



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**CP (IB) / 677 (MB) 2024**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**Orbit Electro Equipments Pvt. Ltd.**

[CIN: U74999MH2008PTC178529]

... Operational Creditor/Applicant

Versus

**Vetshield International Pvt. Ltd.**

[CIN: U51101MH2013PTC249023]

... Corporate Debtor/Respondent

**Order Pronounced on 05.02.2025**

***Coram:***

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

***Appearances:***

For the Operational Creditor : Mr. Ashish Pyasi, Ld.  
Counsel



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH – 1

CP(IB) NO.677(MB)2024

For the Corporate Debtor : Ms. Ruchi Kamdar, Ld.  
Counsel

**ORDER**

**Brief Facts:**

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC/Code”) by **Orbit Electro Equipments Pvt. Ltd.** ("hereinafter referred to as Operational Creditor/OC/Applicant/OEEPL"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Vetshield International Pvt. Ltd.** ("hereinafter referred to as Corporate Debtor /CD/Respondent/VIPL").
2. The Operational Creditor is a private limited company bearing CIN U74999MH2008PTC178529 incorporated on 06.02.2008 having its registered address at Orbit Elector Equipments Pvt. Ltd. Unit No. J1, Wing J, 4<sup>th</sup> Floor, Tex Center Premises Co-Op Soc. Ltd. Chandivali Rd. Andheri East, Mumbai 400072. The Operational Creditor is engaged in the business of manufacturing, supply and sale of electrical/machinery equipment.
3. The Respondent is a Private Limited Company under the Companies Act, 1956 incorporated on 09.10.2013 bearing CIN U51101MH2013PTC249023. Its registered office is at Flat no.17, 4<sup>th</sup> floor, A Wing Jeevan Suddha CHS, Plot No. 19, C.D. Barfiwala Road, Andheri, Mumbai 400058. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
4. The Corporate Debtor approached the Applicant and developed a business relationship under which the Applicant agreed to



- supply goods in accordance with the requirements specified in the Purchase Orders issued by the Corporate Debtor. The Corporate Debtor failed to pay the amount for these goods.
5. The Amount claimed to be in default is Rs. 2,05,45,713/- (Rupees Two Crore Five Lakhs Forty-Five Thousand Seven Hundred and Thirteen only) outstanding under Invoice no. OEEP/0391/19-20 dated 19.10.2019 and invoice no. OEEPI/0212/20-21 dated 28.02.2021 and the date of default is stated to be 17.01.2020 in Part IV of the Application.
  6. The Applicant has filed Affidavit under Section 9(3)(b) along with the Application. A copy of the present application has been served to the Insolvency & Bankruptcy Board of India.

**Submissions of the Applicant:**

7. The Operational Creditor had provided certain goods to the Corporate Debtor as per the Purchase Orders dated 19<sup>th</sup> October 2019 and 28<sup>th</sup> February 2021 for which the Operational Creditor has submitted the Invoices to the Corporate Debtor, bearing no. OEEPL/0391/19-20 dated 19.10.2019 amounting to Rs.34,06,070/- and Invoice no. OEEPL/0212/20-21 dated 28<sup>th</sup> February 2021 amounting to Rs. 1,11,95,722/-.
8. Pursuant to the abovementioned Purchase orders the Operational Creditor had dispatched the material/goods prescribed in the said Purchase Orders, which were received by the Corporate Debtor without any protest and/or Demur. Till date there is no complaint or grievance of the said material/goods by the Corporate Debtor.
9. As per the agreed terms as mentioned in Purchase Order and Invoice between the Operational Creditor and Corporate



Debtor, the amount mentioned under the above invoice(s) was to be paid within a period of 90 days from the date the order was completed. However, the Corporate Debtor has failed to pay any amount as mentioned in the Invoice.

10. In view of the above, there is an admitted debt due and payable by the Corporate Debtor to the Operational Creditor of a sum of Rs. 2,05,45,713/- (which consists of Rs.1,46,01,792/- towards the aforesaid invoices and Rs. 59,43,921/- towards the interest on delayed payments).
11. The amount mentioned in the Invoice was required to be paid within ninety (90) days and hence the debt was due from 17th January 2020 for Invoice No. OEEP/039/19-20 dated 19th October 2019 and 29th May 2021 for Invoice No. OEEPL/0212/20-21 dated 28th February 2021.
12. The Operational Creditor had previously issued a Demand Notice dated 6th April 2023, against the Corporate Debtor wherein the operational creditor called upon the Corporate Debtor to make a payment of Rs.2,23,14,805/- due as per the aforesaid invoices within 10 days from the date of receipt of the demand notice.
13. Since the Corporate Debtor failed to pay the aforesaid amount within 10 days' time, the Operational Creditor was constrained to file application under section 9 of the Code against the Corporate Debtor bearing Company Petition No. C.P. (IB) 459 (MB)/2023. Pursuant thereto, as there were some calculation errors, the said Company Petition was withdrawn by the Operational Creditor with the liberty to file fresh proceedings, which this Tribunal vide its order dated 18.07.2023 granted.



14. As per the fresh calculation the current amount outstanding, due and payable by the Corporate Debtor as on 24.06.2024 is Rs. 2,05,45,713/-.
15. In view of the aforesaid order, the Operational Creditor again issued a fresh demand notice dated 27<sup>th</sup> May 2024 calling upon the Corporate Debtor to pay the outstanding amount of Rs. Rs. 2,04,11,297/- (o/s amount as on 27<sup>th</sup> May 2024) within 10 days from the receipt of the demand notice. The aforesaid demand notice was sent to the Corporate Debtor by way of hand delivery and the same was received by the Corporate Debtor on 27<sup>th</sup> May 2024.
16. However, the Corporate Debtor has failed to pay the outstanding amount and hence the present application.

**Submissions of the Respondent:**

17. The Respondent has contested the present application on the following grounds:
  - i. **Delay in filing the Petition** - The causes of action in respect of Invoice No. OEEPL/0391/19-20 dated 10th October 2019 and Invoice No. OEEPL/0212/20-21 dated 28th February 2021 arose long back in the year 2019 and 2021 respectively and the Operational Creditor has issued its first demand notice only in April 2023.
  - ii. **Pre-existence of dispute** –
    - a. The parties mutually agreed that payment for the goods supplied would be due within a credit period of 90 (ninety) days from the date of complete receipt of the order by the Corporate Debtor. Additionally, it was agreed that each order would be fulfilled within a



timeframe of 15 (fifteen) days and that all goods supplied would conform to the quality standards and specifications mutually established by both parties.

- b. The delayed delivery disrupted the Corporate Debtor's operations and supply chain, as the goods were required as raw materials for the timely production of finished products. This delay resulted in financial losses, reputational harm, and operational inefficiencies for the Corporate Debtor. It also rendered the goods of diminished utility, further aggravating the losses suffered.
- c. The Operational Creditor was notified of an existing dispute with respect to the delay in delivery of goods under the said Purchase Orders. The said dispute was very well within the knowledge of the Operational Creditor even prior to the issuance of the First Demand Notice dated 6<sup>th</sup> April 2023. Despite multiple follow-ups, the Operational Creditor failed to address this issue.

- iii. **Other technical grounds** - At no point throughout the course of the business relationship did the parties agree, verbally or in writing, to any interest on delayed payments. Additionally, the said Invoices raised by the Operational Creditor make no provision for interest on overdue amounts, nor do they mention any terms or conditions that would justify the accrual of interest. The unilateral inclusion of a 12% interest charge in the Operational Creditor's Demand Notices and subsequent



Petition appears to be an attempt to inflate the claim amount artificially, without any contractual basis or legal justification.

- iv. Payments were made punctually, as evidenced by the Operational Creditor's bank statements annexed to the Petition. At no point, was there any instance of default or delay in these payments, nor has the Operational Creditor previously raised any complaint regarding delayed payments or non-compliance with payment terms.
- v. The Demand Notice dated 27th May 2024, demanding payment of Rs. 2,04,11,297, an amount inclusive of interest calculated at 12%, was issued with complete disregard for the pre-existing and unresolved disputes regarding the delay in the delivery of goods.

**Submissions of the Applicant vide its rejoinder:**

18. The Applicant submitted vide its rejoinder that the plea taken by the Respondent that there is a pre-existing dispute is a mere afterthought since the Respondent has not placed on record any documentary evidence to substantiate the same.
19. The present petition is not barred by limitation since the invoices became due after 90 days. Accordingly, the First Invoice became due on 17.01.2020, and the Second Invoice became due on 29.05.2021. The withdrawn CP 459 of 2023 was filed on 24.04.2023 and the fresh petition was filed on 29.06.2024. Considering that the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 excluded the period from 15.03.2020



to 28.02.2022 for the purpose of calculating limitation, the present petition falls within the limitation period. Also, the period between filing of the two petitions, i.e. 24.04.2023 and 18.07.2023 ought to be excluded.

20. With respect to the levy of 12% interest, the Applicant has submitted that since the Operational Creditor is an MSME, it can levy interest as per the provisions of Section 16 of the Micro Small and Medium Enterprises Development Act, 2006 which states that "*where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or; as the case may be from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.*"

**Findings:**

21. We have heard the submissions of the learned Counsel for the Applicant and Respondent. Perused the record.
22. Upon perusal of the documents produced on record, the existence of debt is clearly established. Moreover, the Respondent has not placed on record any document proving the fact that it had any complaints with respect to the quality of the goods or there was a delay in the delivery of goods. Hence, the Respondent has clearly acknowledged the fact the Operational Creditor has indeed provided the goods and the invoices raised were due as per the date mentioned therein.



23. The Respondents plea is that there is a pre-existing dispute between the parties. In ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.***, Hon'ble Supreme Court has held that:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”* However, in the present case, the Respondent has failed to provide any substantive documentary evidence proving pre-existence of dispute. Hence, a bald statement that there was delay in supply of goods is not sufficient to prove that there is an existence of dispute.

24. The Respondent has further submitted that the present petition is not within the limitation period. However, taking into consideration the Hon'ble Supreme Court decision in *Suo Motu*



Writ Petition (C) No. 3 of 2020, the present petition falls well within the limitation period.

25. With respect to the interest levied upon the default amount, we are of the considered view that the principal amount due under the invoices itself is in excess of threshold of Rs. 1.00 crores. Accordingly, if the interest as claimed in the petition is excluded from the amount claimed to be in default, the petition is still maintainable.
26. The Petition is complete in all respects, accordingly, we are considered view that the present petition deserve to be allowed thus admitting the Corporate Debtor into the Corporate Insolvency Resolution Process.

### **ORDER**

1. In view of above, this Adjudicating Authority admits this Petition and passes the following order:
2. The Petition bearing CP (IB) 677/MB/2024 filed by **Orbit Electro Equipments Pvt. Ltd.** [CIN: U74999MH2008PTC178529], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Vetshield International Pvt. Ltd.** [CIN: U51101MH2013PTC249023], the Corporate Debtor, is admitted.
3. There shall be a moratorium under section 14 of the IBC, in regard to the following:
  - i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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 (SARFAESI) Act, 2002;
  - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
4. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
5. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.



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6. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
7. The Applicant has proposed name of Mr. Kshitiz Gupta and hence, we hereby appoint Mr. Kshitiz Gupta having registration no. IBBI/IPA-002/IP-N00721/2018-2019/12140, Mobile no. 9929106990 and email ID kshitiz.ca@gmail.com as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
8. During the CIRP Period, the management of the Corporate Debtor 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 Corporate Debtor 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.
9. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).



10. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
11. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
12. Ordered accordingly.

Sd/-

**Prabhat Kumar**  
Member (Technical)

MK

Sd/-

**Justice V. G. Bisht (Retd.)**  
Member (Judicial)