

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

**IBA/1193/2019**

*(filed 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 ***M/s. Canalairz Airz Solutions Pvt. Ltd.***

**M/s. Beardsell Limited**

47, Greams Road,  
Chennai – 600 006

*... Operational Creditor*

-Vs-

**M/s. Canalairz Airz Solutions Private Limited**

1<sup>st</sup> Floor, SC No.1, Shopping Complex,  
Door No.1/369,  
Pollachi Main Road, SIDCO,  
Coimbatore – 641 021

*...Corporate Debtor*

*Order Pronounced on 25<sup>th</sup> January 2021*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : J. Manivannan, Advocate*

*For Corporate Debtor : Ramya Sarat, Advocate*

**ORDER**

***Per: R. VARADHARAJAN, MEMBER (JUDICIAL)***

1. The present Application is filed by **M/s. Beardsell Limited** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in

short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Canalairz Airz Solutions Private Limited** (hereinafter referred to as '*Corporate Debtor*') seeking thereof to initiate the Corporate Insolvency Resolution Process, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U29197TLZ2008FTC014657 was incorporated on 22.07.2008 and that its Authorized Share capital is being Rs.2,00,00,000/- and paid up capital of Rs.1,67,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 1<sup>st</sup> Floor, SC No.1, Shopping Complex, Door No.1/369, Pollachi Main Road, SIDCO, Coimbatore – 641 021.

3. Part-III of the Application shows that the Operational Creditor has not proposed the name of the "Interim Resolution

Professional" (IRP) and left it to the discretion of this Tribunal to appoint the same.

4. From Part-IV of the Application, it is seen that a sum of Rs.16,09,790/- is being claimed by the Operational Creditor as Operational Debt, with interest at the rate of 18% p.a. from the due date of invoice till realization. The present Application is filed before this Tribunal on 27.09.2019.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is engaged in the business of sale of Siemens Motors and the Corporate Debtor has placed various purchase Orders from time to time on the Operational Creditor for procuring Siemens motors. The copy of the Purchase Order is placed at page Nos. 13 to 29 of the typed set filed along with the Application. It was submitted that the Operational Creditor has effected the supply of the materials as placed under the Purchase Order to the Corporate Debtor on various dates, as per the agreed terms and condition and accordingly raised invoices. The copy of the Invoices raised by the Operational Creditor is placed at page Nos. 30 to 74 of the typed set filed along with the Application.

6. The Learned Counsel for the Operational Creditor submitted that as per the terms of the Purchase Order the Corporate Debtor was supposed to make the payment within 30 days from the date of receipt of the respective materials, however the Corporate Debtor has not made the payments as stipulated in the terms and conditions of the Purchase Order. Despite non payment by the Corporate Debtor, the Operational Creditor continued to supply the materials to the Corporate Debtor. It was submitted that out of the total Invoice amount of Rs.39,73,688/-, the Corporate Debtor has made a total payment of Rs.23,63,898/- upto 14.12.2017 and has failed to make the balance payment of Rs.16,09,790/-. Further, it was submitted by the Learned Counsel for the Operational Creditor that they have issued a letter dated 15.04.2019 to the Corporate Debtor, requesting them to make the payment, however, the Corporate Debtor has not replied to the said letter.

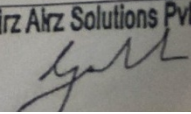
7. The Learned Counsel for the Operational Creditor submitted that on 01.08.2019, the Operational Creditor has sent a Demand Notice in Form 3 as mandated under Section 8 of IBC, 2016 to the Corporate Debtor, which was received by the Corporate Debtor on 05.08.2019, to which the Corporate

Debtor has sent a reply on 12.08.2019 by stating that the Demand Notice has not been served to the Registered Office address of the Corporate Debtor but has been received only by the Directors and hence the present service of Demand Notice is not valid. Further, it has been stated in the reply to the demand notice that the demand for a sum of Rs.16,09,790/- is time barred and therefore the same is not a "debt" in the eye of law. However, a perusal of the reply of the Demand notice further posits the fact that the Corporate Debtor has not raised any dispute in relation to the supply of goods provided by the Operational Creditor. The copy of the Demand Notice and the reply to the Demand Notice is placed at page Nos. 12 to 12C and 77 to 78 of the typed set filed along with the Application. The Operational Creditor has filed the present Application under Section 9 of IBC, 2016 seeking to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

8. The Corporate Debtor has filed counter and the Learned Counsel for the Corporate Debtor submitted that the alleged claim of the Applicant is barred by limitation and out of the 42 Invoices, the invoices No. 1 to 37 as found in page 2 and 3 of the counter, are barred by limitation. The list of invoices as

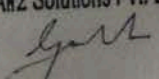
filed and extracted by the Corporate Debtor, which is stated to be barred by limitation, in their counter is reproduced hereunder;

S.No	Date	Bill No.	Amount (in Rs.)
1.	15.02.2016	5033	5,52,173
2.	16.02.2016	5038	62,228
3.	16.02.2016	5039	77,197
4.	17.02.2016	5040	16,500
5.	17.02.2016	5041	20,000
6.	18.02.2016	5045	1,80,615
7.	19.02.2016	5047	6,100
8.	19.02.2016	5049	8,300
9.	22.02.2016	5058	84,651
10.	29.02.2016	5070	60,715
11.	02.03.2016	5073	50,551
12.	05.03.2016	5079	5,290
13.	15.03.2016	5092	16,188
14.	15.03.2016	5093	14,742
15.	23.03.2016	5106	5,136
16.	23.03.2016	5107	16,811
17.	05.04.2016	5108	16,315

For Canalairz Airz Solutions Pvt. Ltd  


18.	07.04.2016	5127	5,404
19.	07.04.2016	5132	8,577
20.	15.04.2016	5133	16,542
21.	15.04.2016	5146	17,044
22.	21.04.2016	5171	5,136
23.	22.04.2016	5172	57,807
24.	13.05.2016	5213	3,986
25.	13.05.2016	5214	13,296
26.	24.05.2016	5227	4,432
27.	25.05.2016	5228	29,824
28.	25.05.2016	5229	51,465
29.	25.05.2016	5230	11,957
30.	21.06.2016	5268	29,003
31.	21.06.2016	5269	4,432
32.	24.06.2016	5375	27,901
33.	22.07.2016	5338	3,986
34.	22.07.2016	5339	11,957
35.	22.07.2016	5340	17,728
36.	22.07.2016	5341	8,577
37.	03.08.2016	5360	8,577
38.	17.08.2016	5387	3,986
39.	17.08.2016	5388	8,577
40.	17.08.2016	5389	14,943
41.	17.08.2016	5390	14,502
42.	06.09.2016	5418	5,404
43.	TOTAL		Rs.16,09,790/-

For Canairz Airz Solutions Pvt. Ltd

  
Authorized Signatory.

9. In rebuttal the Operational Creditor has filed a rejoinder and the Learned Counsel submitted that the Operational Creditor has continuously supplied materials to the Corporate Debtor during the period from 15.02.2016 to 06.09.2016 under the Purchase Order for which various invoices were raised on the Corporate Debtor, however the Corporate Debtor has not paid the amount then and there and whatever the amount the Corporate Debtor has paid was given credit to and hence a continuous account has been maintained. Further it was submitted that the account between the parties are open, running, but non – mutual account.

10. It was contended by the Learned counsel for the Operational Creditor that in case of a running and non – mutual account between the buyer and the seller, when goods are delivered by the seller to the buyer, the value of the goods is debited in the debit column and when the amounts are paid by the buyer to the seller, they are entered in the credit column and in such a case, when the buyer defaults to make the balance payment, the seller's action is not for the price of goods sold and delivered but for the balance due at the foot of an account. In support of his arguments, the Learned Counsel

for the Operational Creditor has relied on the following Judgments;

- (i) **Renganathan –Vs- Saravana Stores**; *OSA No. 31 of 2018 and CMP No. 1852 of 2018 (Hon’ble High Court of Madras)*; wherein it is held that when the account between the parties are running and current but non – mutual, then Article 14 of the Schedule to the Limitation Act, 1963 would not apply, the residuary Article 113 only will apply.
- (ii) **Dara Projects Pvt. Ltd. –Vs- Business India Exhibitions Pvt. Ltd & Anr**; *CS (Comm) No. 216 of 2016 (Hon’ble High Court of Delhi)*; wherein it is also held that when the account between the parties are running and current but non – mutual, then Article 14 of the Schedule to the Limitation Act, 1963 would not apply, the residuary Article 113 only will apply.

11. Adverting to his submission, the Learned Counsel for the Corporate Debtor has relied upon the following Judgments in order to bolster her arguments;

- (i) **WIN Cable & Datacom Pvt. Ltd. –Vs- Grass Link Advertising Pvt. Ltd. & Anr.** ; *2011 (122) DRJ 630 (Hon’ble High Court of Delhi)*; wherein it is held that when different orders are placed from time to time and those orders are executed on different dates, each order would constitute a distinct and separate cause of action.
- (ii) **Babulal Vardharji Gurjar –Vs- Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.**; *Civil Appeal No.6347 of 2019 (Hon’ble Supreme Court of India)*; wherein it is held that for

applying the principles of section 18 of the Limitation Act, 1963 the Applicant has to specifically plead in the Application the date of default and how it is saved by limitation and it also remains trite that the question of limitation is a mixed question of law and facts.

12. Heard the submissions made by the Learned Counsel for the respective parties. From the contentions raised by Learned Counsel for both the parties, the only question which has to be decided by this Tribunal is as to whether the invoices as raised by the Operational Creditor in the present Application is barred by limitation.

13. *Prima facie*, it is the contention of the Learned Counsel for the Corporate Debtor that each Purchase Order placed by the Corporate Debtor constitutes a separate and distinct transaction and the invoices raised pursuant to the purchase orders constitutes a separate transaction. Hence, the stance of the Operational Creditor in clubbing all the invoices together is erroneous in law. However, it was contended by the Learned Counsel for the Operational Creditor that the account maintained by the parties is a running and non – mutual account and when goods are delivered to the Corporate Debtor, the value of the goods is debited in the debit column and when the amounts are paid by the Corporate Debtor, they

are entered in the credit column and in such a case, when the Corporate Debtor defaults to make the balance payment, the action initiated by the Operational Creditor is not for the price of goods sold and delivered but for the balance due at the foot of an account.

14. Thus, before examining the issue as to whether the invoices as raised by the Operational Creditor are barred by limitation, it becomes imperative for this Tribunal to first answer the issue as to whether each Purchase Order and resulting Invoices raised by the Operational Creditor would constitute a separate and distinct transaction, in the facts and circumstances of the case.

15. It is not in dispute that the Operational Creditor has raised a total of 42 Invoices ranging between the periods from 15.02.2016 to 06.09.2016. Each Invoices raised by the Operational Creditor are corresponding to the Purchase Order placed by the Corporate Debtor. From the Bank Statement as filed by the Operational Creditor, which is annexed at pages 81 to 86 of the typed set filed along with the Application, it is seen that the Corporate Debtor has effected part payments in view of the supply of goods being made by the Operational

Creditor. It is to be noted here that as per the terms of the Purchase Order, the payment has to be made within 30 days from the receipt of the materials. However, from the perusal of the Bank Statement, it is seen that the Corporate Debtor has not paid the sum, as claimed in the Invoice, within 30 days period as stipulated under the terms and conditions of the Purchase Order and Invoice. Further, it is seen that the Corporate Debtor has issued two cheques one for a sum of Rs.5,00,000/- on 05.07.2017 and another for a sum of Rs.1,63,897/- on 13.12.2017, in discharge of their liability towards the various Invoices raised by the Operational Creditor. The said sum of Rs.5,00,000/- and Rs.1,63,897/- does not exactly correlate with the specific amount mentioned in the list of 42 Invoices. Hence, it has to be construed that the Corporate Debtor has not made payments as against each and every Invoices as soon as the same becomes due and payable, however the same is being paid only at a later stage by clubbing the payments in the Invoices and thereby making a lump sum payment.

16. Thus, the plea of the Corporate Debtor that each Purchase Order placed by the Corporate Debtor constitutes a separate and distinct transaction and the invoices raised

pursuant to the purchase orders constitutes a separate transaction is required to be brushed aside in view of the fact that the Corporate Debtor has not made the payment as against each and every invoice as and when the same become due and payable, however made the payments only at a later stage by way of a lump sum payment. Hence, the issue as to whether the Purchase Order and resulting Invoices raised by the Operational Creditor would constitute a separate and distinct transaction, in the facts and circumstances of the case is answered in the negative. Also, the judgments referred by the Operational Creditor in this regard pertains to Article 113 of the Limitation Act, 1963, however this Tribunal is aware of the fact that for matters pertaining to IBC, 2016, it is only Article 137 of Limitation Act, 1963 alone that will apply.

17. Further, it is to be seen here that the Corporate Debtor has issued two cheques for a sum of Rs.5,00,000/- on 05.07.2017 and another for a sum of Rs.1,63,897/- on 13.12.2017. It is to be noted here that this Tribunal in the matter of **ACI Wonderwood Products –Vs– Ad Mart Pvt. Ltd.** in *IBA/140/2020*, after discussing the decisions rendered by the various High Court in relation to the issue as to whether issuance of cheque, irrespective of the fact whether it

is honoured or dishonoured, would amount to acknowledgment of debt or not, has held in para 20 in the affirmative that the payment by cheque would amount to acknowledgement of a debt and a liability and by necessary consequence there will be saving of limitation as envisaged by Section 18 of the Limitation Act, 1963. Even then the part payments being made by the Corporate Debtor by way of cheque also extends the period of Limitation as per Section 19 of the Limitation Act, 1963. Thus, in view of the cheque being issued by the Corporate Debtor for a sum of Rs.5,00,000/- on 05.07.2017 and another for a sum of Rs.1,63,897/- on 13.12.2017 and necessarily to be construed issued towards the balance amount due from the Corporate Debtor to the Operational Creditor in the absence of any specific instructions given by the Corporate Debtor as to its appropriation. Thus, the present Application being filed before this Tribunal on 27.09.2019, in view of the findings given in paragraph *supra*, we are of the considered view that the claim of the Operational Creditor is not barred by limitation.

18. Further, a perusal of the reply to the Demand Notice and also in the counter filed by the Corporate Debtor it is seen that the Corporate Debtor has raised a defence only as to the

Limitation and not raised any dispute in relation to the quality of the materials being supplied by the Operational Creditor or disputed the amounts payable otherwise. Also, the Corporate Debtor has failed to bring to the notice of this Tribunal the existence of any dispute between the Corporate Debtor and the Operational Creditor before the issuance of the Demand Notice under Section 8 of IBC, 2016. Under such circumstances, since the plea of the Corporate Debtor in relation to the limitation does not hold much water in view of the Section 18 and 19 of the Limitation Act, 1963, and also in view of the discussions made *supra* and also in view of the fact that the Corporate Debtor has also failed to bring to the notice of this Tribunal, the existence of any dispute between the Corporate Debtor and the Operational Creditor before the issuance of the Demand Notice, besides satisfying the debt and default on the part of the Corporate Debtor, we are of the considered view that the petition as filed by the Operational Creditor is required to be admitted in terms of Section 9(5) of IBC, 2016.

19. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under

Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

20. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021, appoints **Mr. Vengetrao**, Reg. No. IBBI/IPA-002/IP-N00445/2017 – 2018/11331 (email:- kvengetrao@gmail.com) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a

period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

21. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

22. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

23. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*