

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

**CP (IB) No. 2970/MB-VI/2018**

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

**H. R. CORPORATION**

Registered Office: 401, Amar Smruti,  
R.B. Mehta, Marg, 60ft Road, Ghatkopar,  
Mumbai – 400077, Maharashtra.

**...Operational Creditor**

V/s

**SAMAYPRA TECHNOSOLUTION PRIVATE LIMITED**

[CIN- U52100MH2012PTC231386]

Registered Office: Unit No. 1114, Opal Square,  
Plot No. C/1, Thane- 400604, Maharashtra.

**...Corporate Debtor**

Reserved for orders: 07.09.2023

Pronounced: 05.10.2023

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances (Physical):**

Operational Creditor : Adv. Dhruva Gandhi a/w Adv. Akshita Vakaria i/b  
Adv. Dharmesh Joshi for OC

Corporate Debtor : None.

**ORDER**

***[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]***

## 1. **Background**

1.1 This C.P. (IB) No. 2970/MB/C-VI/2018 (Application) was filed on 22.07.2021 by H.R. Corporation, the Operational Creditor (OC), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Samaypra Technosolution Private Limited, the Corporate Debtor (CD). The debt in the present Application arises from the supply of goods (pipes) by OC to CD in lieu of which several tax invoices were raised by OC. In view of the said tax invoices raised upon the CD along with several transport receipts and delivery challans, a total amount of Rs.19,81,914/- fell due to the OC from the CD inclusive of principal amount of Rs.14,05,373/- along with interest @ 18% p.a. amounting to Rs.5,76,541/- till 31.03.2018. The Application was dismissed as withdrawn *vide* order dated 12.02.2020 on the basis of consent terms entered in to by the OC and the CD, with liberty to revive it again the event of failure of consent terms. As the consent terms had been violated by the CD and all post-dated cheques given pursuant to the consent terms were dishonoured, the Application was restored *vide* order dated 07.08.2023 in IA 321/2021.

## 2 **Contentions of OC**

2.1 The OC alleges that in spite of the delivery of goods and raising tax invoices with respect to the purchase orders placed by CD and the

same being accepted by the CD without any dispute or demur, the CD did not pay the dues arising out of the terms of the said invoices, i.e., within thirty days from the issue of invoice or before sixty days from the delivery of material, as mentioned in the purchase order raised by the CD itself

- 2.2 The OC has also submitted the ledger account of the CD for the period between 01.04.2016 and 31.03.2018 maintained by it in its books of account, which shows the outstanding amount/closing balance as the total amount claimed in the present Application. Additionally, the OC has also attached an undated balance confirmation letter sent by CD to it, acknowledging its debt and liability towards the OC.
- 2.3 The CD had issued 6 cheques amounting to Rs.19,00,000/- without dates to the OC, however, when presented for payment by the OC, the same were dishonoured with a remark "Payment Stopped by the Drawer" and thereby returned to the CD by the OC as evidenced by letters dated 25.05.2018 as attached to the present Application.
- 2.4 The OC then sent Demand Notice dated 12.06.2018 under Form 3 as prescribed Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Postal receipts dated 19.06.2018 and the Acknowledgement cards have been placed on record by the OC which makes it clear that the delivery was accepted by the CD and it deliberately chose not to file reply to the said demand notice or to produce proof of payment made in respect of the amount claimed by OC.

2.5 The OC has also attached a Bank Certificate dated 23.07.2018 addressed by its Banker confirming that no payment has been received by the OC in its account from the CD between the 01.06.2018 and 23.07.2018. The OC, therefore, prays for initiation of CIRP of the CD u/s 9 of the IBC for the default in payment of the amount due i.e., Rs. 19,81,914/-.

### **3 Contentions of CD**

3.1 The CD has chosen not to file a reply to the Application. The parties had previously entered into a settlement but in view of the breach of the settlement agreement by the CD, this Application was restored. Even after restoration, the CD did not file any reply.

3.2 The OC placed on record, *vide* an Additional Affidavit, an email dated 28.08.2018 sent by the accounts department of the CD confirming its liability and requesting for time to repay the debt. The CD also mentioned in the email that a payment of Rs.1,50,000/- was made by them on 26.09.2017.

### **4 Analysis & Findings**

4.1 Part IV of the application filed by the OC mentions the date of default as 25.05.2018 in view of the last cheque issued by the CD to the OC on such date as submitted by OC. The letter sent by the CD to the OC placed at Page 77 confirms having issued 6 cheques to the OC towards the debt and liability. As pleaded by the OC, the last

cheque was issued on 22.05.2018 and all such cheques were presented for payment and returned dishonoured on 25.05.2018 with the remark "Payment stopped by Drawer". Hence, the date of default is determined as 25.05.2018 i.e., the date on which the cheques issued by the CD were dishonoured, as submitted by the OC in Part IV of this Application.

- 4.2 It is further noted that despite any reply from the CD, it is safe to assume that the debt had been admitted by the CD as both the parties had entered into consent terms and this Application has been restored in view of the breach of terms by the CD.
- 4.3 We find that the debt accrued on the basis of supply of goods against the invoices raised by the OC upon the CD, falls within the meaning of "operational debt" u/s. 5(21) of the IBC.
- 4.4 After perusal of the documents on record and the arguments advanced by the OC, this Bench is of the considered view that there is no dispute raised by the CD as regards the existence of the debt and default and also that there is no payment of the unpaid operational debt by the CD.
- 4.5 The present Application is filed on 22.07.2021, which is well within the limitation period under Section 238A of the IBC r/w Article 137 of the Limitation Act, 1963, as applicable for filing an Application under the IBC.
- 4.6 On perusal of the documents submitted by the OC, it is clear that the operational debt of more than Rs.1,00,000/- (One lakh Rupees)

is due and payable by the CD to the OC u/s. 4 of IBC, and thus, this Application u/s. 9 of the IBC is maintainable. The Application is complete and has been filed under the proper form as per the law. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.

- 4.7 The Applicant has proposed the name of Ms. Nishi Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01662/2019-2020/12664] and Email Id.- csnishijain@gmail.com; and has submitted her consent letter dated 12.01.2021 u/s. 9 (4) of the IBC to carry out the functions as thereunder.

### **ORDER**

In view of the above discussions, this Application bearing C.P. (IB) No. 2970/MB/C-VI/2018 filed by H. R. Corporation, the OC, under section 9 of the IBC for initiating CIRP in respect of Samaypra Technosolution Private Limited, the CD is **Admitted**.

We further declare moratorium u/s 14 of IBC, with consequential directions as follows:

- I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints Ms. Nishi Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01662/2019-2020/12664] and Email Id.- csnishijain@gmail.com as the Interim Resolution Professional (IRP) to carry out the functions under the IBC, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD 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 CD 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.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.

IX. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.

X. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-  
SANJIV DUTT  
MEMBER (TECHNICAL)**

**Sd/-  
K. R. SAJI KUMAR  
MEMBER (JUDICIAL)**

//LRA/Akshata Shah//