

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON ~~13-05-2020~~ 21.05.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 88/BB/2020	For pronouncement of order	Sec 9 of I&B code 2016	M/s Exxaro Tiles Pvt Ltd	VGB Associates	M/s KPR Realty India Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

Theerth

ADVOCATE FOR RESPONDENT/s:

ORDER

CP (IB) 88/2020 is dismissed by separate order

Shri
Member (T)

VGB
member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.88/BB/2020
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

Exxaro Tiles Private Limited

Survey No.169 & 170,
Vavdi Harsol Road,
At Po: Mahelav,
Tal. Talod Sabar Kantha,
Gujarat -383 305.

- Operational Creditor/Petitioner

Versus

KPR Realty India Private Limited

No.58, 10th Cross,
J P Nagar, 6th Phase, '
K R Layout
Bengaluru – 560 078.

- Corporate Debtor/Respondent

Order delivered on: 21st May, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Theerthesh B.S., Advocate

ORDER

Per: *Ashutosh Chandra, Member (Technical)*

1. C.P. (IB) No.88/BB/2020 is filed by Exxaro Tiles Private Limited (hereinafter referred to as 'Operational Creditor') under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of KPR Realty India Private Limited (hereinafter referred to as 'Corporate Debtor') on the ground that the Corporate Debtor has committed default for a total outstanding amount of Rs.5,77,494/- (Rupees Five Lakh Seventy



Seven Thousand Four Hundred and Ninety Four only) including interest of 18% p.a. being Rs.2,42,987/- on a principal due of Rs.3,54,988/- arising out of supply of tiles 'TOPAZ SERIES' Premium quality.

2. Mr. Parth Upendra Shah has filed this petition being duly authorised by Board Resolution dated 11.12.2018 passed by the Petitioner Company. Copy of the Board Resolution dated 11.12.2018 is annexed to the Petition.
3. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are inter alia as follows:

- (1) The Petitioner submits that it is engaged in the business of ceramic and tiles and the Respondent Company is engaged in real estate and construction. The Petitioner supplied tiles 'TOPAZ SERIES' Premium quality to the Respondent since the year 2013. The Respondent made payments on running account basis.
- (2) That the tiles 'TOPAZ SERIES' premium quality was supplied to the Respondent on 28.12.2015 and an invoice No.3245 was raised against the supply for a sum of Rs.5,77,494/- (Rupees Five Lakh Seventy Seven Thousand Four Hundred and Ninety Four only). Copy of the said invoice is annexed to the Petition.
- (3) It is submitted by the Petitioner that after the supply of goods on 28.12.2015, the closing balance of the Respondent in the books of account of Petitioner stood at Rs.11,54,988/- (Rupees Eleven Lakh Fifty Four Thousand Nine Hundred and Eighty Eight only) which included the previous supplies. After issuance of Credit Note by the Petitioner for Rs.5,00,000/- (Rupees Five Lakh only), the Respondent has made part payments of Rs.2,00,000/- and Rs.1,00,000/- on 07.08.2017 and 03.07.2018 respectively.
- (4) The Petitioner submits that thereafter the outstanding due of Rs.3,54,988/- has not been paid till day. It is further submitted that for the outstanding amount of Rs.3,54,988/-, three cheques bearing No. 968204, 968205 and 968206 dated 11.09.2019 for Rs.1,00,000/-

(Rupees One Lakh only), Rs.1,00,000/- (Rupees One Lakh only) and Rs.1,54,988/- (Rupees One Lakh Fifty Four Thousand Nine Hundred and Eighty Eight only) were issued. However, the same were dishonoured with Bank return memo dated 10.12.2019 with an endorsement 'Funds Insufficient'. Copies of the Cheques and the Bank return memos are annexed to the Petition.

- (5) The Petitioner submits that despite sufficient follow up and demands seeking payment of the outstanding dues, the Respondent has failed to make the payments. Further, it is submitted that on issuance of Demand Notice dated 25.10.2019 under section 8 of the I & B Code, 2016 neither any payments nor reply showing any existing dispute regarding the quality of goods has been issued. Copy of the Demand Notice dated 25.10.2019 along with the postal receipts and acknowledgments dated 30.10.2019 showing due service of notice on the Respondent are annexed to the Petition.
- (6) The Petitioner has annexed Record of Financial Information in Form-C issued by the National E-Governance Services Ltd. dated 16.12.2019. Further, Copy of the Bank Statement of Petitioner for the period 01.10.2019 to 30.11.2019 reflecting no payments in the said period, is annexed to the Petitioner.
- (7) The Petitioner has annexed an Affidavit dated 08.01.2020 stating that no notice of dispute has been received by the Petitioner and no payments have been made.
4. Heard Shri Theerthesh B.S, learned Counsel for the Petitioner. We have carefully perused the pleadings of the Petitioner and extant provisions of the Code and the Rules made thereunder.
5. On perusal of the Petition and the records filed by the Petitioner, the Petition at the very outset, appears to be an attempt to misuse the provisions of the I&B Code, 2016 and use this Authority as a substitute for a recovery forum, by filing a petition under section 9 of the I & B Code, 2016.



6. It is seen that the Petitioner has been raising invoices against his supplies and has a running account with the Corporate Debtor. However, while it has been receiving payments, the amounts claimed to be outstanding in this petition are arising out of invoice dated 28.12.2015 of which also part payments have admittedly been received by the Petitioner. This petition has been filed claiming principal due of Rs.3,54,988/- along with an interest of Rs.2,42,987/-, though the Petitioner has not filed any agreement in respect of interest to be calculated on the principal due. Thus it has come before this Adjudicating Authority only for recovery of the part payment due from the Corporate Debtor.
7. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*¹ has inter alia held that I & B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency. It is also pertinent to mention here that the Hon'ble Supreme Court in the case of *K. Kishan v. Vijay Nirman Company Private Limited*² clarified that the Petitioners cannot use IBC either prematurely or for extraneous considerations or as substitute for debt enforcement procedures.
8. In the light of above well settled position with the regard to the intent of legislature in introducing the Code of 2016, the Petitioner has to make a case that there is a clear and undisputed debt, a default and also that the Respondent is insolvent and has lost its ability to pay its debts. Otherwise, these proceedings become mere recovery proceedings and fall outside the scope of the I&B Code, 2016.
9. The Operational Creditor has also failed to make out a case that the Corporate Debtor is insolvent and incapable of paying the debt and which requires initiation of a CIRP against it. The Corporate Debtor has a Paid Up Share capital of Rs 3.18 crore, has assets such as Long Term Loans and Advance of Rs 8.34 crore, and Trade Receivables of Rs 16,47,516/-. It has

¹ 2018 (1) SCC 353

² (C A) No.9597 of 2018 dated 23rd October, 2018, (147 CLA 112 (SC)



generated Rs.2,80,97,077/- revenue from rendering services and other income and is a profit making entity. Its cost of material consumed at Rs.65,68,485/- indicates that it is a running concern. On these facts, we find no merit in initiating Corporate Insolvency Resolution Process against the Corporate Debtor.

10. These proceedings also cannot be used to settle disputes over dishonoured cheques, as the same have to be dealt with under Negotiable Instruments Act, 1881.
11. In view of the foregoing, we find no merit in the Petition and the same cannot be admitted under Section 9 of the I&B Code, 2016. Hence, C.P. (IB) No. 88/BB/2020 fails and is dismissed. No order as to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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