

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 4221/IBC/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

POWER2SME PRIVATE LIMITED

Having registered office at: AD-13,
Tagore Garden, New Delhi 110027

.....Operational Creditor

Vs

**GOVINDA INDUSTRIES PRIVATE
LIMITED**

(CIN: U74900MH2016PTC272946)
Registered office at: 401 Devpooja
North Avenue Road, Santacruz (W),
Mumbai-400054

.....Corporate Debtor

Order delivered on: 15.12.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Anirudh Bhalwal

For the Respondent: Mr. Amish Gandhi

Per: Shri H.V. Subba Rao, Member (Judicial)

1. The above Company Petition is filed by M/s. Power2Sme Private Limited hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against M/s. Govinda Industries Private Limited called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 45,00,119/-.

BRIEF FACTS OF THE CASE

2. The Petitioner is engaged in business of procuring and selling of raw material, consumable, operational supplies, industrial goods etc, (collectively referred to as the "Raw Material") to micro, small and medium enterprises ("SMEs") for increase their profitability by demand aggregation and providing raw material at competitive price by directly buying from large manufactures and enabling its customers to increase business efficiencies against cash payment or on credit basis.
3. The Petitioner submits that, the Respondent had in the course of business approached the Petitioner for purchase of Polymer (LLDPE) etc. of particular specification. The Respondent placed the order and issued various the Purchase Orders. The details of the various purchase orders are as under;
 - I. P.O. No. GI 180049 dated 30.10.2018 for Qty. 32,000 Kg. at Basic rate of 86.50 amounting to 27,68,000/-. The total of the said P.O. including 18% G.S.T. amounted to Rs.32,66,240/-
 - II. P.O. No.GI 1800450 dated 01.11.2018 for Qty. 9,000 Kg. at Basic rate of 100.15 amounting to 6,01,350/-. The total of the said P.O. including 18% G.S.T amounted to Rs. 10,63,593/-

- III. P.O. No. GI 180052 dated 05.11.2018 for Qty. 6,50 kg. at Basic rate of 85.35 amounting to 5,54,775/-. The total of the said P.O. including 18% G.S.T amounted to Rs. 6,54,635/-
4. At the request of Corporate Debtor the Petitioner sold materials i.e. Polymer (LLDPE) etc. of particular specification on credit basis and have raised various invoices provided the amounts are paid within a stipulated period of 30 days failing which delayed payment interest will be charged @ 24% per annum against purchase of material of particular specifications as per purchase orders raised by Respondents.
5. The Petitioner transported the said material of particular specification to the Respondent by Logistics Agency. The said material were transported in four parts. The details of E-Way Bills are as under;
- I. E-Way Bill No. 2310 5507 1316 dated 01.11.2018
 - II. E-Way Bill No. 2410 5507 4037 dated 01.11.2018
 - III. E-Way Bill No. 2410 5517 3590 dated 02.11.2018
 - IV. E-Way Bill No. 2710 5615 3350 dated 06.11.2018
- 01.11.2018, 02.11.2018 & 06.11.2018 as a proof of delivery of the materials upon the Respondent.
6. The Petitioner submits that it was mutually agreed that the Respondent Company shall be making the payment as per due date of invoices. However, the Respondents have failed and neglected to make the payment as per due date of invoices. The Petitioner has supplied the required materials to the Respondents as per the satisfaction of Respondents without raising any dispute in regard to quality & quantity of material. The details of outstanding invoices/debit notes as on 26.02.2019 are as under:

Invoice/Debit Note Date	Documents No.	Original Amount (Rs.)	Remaining Invoice Amount
01.11.2018	T/MH01/1819/1059	16,33,120	1,33,120
01.11.2018	T/MH01/1819/1060	16,33,120	16,33,120
02.11.2018	T/MH01/1819/1062	10,63,593	10,63,593
05.11.2018	T/MH01/1819/1068	6,54,635	6,54,635
26.02.2019	DN/MH01/1920/038	3,33,607	83,607
25.10.2019	DN/MH01/1920/039	9,32,044	9,32,044
	TOTAL		45,00,119

7. The Respondents have issued a cheque towards discharge of their liability. That a cheque has been dishonoured twice on its presentation. The details of the cheque is as under:-

CUSTOMER NAME	Cheque Number	Bank Name	Cheque Amount
GOVINDA INDUSTRIES PVT.LTD	810136	STATE BANK OF INDIA	49,84,468
Total			49,84,468

8. The Respondents failed and neglected to comply with the terms and conditions as stated in their various Purchase Orders which is marked as Exhibit "A" to "A-2" above. The Petitioner then was compelled to issue Demand Notice in Form-3 clause (a) of Sub-Rule 1 Rule 5 dated 26.02.2019, being the Statutory Notice under the Insolvency and Bankruptcy Code 2016 brought the aforesaid facts on record and

demanded payment of the unpaid operational debt due from the Respondents being issued under section 8 of Insolvency and Bankruptcy Code 2016. The petitioner informed the Respondents that they are in default of Rs. 53,18,075/- as on 26.02.2019 payable with interest @ 24% per annum accrued thereon. The said Notice was served upon the Respondent by speed post and the same has been delivered. The said Notice was received by the Respondents.

9. The Petitioner further submits that the Respondents have left a balance outstanding of Rs. 45,00,119/- as stated in the statement of account and balance is not paid by the Respondent within the stipulated period mentioned in the correspondence above. The Petitioner though requested the Respondent to clear the pending due but the Respondent failed and neglected to pay and clear the balance outstanding dues together with further interest accrued thereon at the rate of 24% p.a.
10. In the circumstances aforesaid, the Petitioner submits that the Respondent company is bound and liable to pay to the Petitioner, the said outstanding amount as on dated 25.10.2019 of Rs. 45,00,119/- together with further interest thereon at the rate of 24% per annum till payment or realisation as per particular of claim.
11. In the circumstances stated above it is just and necessary that the process of insolvency resolution can be initiated as there is default in payment of admitted liability in respect of claim which is due from the Respondent under Section 3(11) and Section 9 of the Insolvency and Bankruptcy Code 2016 as has committed default in respect of invoices drawn being Ex. C & C-5 hereto.
12. The Petitioner understands that the Respondent Company is in tremendous financial difficulties and has committed default in payment and hence is in the process of disposing of its assets. If the Respondent Company is permitted to dispose of its assets, nothing

would remain in the Respondent Company to the benefit of its creditors.

13. The Petitioner apprehends that the Respondent Company or its directors will deal with material and other assets, dispose off the company's assets, and/or dispose off the company's outstanding, books of accounts, papers and vouchers to the detriment of the Respondent's company creditors. The Petitioner submits that in the circumstances aforesaid it is not only just and proper but absolutely necessary that pending the hearing and final disposal of the Petition, the process of Insolvency and Bankruptcy code 2016 as default under section 6 is committed and the resolution professional proposed to act as an interim resolution professional or some other fit and proper person be appointed as the Provisional Resolution Professional of the company with all powers under the Insolvency and Bankruptcy Code 2016. The Petitioner is also entitled to admission of the Petition and ad-interim relief and interim reliefs in terms aforesaid be granted.
14. The Petitioner further submits that there is no reference in Appeal pending either before the NCLAT, BIFR or AAIFR or any other Court or Tribunal against the Respondent Company.

FINDINGS

15. Heard the arguments of the counsel appearing for the Operational Creditor. The Corporate Debtor remained absent despite service of notice and accordingly he was set ex-parte vide order dated 27.10.2021.
16. Ld. Counsel appearing for the Operational Creditor invited the attention of this Bench to the various purchase orders and E-Way Bills annexed to the Company Petition basing on which the above Company Petition was filed. The counsel appearing for the Operational Creditor also invited the attention of this Bench to the demand notice dated 26.02.2019 annexed at page no.35 of the

Petition and the postal receipt and the track report issued by the Postal Authority in support of proof of delivery of demand notice on the Corporate Debtor.

17. After hearing the submission and upon perusing the material available on record, this Bench feels that the Petitioner has successfully demonstrated the existence of debt and default committed by the Corporate Debtor in this case. Since the Corporate Debtor remained ex-parte the claim of Operational Creditor remained unchallenged.
18. Since the purchase orders are pertaining to the period of 2018 the above Company Petition being filed on 20.11.2019 is well within limitation. Thus, the Petitioner has satisfied all the necessary legal requirements for admission of the above Company Petition and the above Company Petition deserves to be admitted.
19. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) 4221(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Govinda Industries Private Limited.
- 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. Nitin Agrawal (nitinagrawal1206@gmail.com)**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02345/2021-2022/13531 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.

- 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.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**