

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/138(CHE)/2021

*(Filed under Rule 6, 8 r/w Section 9 of Insolvency and Bankruptcy
(Application to Adjudicating Authority Rules, 2016))*

In the matter of **VRMX Concrete India Pvt. Ltd.**

Mr. Ranjith Babu, Proprietor,
NXT GEN RMC,
Block No.6, 2nd Floor,
Door No.A, Bashyam Navarathana Apartments,
Thiruneermalai Road,
Chromepet, Chennai – 600 044.

... Applicant / Operational Creditor

Vs.

VRMX Concrete India Pvt. Ltd.,
Having its Registered Office at
No.17/22, Nehru High Road, B.V. Nagar,
Palavanthangal,
District : Kancheepuram,
Chennai – 600 114.

... Respondent / Corporate Debtor

Present: -

*For Applicant : Ms.Rathi Devi, Advocate
Mr.Sukumar, Advocate*

For Respondent : Mr.Thirumavalavan, Advocate

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Order Pronounced on 25th July, 2023

ORDER

(Hearing conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

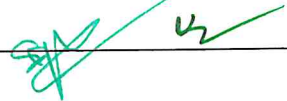
This Application has been filed by the Operational Creditor
Mr. Ranjith Babu, Proprietor of NXT GEN RMC having its registered

office at Block No.6, 2nd Floor, Door No.6, 2nd Floor, Door No.A, Bashyam Navarathana Apartments, Thiruneermalai Road, Chromepet, Chennai – 600 044 for initiating Corporate Insolvency Resolution Process on VRMX Concrete India Pvt. Ltd under Rule 6, 8 r/w Section 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. Part – II of the application reveals that the Corporate Debtor was incorporated on 19.07.2018 with CIN No.U45500TN2018PTC123789. The registered office of the corporate debtor is at 17/22, Nehru High Road, B.V. Nagar, Palavanthangal, District : Kancheepuram, Chennai – 600 114.

3. In Part III of the application, the Operational Creditor has not named any Interim Resolution Professional.

4. In Part IV of the application the Operational Creditor has claimed unpaid debt of Rs.1,03,36,069/- (Rupees One Crore Three Lakh Thirty-Six Thousand and Sixty-Nine Only) including interest as on 31.05.2021 stating the debt first fell due on 27.04.2019 and thereafter on various dates till 19.04.2020. Copies of various invoices are attached as Annexure A. The Applicant has also attached copies of the ledger accounts for the period from 01.04.2018 to 21.05.2021 of the corporate debtor maintained by the operational creditor demonstrating the computation of default in tabular form attached as Annexure B. The statement of interest



calculation is attached as Annexure C. Page No.151 the Principal amount and interest claimed are stated as Rs.80,88,255.36 and Rs.22,47,813.45. The Operational Creditor has attached the confirmation of accounts / common acknowledgment of the debt as given by the corporate debtor for the period from 01.04.2019 to 31.05.2020 as Annexure – D.

5. The copy of the demand notice dated 08.06.2021 was sent by the operational creditor through speed post and was delivered to the corporate debtor on 09.06.2021 & 10.06.2021 as per the track report placed on page nos.23 & 24 of the application. It is stated that there is no reply to the notice of the operational creditor regarding any dispute. The operational creditor has filed affidavit of not dispute which is placed at Annexure – IV.

6. Counter has been filed by the Respondent under S.R.No.4600 dated 12.10.2021. It is stated that the applicant is trader of cement and concrete. The Respondent is the manufacturer of Ready-Mix Concrete. The Applicant used to supply the same to the Respondent based on the purchase order issued by the respondent. Similarly, respondent used to supply ready mix concrete to the applicant based on the purchase order issued by the applicant.

7. It is stated that Respondent's business activities used to be carried out by four directors namely Ramasamy Sundarraj Rajkumar, Ganabathi Subramani Ramakrishnan, Kalaivanan



Ayyappan and Kolappan Alvin. The business with the applicant used to be looked after by one of the Directors namely Mr.Ganabathi Subramani Ramakrishnan.

8. It is stated that on 05.06.2020 during the pandemic period all the four directors resigned and communicated the same through Registered Post. Before resigning the directorship, all the four directors had directed the Accounts Manager of the Respondent to issue balance confirmation letter to the Applicant as on 01-06-2020 without the consent of the Board of Directors. It is stated that the resignation of the four directors created vacuum due to which the business of the Corporate Debtor suffered.

9. It is stated that the demand notice dated 08.06.2021 was replied on 11.07.2021 through the lawyer of the respondent. In the reply the respondent had admitted to pay a sum of Rs.80,63,232/- as on 06.08.2020. The same is attached at page nos.155 & 156 of the typeset of the document filed under S.R.No.6380. It is stated that respondent had issued demand notice dated 02.01.2021 to one M/s. AR Constructions where Mr. Ranjith Babu of M/s. Nxt Gen RMC is also a Director / Partner.

10. It is stated that M/s. Nxt Gen RMC and M/s. AR Constructions are liable to pay a sum of Rs.1,25,71,549/- to the Respondent. However it is admitted by the Respondent that a sum of Rs.80,63,232/- is due to to the applicant herein. It is stated that a

sum of Rs.10,43,913/- was remitted by the respondent to the applicant on 06.08.2020 which was prior to the issue of the demand notice dated 08.06.2021.

11. It is stated that as per their records, a sum of Rs.12,79,059/- is the only sum payable to the Applicant for which he is ready and willing to pay in instalments.

12. Heard the Counsels and perused the documents. This application has been filed on 13.07.2021. The list of various invoices are attached at page nos.26 to 145 of the Application. The statement of interest calculation attached at page no.151 as Annexure – II (C) is as below:

ANNEXURE - C

Nxtgen RMC (2020 - 2021)
No.3B, 1st Floor, TSD Nagar 1st
Cross Street, TSD Nagar Extn
Anumbakkam

Bills Receivable
1-Apr-2020 to 21-May-2021

Date	Ref. No.	Party's Name	Credit Period 30 Days from the date of Invoice				Interest %	Interest	Overdue
			Pending Amount	Due on	Overdue by days	Interest			
24-Feb-2020	Nst/Feb-2020/610	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,13,273.34	31-May-2021	432	24%	₹ 32,175.84	₹ 1,45,449.18	
24-Feb-2020	Nst/Feb-2020/611	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,34,500.00	31-May-2021	432	24%	₹ 95,016.33	₹ 4,29,516.33	
24-Feb-2020	Nst/Feb-2020/612	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,91,000.00	31-May-2021	432	24%	₹ 54,254.47	₹ 2,45,254.47	
24-Feb-2020	Nst/Feb-2020/613	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,34,200.00	31-May-2021	432	24%	₹ 94,931.11	₹ 4,29,131.11	
24-Feb-2020	Nst/Feb-2020/614	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,90,600.00	31-May-2021	432	24%	₹ 1,11,008.61	₹ 5,01,608.61	
28-Feb-2020	Nst/Feb-2020/639	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,23,500.00	31-May-2021	428	24%	₹ 91,040.88	₹ 4,14,540.88	
28-Feb-2020	Nst/Feb-2020/640	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,95,000.00	31-May-2021	428	24%	₹ 55,159.23	₹ 2,50,159.23	
28-Feb-2020	Nst/Feb-2020/641	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 4,50,500.00	31-May-2021	428	24%	₹ 1,26,781.81	₹ 5,77,281.81	
28-Feb-2020	Nst/Feb-2020/637	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 4,67,500.01	31-May-2021	428	24%	₹ 1,30,158.91	₹ 5,97,658.92	
28-Feb-2020	Nst/Feb-2020/642 A	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 7,25,500.00	31-May-2021	428	24%	₹ 2,04,201.73	₹ 9,29,701.73	
29-Feb-2020	Nst/Feb-2020/650	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 59,556.00	31-May-2021	427	24%	₹ 16,440.60	₹ 74,996.60	
03-Mar-2020	Nst/Mar-2020/649	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 2,48,600.00	31-May-2021	424	24%	₹ 69,308.32	₹ 3,17,908.32	
03-Mar-2020	Nst/Mar-2020/648	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 5,37,700.00	31-May-2021	424	24%	₹ 1,49,307.81	₹ 6,87,007.81	
10-Mar-2020	Nst/Mar-2020/658	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 24,478.00	31-May-2021	417	24%	₹ 6,711.32	₹ 31,189.32	
11-Mar-2020	Nst/Mar-2020/659	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,48,900.00	31-May-2021	416	24%	₹ 40,729.25	₹ 1,89,629.25	
11-Mar-2020	Nst/Mar-2020/660	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 7,44,200.00	31-May-2021	416	24%	₹ 2,03,564.19	₹ 9,47,764.19	
11-Mar-2020	Nst/Mar-2020/661	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,45,700.00	31-May-2021	416	24%	₹ 94,569.79	₹ 4,40,269.79	
11-Mar-2020	Nst/Mar-2020/662	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 5,95,900.00	31-May-2021	416	24%	₹ 1,62,999.06	₹ 7,58,899.06	
12-Mar-2020	Nst/Mar-2020/663	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,50,100.00	31-May-2021	415	24%	₹ 40,958.79	₹ 1,91,058.79	
12-Mar-2020	Nst/Mar-2020/664	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,50,100.00	31-May-2021	415	24%	₹ 40,958.79	₹ 1,91,058.79	
12-Mar-2020	Nst/Mar-2020/665	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,71,100.00	31-May-2021	415	24%	₹ 1,01,254.55	₹ 4,72,354.55	
12-Mar-2020	Nst/Mar-2020/667	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 1,60,500.00	31-May-2021	415	24%	₹ 43,796.71	₹ 2,04,296.71	
12-Mar-2020	Nst/Mar-2020/668	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 3,50,900.00	31-May-2021	415	24%	₹ 95,752.44	₹ 4,46,652.44	
14-Mar-2020	Nst/Mar-2020/668	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 64,638.00	31-May-2021	413	24%	₹ 17,552.66	₹ 82,190.66	
15-Mar-2020	Nst/Mar-2020/672	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 88,914.00	31-May-2021	411	24%	₹ 24,028.70	₹ 1,12,942.70	
19-Mar-2020	Nst/Mar-2020/675	Vrmx Concrete Pvt Ltd-Receiveable-Cement	₹ 2,01,800.01	31-May-2021	408	24%	₹ 54,137.70	₹ 2,55,937.70	
			₹ 80,48,255.38				₹ 22,47,813.45	₹ 1,02,96,068.81	

For Nxtgen RMC

D. R. I. B. L.
Proprietor

Perusal of the invoices reveals that there was no agreement as to the interest.

13. The principal amount claimed ~~is~~ in the present case is Rs.80,88,255/-. Whereas, threshold to file application under Sections 7, 9 and 10 of IBC, 2016 is Rs.1,00,00,000/- (Rupees One Crore) vide notification dated No. S.O. 1205(E), dated 24.3.2020. The relevant provision is extracted hereunder.

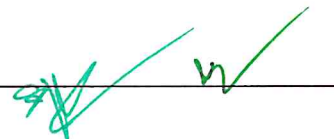
Section 4:

(1) This part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:

Provided that the Central Government may, by notification¹, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

²[Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the prepackaged insolvency resolution process of corporate debtors under Chapter III-A].

Notification No. S.O. 1205(E), dated 24-3-2020: *In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.*



There is no specific agreement so as to the interest, no specific incidence has been shown where the Respondent agreed / paid the interest on the invoice.

14. It is also noted that there were mutual dealings between the parties through various companies under the same management.

15. For the aforesaid reasons, we are of the view that this application does not ^{meet} met the pecuniary threshold prescribed under Section 4 of IBC, 2016. The same is not maintainable. Accordingly, CP(IB)/138(CHE)/2021 stands dismissed.

— Sol —

SAMEER KAKAR
Member (Technical)

— Sol —

SANJIV JAIN
Member (Judicial)