



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI PRASANTA KUMAR MOHANTY**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 328/9/JPR/2019**  
**& IA No. 204/JPR/2022**

(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:**

**M/s Garg Granites Private Limited**  
**CIN: U14102RJ1992PTC006873**  
E-1 & 2, NH-10, Industrial Area,  
Kishangarh (Rajasthan)

**...Applicant / Operational Creditor**

**VERSUS**

**M/s Radharani Exports Private Limited**  
**CIN: U52190RJ2012PTC040215**  
457, Ganesh Nagar, Niwaru Road  
Jothwara, Jaipur-302012

**...Respondent / Corporate Debtor**

**Secretary, Ministry of Corporate Affairs,**  
Union Of India, "A" Wing, Shastri Bhawan,  
Dr. Rajendra Prasad Marg Road, New Delhi-110001

**.....Necessary Party**

**For Petitioner (s) : Aman Pareek, Adv.**

***CP No. (IB) - 328/9/JPR/2022***  
***& IA No. 204/JPR/2022***



**For Respondent (s)** : None Appeared

**ORDER PRONOUNCED ON: 12.04.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by M/s Garg Granites Private Limited ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') in the matter of M/s Radharani Exports Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Applicant, M/s Garg Granites Private Limited, supplied marble slabs to the Corporate Debtor. The Respondent has alleged default for the non-payment of operational dues amounts to Rs. 1,89,10,937/- (Rs. One Crore Eighty-Nine Lakh Ten Thousand Nine Hundred Thirty-Seven Only) along with an interest rate of 18% per annum.
3. The Corporate Debtor, M/s Radharani Exports Private Limited, is incorporated under the Companies Act, 1956 in 2012. The Corporate Debtor has an Authorised Share Capital of Rs. 11,00,000/- (Rs. Eleven Lakh Only) and a Paid-Up Share Capital of Rs. 11,00,000/- (Rs. Eleven Lakh Only).



4. The Applicant supplied marble slabs to the Corporate Debtor however the Corporate Debtor has not made a payment towards the supply made by the Corporate Debtor. The Applicant raised various invoices for supplying the goods to the Corporate Debtor as follows:

<i>Sr. No.</i>	<i>Invoice Date</i>	<i>Invoice No.</i>	<i>Amount (Rs.)</i>
1.	02.03.2017	167	13,36,903.00
2.	02.03.2017	168	16,23,961.00
3.	07.03.2017	173	25,03,152.00
4.	14.03.2017	178	26,20,317.00
5.	20.03.2017	179	22,60,934.00
6.	22.03.2017	180	23,54,130.00
7.	24.03.2017	183	23,53,508.00
8.	25.03.2017	186	22,74,775.00
9.	29.03.2017	188	20,83,930.00
10.	29.03.2017	189	3,96,223.00
11.	30.03.2017	192	22,03,104.00
		<i>Total</i>	2,20,10,937.00

5. After settling the above-mentioned amount, the balance on the account of default is Rs. 1,89,10,937/- (Rs. One Crore Eighty-Nine Lakh Ten Thousand Nine Hundred Thirty-Seven Only). The Applicant issued a Demand Notice under Section 8 of the Code on 10.10.2019 for the payment of money alongside interest, totalling Rs. 1,89,10,937/- (Rs. One Crore Eighty-Nine Lakhs Ten Thousand Nine Hundred Thirty-Seven Only) along with 18% interest per annum, which is enumerated in Part IV of the Application:

#### **Part IV**

#### **Particulars of Operational Debt**



1.	Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.	The total amount of debt is Rs. 1,89,10,937/- (Rupees One Crore Eighty-Nine Lakh Ten Thousand Nine Hundred Thirty-Seven Only) along with interest @ 18% per month which fell due from 02.03.2017.  The Debt has arisen due to non-payment of the invoices by the Corporate Debtor.
2.	Amount claimed to be in default and the date on which the default occurred	Total Amount in Default: Rs. 1,89,10,937/- (Rupees One Crore Eighty-Nine Lakh Ten Thousand Nine Hundred Thirty-Seven Only)  Date of default -02.03.2017

6. The Respondent, in its reply, filed *vide* Diary No. 3038/2019 dated 27.12.2019, has stated that:

- a. It is submitted that the Corporate Debtor agreed to purchase irregular Marbles slabs from the Applicant, thereafter the Applicant failed to deliver the irregular marble slabs to the Corporate Debtor. Further, it is stated that the Applicant admitted the default in delivering the marble slabs in the telephonic conversation.
- b. The Applicant has sent the demand notice dated 10.10.2019 to the Corporate Debtor demanding the payment of Rs.1,89,10,937/- subsequently the Corporate Debtor replied to said Demand Notice



however the Applicant refused to accept and the same was returned to the Corporate Debtor with the endorsement 'Refused'.

- c. It is pertinent to note the Corporate Debtor also sent a Demand-cum-Arbitration Notice dated 03.11.2019 to the Applicant raising the dispute however the Applicant refused to accept and the same was returned to the Corporate Debtor with the endorsement 'Refused'. The Corporate Debtor sent an E-mail to the Applicant on 09.09.2019 which is prior to the issuance of the Demand Notice dated 09.09.2019. Copy of the E-mail dated 09.09.2019 and 11.09.2019 are annexed as Annexure-R/3 of the reply.
- d. The Corporate Debtor says that the Applicant has filed a wrong affidavit under Section 9(3)(b) of the Code and no certificate has been filed in terms of Section 9(3)(c) of the Code.
- e. The Applicant never delivered the goods to the Corporate Debtor for which the invoices have been raised by the Applicant for an amount of Rs. 1,89,10,937/- therefore no demand has been raised in due course of time hence the Corporate Debtor is not liable to pay to the Applicant.
- f. Moreover, the invoices which are annexed to the present petition do not bear any signature of the purchaser.



7. The Applicant *vide* Dairy No. 2953/2019 dated 16.12.2019 has filed an affidavit under Section 9(3)(c) of the Code stating that there is no repayment of the unpaid operational debt as specified in the Application.
8. The Applicant *vide* Dairy No. 1359/2022 dated 04.05.2022 has filed an Interlocutory Application ('IA') No. 204/JPR/2022 for seeking necessary directions against the Respondent under Section 60(5) read with NCLT Rules.
9. The Registrar of Companies has filed a reply *vide* Dairy No. 174/2023 dated 18.01.2023 and stated that the present status of the Corporate Debtor is Active and has filed an annual return till Financial Year 2015-16. Further seeking appropriate directions against the Corporate Debtor to file all annual statutory and legal compliances under the Companies Act, 2013.
10. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, and the additional documents enclosed with the Application.
11. The registered office of the Corporate Debtor is situated in the state of Rajasthan, therefor this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, the Applicant has alleged that the default occurred on 20.06.2018.
12. The Application was filed under Section 9 of the Code on 09.12.2019, therefore, in view of the same, this matter is filed within the prescribed



limitation period. The Applicant has filed the present Application claiming the default of Rs. 1,89,10,937/- (Rs. One Crore Eighty-Nine Lakh ten Thousand Nine Hundred Thirty-Seven Only) along with interest @ 18% per annum which fell due from 02.03.2017.

13. In the instant case, the Operational Creditor has annexed a Computation Sheet whereby he mentioned the invoice amount and further stated the payment received against those amounts. In support of the same, the Applicant has annexed the Ledger Account maintained by himself, whereby it is made clear that the Corporate Debtor has not made full payment against the invoices raised by the Operational Creditor in 2017.
14. It is also evident from the above that the Corporate Debtor has defaulted in payment of the Debt to the Operational Creditor. Further, he has raised the contention of the dispute flouts the principle of law, which states that if there is a pre-existing dispute between the parties, an Application filed under Section 9 is not maintainable.
15. The first issue for consideration is whether there is a dispute regarding the quality of the goods supplied by the Applicant to the Corporate Debtor. The Respondent / Corporate Debtor has filed a Reply and stated that a dispute exists between the Applicant and the Corporate Debtor. However, they have not submitted any authentic communication to substantiate the same. Thus, as per the documents placed on record with the Adjudicating Authority, there



is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.

16. The next issue to decide upon is whether the Demand Notice in Form – 3 dated 10.10.2019 was served upon the Respondent and the same has been admitted by the Respondent in the Reply.

17. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority must examine in an Application under Section 9. Para 34 is as follows: -

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*

*(iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the*



*Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

18. However, the defence must be plausible, and while not examining it on merits, it must not appear as a moonshine defence. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute does not seem to be confirmed.

19. We have gone through the contents of the Application filed in Form No. 5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in Default) of Rs. 1,89,10,937/- (Rupees One Crore Eighty-Nine Lakh Ten Thousand Nine Hundred Thirty-Seven Only), including the interest @18% per annum. It is observed that the Operational Creditor has issued invoices (Annexure 5 (Colly) on page no. 27-37 of the Application) for goods supplied to the Respondent/ Corporate Debtor. Applicant/ Operational Creditor has given Demand Notice in Form No. 3 dated 10.10.2019, duly served on the Respondent/ Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.



20. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the IBC stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.

21. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'), but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed the name of any person to be appointed as IRP. Hence, this bench will appoint the IRP from the pool of RPs empanelled with the IBBI. Therefore, the bench is appointing Mr. Prashant Agarwal, bearing Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 with the e-mail address [ippagrawal@gmail.com](mailto:ippagrawal@gmail.com) and phone number +91-9828355000 as the IRP in the present matter. The said IRP is directed to file the written consent to act as an interim resolution professional in Form – 2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

22. In this matter, the Interim Resolution Professional appointed herein Mr. Prashant Agrawal, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the



Application, if not provided already, along with this order to IBBI for its records.

23. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

24. Consequences of initiation of CIRP shall be inter-alia as follows: -

- a. The IRP appointed by the Adjudicating Authority, Mr. Prashant Agrawal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- b. Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.



- c. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Sections 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- d. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.
- e. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy



of the Application and documents on the Interim Resolution Professional by all modes for information.

f. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the IRP nominated herein on his e-mail id.

25. Accordingly, CP No. (IB)-328/9/JPR/2022 is admitted. Considering forgoing all the pending IAs in the present matter stands disposed off. Further, it is directed to the IRP to file all annual returns and carry out legal compliances under the Companies Act 2013.

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**