

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

104. C.P.(IB)-4656(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **08.11.2021**

NAME OF THE PARTIES: Ultratech Cement Ltd

V/s

Khan & Co Infra Projects Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Applicant, Mr. Sahil Mahajan is present through virtual hearing. Corporate Debtor was already set ex-parte vide its order dated 16.04.2021 of this Bench.

The above Company Petition is filed for the unpaid amount as per the settlement entered into between the parties in the earlier Company Petition 3326/2018 which was withdrawn by the Petitioner, in view of settlement entered into between the parties and handing over of 17 post dated cheques of various dates issued by the Corporate Debtor in favour of the Operational Creditor towards the settlement amount.

The counsel appearing for the Operational Creditor submits that except three cheques, the remaining cheques issued by the Corporate Debtor have been returned for want of sufficient balance. Hence, the Petitioner filed the present Company Petition for Resolution of the unpaid amount.

The Petitioner also issued Demand Notice dated 04.12.2019 calling upon the Corporate Debtor to pay the remaining amount as per the settlement.

The Corporate Debtor having received the said notice neither send any reply nor cleared the outstanding amount as claimed by the Operational Creditor in the demand notice.

After hearing the submissions made by the counsel appearing for the Petitioner and upon perusing the material available on record, this Bench finds there is a debt and default and the debt is also within limitation. The above Company Petition satisfies all the legal requirements for admission. Accordingly, the above Company Petition is admitted. Detailed order will follow.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

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

C.P. No.4656 /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

ULTRATECH CEMENT LIMITED

Registered office at: Ahuja Centre,
B-Wing, 2nd Floor, Mahakali Caves
Road, Andheri (E), Mumbai-400093
.....Operational Creditor

Vs

**KHAN & CO INFRA PROJECTS
PRIVATE LIMITED**

(CIN: U74999MH2012PTC235684)
Registered office at: Gala No.40, 2nd
Floor, Jai Bharat Industrial Estate,
Nr. Virwani Ind. Estate, W.E.
Highway, Goregaon (E), Mumbai-
400063

.....Corporate Debtor

Order delivered on: 08.11.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Sahil Mahajan

For the Respondent: None appeared

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

ORDER

1. The above Company Petition is filed by M/s. Ultratech Cement Limited hereinafter called as “Operational Creditor” seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Khan & Co Infra Projects Private Limited hereinafter 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 Resolution of an Operational Debt of Rs. 26,75,483/- with interest at the rate of 21% per annum.

BRIEF FACTS OF THE CASE

2. The Operational Creditor is doing business manufacturing and sale of various grades of Cements, Ready Mix Concrete material, Building products and Building Solutions.
3. During the routine course of business and as per the Corporate Debtor’s request and orders, the Operational Creditor had supplied the material to the Corporate Debtor from time to time. The said material was duly received by the Corporate Debtor without raising any dispute and objection and for the same Operational Creditor had issued the invoices upon Corporate Debtor. As per the accounts maintained by the Operational Creditor, as on 10.08.2019 the Corporate Debtor failed and neglected to pay the amount of Rs. 17,12,182/- of the Invoices.
4. In spite of repeated requests and reminders, the Corporate Debtor failed to make the payment of the invoices incurred during the said time period.
5. During the pendency of the aforesaid proceedings, the parties had settled the matter and accordingly the Operational Creditor had filed Withdrawal Application before the Hon’ble NCLT. As per the Settlement Terms between the Operational Creditor and Corporate

Debtor, the Corporate Debtor agreed to pay an amount of Rs. 17,12,182/- in seventeen (17) instalments. In order to discharge the aforesaid liability, the Corporate Debtor has issued post-dated cheques in favour of the Operational Creditor with the assurance that they shall be honoured on their due date.

6. By order dated 01.03.2019 the Hon'ble NCLT has disposed of the said Company Petition No.3326 of 2018, dismissed as withdrawn.
7. The Corporate Debtor honoured 3 (three) cheques through RTGS. The Corporate Debtor requested the Operational Creditor to not deposit the fourth cheque due to which the Operational Debtor did not deposit the said cheque. When the Operational Creditor deposited the cheques as in sequence from no.5 to 8 with the Bankers at ICICI Bank, the cheques were returned dishonoured with an endorsement "Other Reasons Please Specify" and the same were returned back to the Operational Creditor by their bankers with their memo dated 01.11.2019 and 16.11.2019.
8. As per the books of account maintained by the Operational Creditor, the Corporate Debtor failed and neglected to pay the amount of Rs. 14,12,182/-.
9. Operational Creditor through its Advocate had issued Demand Notice dated 04.12.2019 whereby the Operational Creditor called upon the Corporate Debtor to pay the Operational Creditor a sum of Rs. 26,75,483/- comprising of an amount of Rs. 14,12,182/- being the amount of Invoices and the amount of Rs. 12,63,301/- being the interest amount calculated @ 21% per annum from due date of the Invoices till 25.10.2019.
10. The Corporate Debtor having duly received the said notice on 06.12.2019 neither sent any reply nor settled the dues of the Operational Creditor. Hence, the Petitioner/OC filed the above Company Petition praying this Tribunal to order initiation of CIRP against the Corporate Debtor.

11. The Corporate Debtor after receiving notice from this Tribunal failed to appear before this Bench and accordingly, the Corporate Debtor was set ex-parte vide order dated 16.04.2021.

12. Heard the arguments of the counsel appearing for the Applicant and perused the record. The Ld. Counsel appearing for the Applicant invited the attention of this Bench to the relevant invoices basing on which the above Company Petition is filed. The Ld. Counsel appearing for the Applicant also invited the attention of this Bench to annexures "G1" to "G11" at page nos.47 to 68 of the above Company Petition showing the consolidated outstanding dues of the Operational Debt.

The applicant also demonstrated issuance of demand notice and receipt of the same by Corporate Debtor.

Since the invoices are pertaining to the period 2019, the above Company Petition being filed on 20.12.2019 is well within limitation.

After hearing the submissions of the counsel appearing for the Applicant and upon perusing the material available on record, this Bench is of the considered opinion that the Operational Creditor has successfully demonstrated the existence of debt and default committed by the Corporate Debtor and the Company Petition satisfies all the necessary legal requirements for admission and deserves to be admitted.

The Petitioner also filed form-II suggesting the name of IRP, Mr. S. Gopalakrishnan along with consent letter of proposed IRP.

Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) 4656(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Khan & Co Infra Projects Private Limited.
- b. This Bench hereby appoints **Mr. S. Gopalakrishnan**, Insolvency Resolution Professional, Registration No: IBBI/IPA-002/IP-N00151/2017-18/10398 as suggested by Operational Creditor in the Company Petition.
- 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.
- k. Accordingly, this Petition is admitted.
- l. 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)