2017 for period of 01.09.2017 to 30.09.2017.
  - ii. Invoice No. DOM2762R dated 31.10.2017 for period of 01.10.2017 to 31.10.2017.
  - iii. Invoice No. DOM2890R dated 30.11.2017 for period of 01.11.2017 to 30.11.2017.
  - iv. Invoice No. DOM2959R dated 31.12.2017 for period of 01.12.2017 to 31.12.2017.
  - v. Invoice No. DOM3064R dated 31.01.2018 for period of 01.01.2018 to 31.01.2018.
- c) The total amount in default for the invoices from 30.09.2017 to 22.05.2018 is Rs.1,15,69,785.86/- (Rupees one crore fifteen lakh sixty-nine thousand seven hundred eighty-five and eighty-six only) plus interest of Rs.53,24,088.19/- (Rupees fifty-three lakh twenty-four thousand eighty-eight and nineteen paise only).
- d) The last payment received by the Operational Creditor was on 25.07.2018, thereafter there was no payment made by the Corporate Debtor for the balance amount of Rs.1,15,69,785.86/- (Rupees one crore fifteen lakh sixty-nine thousand seven hundred eighty-five and eighty-six only).
- e) The total debt outstanding as on 25.09.2019 along with interest @ 36% per annum as per the terms of contract amounting to total aggregate



claim of Rs.1,68,93,874.05/- (Rupees one crore sixty-eight lakh ninety-three thousand eight hundred seventy-four and five paise only).

- f) The amount of Receipts and TDS deposited by the Corporate Debtor against the amount deducted as shown in the ledgers of the Operational Creditor is as follows:

<b>Year</b>	<b>Credits as per Form 26 AS</b>	<b>TDS deducted</b>	<b>Receipts</b>	<b>Balance</b>
2015-16	19,53,480	39,070	-	19,14,410
2016-17	83,75,184	1,67,505	5,382	82,02,297
2017-18	-	-	-	-
2018-19	-	-	30,03,848.80	(30,03,848.80)

- g) The balance outstanding as reflected in the credits as per Income Tax Form 26 AS, as compared to the payments as per the ledgers in the books of Operational Creditor shows a difference of Rs.71,12,858.20 (Rupees seventy-one lakh twelve thousand eight hundred fifty-eight and twenty paise only) which is above Rs.1,00,000/- (Rupees one lakh only) and hence the matter is liable to be admitted.
- h) The Operational Creditor had sent consistent reminders through emails to the Corporate Debtor from 21.12.2017 to 28.05.2018 requesting to make payment for the outstanding amount due.
- i) The Operational Creditor submits that the Corporate Debtor has made last payment on 25.07.2018
6. The Operational Creditor has issued Demand Notice dated 25.09.2019 to the Corporate Debtor in Form 3 under section 8 of the Code claiming the total



outstanding of Rs.1,68,93,874.05/- (Rupees one crore sixty-eight lakh ninety-three thousand eight hundred seventy-four and five paise only). The Demand Notice was served upon the Directors of the Corporate Debtor on 01.10.2019 and 03.10.2019. The Corporate Debtor has not replied to said Demand Notice.

7. The Operational Creditor has filed Invoices which is at pp 36-225 as Exhibit 'E' of the Petition. The Invoices does not have provisions of interest for delayed payment. The Rental Lease Agreement dated 01.12.2013 is placed at pp 21-26 as Exhibit 'C' of the Petition.
8. The Operational Creditor has filed an Affidavit dated 15.10.2019 under section 9(3)(b) of the IBC to the effect that there is no notice given by the Corporate Debtor relating to dispute in the unpaid operational debt which is at pp 294-296 as Exhibit 'S' of the Petition.
9. The Corporate Debtor did not appear in the matter.

*Findings/Observations:*

10. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.
11. It is observed by the Bench that the matter was listed on 05.11.2019, the Court Notice was issued to the Corporate Debtor to file reply in the matter. Vide order dated 20.12.2019, this Bench again issued fresh Court Notice dated 20.12.2019 to the Corporate Debtor for effective service to file reply in the matter. The said Court Notice was served upon the Corporate Debtor by Hand Delivery on 21.10.2020, by E-mail on 20.01.2020, by Speed Post on 22.10.2020 and by R.P.A.D. on 20.10.2020.



12. The matter was again listed on 10.03.2021, wherein the Corporate Debtor failed to appear in the matter. Hence, the Bench directed the Operational Creditor to issue personal notice to the Corporate Debtor to file reply in the matter. The matter was further listed on 30.09.2021 wherein the Operational Creditor was directed to take out substituted service by way of publication in the newspaper. The Operational Creditor has published the said order in English and in Marathi Newspaper on 26.11.2021. Despite various service by all available means upon the Corporate Debtor, the Corporate Debtor failed to appear in the matter and hence, the matter was listed on 18.07.2022 for final hearing and was Reserved for Orders.
13. It is observed by the Bench that the Operational Creditor supplied certain containers to the Corporate Debtor on lease/rent. For which the Operational Creditor and Corporate Debtor entered into a Rental/Lease Agreement dated 01.12.2013. The said Agreement was amended and extended from time to time.
14. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of One Lakh Rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and this is fit case for admission into CIRP.
15. The Operational Creditor has proposed Mr. Vinod Radhakrishnan Nair as Interim Resolution Professional (IRP) in the matter.

**ORDER**

16. It is, accordingly, hereby ordered as follows: -



- (a) The petition bearing **CP (IB) 3853/MB-IV/2019** filed by VS & B Domestic Container Solutions Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Opal Asia (India) Private Limited, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-



- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) This Bench appoints Mr. Vinod Radhakrishnan Nair, registration No. IBBI/IPA-001/IP-P01352/201-19/12083, Contact: 7039500000, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Manoj Kumar Dubey  
Member (Technical)  
24.08.2022

Sd/-

Kishore Vemulapalli  
Member (Judicial)