

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

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 18/9/JPR/2021**

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

**IN THE MATTER OF:**

**MR. RAKESH KUMAR GOSWAMI,**  
**PROPRIETOR LAMSYN ENTERPRISES**

**...Operational Creditor**

**VERSUS**

**M/S WESTERN ENERGETICS PVT. LTD.**

**...Corporate Debtor**

**MEMO OF PARTIES**

**Mr. Rakesh Kumar Goswami,**  
*Proprietor Lamsyn Enterprises*  
EF-27, Ashiana Garden, Bhiwadi-  
301019 (Rajasthan)

**...Operational Creditor**

**VERSUS**

**M/s Western Energetics Pvt. Ltd.**  
G-1, 958, Phase III, RIICO  
Industrial Area, Bhiwadi, Alwar-  
301019 (Rajasthan)

**...Corporate Debtor**

**COUNSEL FOR PETITIONER : Mr. Amol Vyas, Adv.**  
**COUNSEL FOR RESPONDENT : Prateek Kasliwal, Adv.**  
Varnali Purohit, Adv.

**Order Pronouncement On: 19.09.2023**

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

1. This is an Application filed by *Mr. Rakesh Kumar Goswami*, Proprietor of *Lamsyn Enterprises* ('Applicant'/ 'Operational Creditor') to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Western Energetics Private Limited* ('Respondent'/ 'Corporate Debtor') under Section 9 of the Insolvency & Bankruptcy Code, 2016 ('Code'/'IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Applicant is engaged in the business of trading decorative and regular laminate sheets, plywood and board. The registered office of the Applicant is located at EF-27, Ashiana Garden, Bhiwadi, Rajasthan. The Applicant has alleged default on the part of the Corporate Debtor for non-payment of operational dues amounting to Rs. 1,39,51,142/- (Rs. One Crore Thirty-Nine Lakhs Fifty-One Thousand One Hundred and Forty-Two Only) and interest calculated as on 14.12.2020.
3. The Corporate Debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 on 13.01.1995 having CIN: U36100RJ1995PTC068644. The registered office is situated at G-1, 958, Phase III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan. The Authorized Share Capital of the Corporate Debtor is Rs. 50,00,000/- (Rupees Fifty Lakhs Only) and Paid- Up share Capital is Rs. 16,54,000/-

(Rupees Sixteen Lakhs Fifty-Four Thousand). The aforesaid has been verified from the online database of the Ministry of Corporate Affairs.

4. The Applicant has filed the present application under Section 9 of the IBC, 2016 vide Diary No. 737/2021 dated 18.03.2021 alleging the following set of facts:

- 4.1. The Applicant has been conducting business with the Corporate Debtor since a notable period of time. A running account of business of the Corporate Debtor has been maintained with the Applicant. The bills were raised by the Operational Creditor as and when the goods were supplied to the Corporate Debtor, according to the demand.

- 4.2. The last bill against the supplies was raised from the side of the Applicant in September, 2019. On being reminded about the payment due and outstanding, part payments were disbursed by the Corporate Debtor in the month of February, July and November, 2020. After deducting the payments made in the above said months, the payment due and outstanding on part of the Corporate Debtor equals to Rs. 1,39,51,142/- (Rupees One Crore Thirty-Nine Lakhs Fifty-One Thousand One Hundred Forty-Two Only).

- 4.3. A Demand Notice under Section 8 was preferred to the Corporate Debtor for an alleged default of Rs. 1,39,51,142/- (Rupees One Crore Thirty-Nine Lakh Fifty-One Thousand One Hundred and

Forty-Two Only) on 20.12.2020. The Applicant did not receive any reply to the notice sent under Section 8 of the IBC, 2016.

4.4. The aforementioned details, as reflected in Part IV of the Application, are as follows:

<b>S. No.</b>	<b>Particulars of Operational Debt</b>	
1.	Total amount of Debt, Details of Transactions on Account of which Debt fell Due and Date of which such Debt fell Due	<p><b><u>Total Amount of Debt</u></b>  <b>Rs. 1,39,51,142/-</b> (Rupees One Crore Thirty-Nine Lakhs Fifty-One Thousand One Hundred and Forty-Two Only)</p> <p><b><u>Date from which Debt fell due:</u></b>  The amount of debt became due 30 days after the issue of invoice.</p>
2.	Amount claimed to be in default and the date on which the default occurred	<p><b><u>Amount In Default:</u></b>  Rs. 1,39,51,142/- and the same is due after 30 days from issuance of date of invoice.</p>

5. Consequent to the notice issued by this Authority, the Respondent filed its reply vide Diary No. 1966/2022 dated 05.07.2022 whereby the following was submitted:

5.1. The Respondent submitted that on account of the devastating impact on the economy which the COVID-19 Pandemic had, the Government of India promulgated an Ordinance dated 05.06.2020, with the main intention to suspend the filing of Applications u/s 7, 9 & 10 of the IBC, 2016 against the Corporate Persons under financial distress due to the unprecedented situation caused by the Covid-19.

In consonance with the said Ordinance, Section 10A was inserted to the Code by way of an amendment, wherein, it states that for any default arising on or after 25.03.2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified, no application under Section 7, 8 & 9 shall be filed for initiation of CIRP of Corporate Debtor for default occurring during this period. As such, Section 10A of the Code is prefaced with a non obstante provision which has the effect of overriding Sections 7, 9 & 10.

5.2. Subsequently, on 04.04.2021, the *Insolvency & Bankruptcy Code (Amendment) Ordinance, 2021* was issued notifying the suspension of filing Applications u/s 7, 9 & 10 of the IBC, 2016. As such, the proviso of Section 10A make it clear that no Application under Section 7, 9 & 10 of the IBC, 2016 can ever be filed against a Corporate Debtor for any default occurring between the period 25.03.2020 and 24.03.2021. Hence, it is clear that the intention of the Government was to avoid large scale insolvencies, especially against the MSMEs, as a result of the financial stress caused by Covid-19.

5.3. The default stated in the Application is a COVID-19 default and Applicant has no right to file application in view of Section 10A of the IBC. It is submitted that the amount claimed by the Applicant

became due and payable after the accounts were settled between the Corporate Debtor and the Applicant in January 2021, pursuant to which cheques were issued to the Applicant and the alleged default was made by the Corporate Debtor when the said cheques dishonored on 29.01.2021.

5.4. The Corporate Debtor further submitted that it had continuously made payments to the Applicant during the COVID -19 crisis and it is on 10.07.2020, for the first time, when the Corporate Debtor could not make the payment. Hence, the present Application is not maintainable as the same is contrary to Section 10A of the Code. It is further relevant to mention that the provisions of the Code are triggered on the default made by the Corporate Debtor.

5.5. Subsequently, the accounts were settled between the Corporate Debtor and the Applicant in January 2021, pursuant to which cheques were issued to Applicant. On 29.01.2021, the said cheques dishonored and this fact has been admitted by the Applicant itself vide legal notice dated 18.02.2021. Thereafter, it was submitted that the accounts, documents and all statutory records of the Corporate Debtor were seized by the Enforcement Directorate in a raid conducted last year and as such the Corporate Debtor is left with no documents. Therefore, a detailed reply cannot be filed to this application.

- 5.6. It is submitted that the Corporate Debtor is an MSME and on account of COVID-19, raid by the Enforcement Directorate and the ban imposed by the government, the Corporate Debtor collapsed due to the existing economic scenario. If the present application is admitted then the purpose of the Code, so far as, promoting entrepreneurship, ease of doing business and facilitating more investments leading to higher economic growth and development, will not be achieved.
6. The Applicant filed its rejoinder *vide* Diary No. 2695/2022 dated 08.09.2020, submitting the following:
- 6.1. The Applicant submitted that Section 10A of the IBC is not applicable in the present matter as Section 10A is not applicable to the defaults which have been committed prior to 25.03.2020. The debt in respect of which the present insolvency application has been filed was issued by the Operational Creditor to the Corporate Debtor from 20.04.2019 to 19.09.2019. The amount was to be paid within a period of 30 days from the date of receipt of the invoice. It is relevant to note that the debt fell due 30 days after the date of the invoice and therefore, the date of default is 19.10.2019, which is the date of default as per the application filed under section 9 of IBC. Hence, Section 10A has no applicability in the present facts &

circumstances of the case. The Corporate Debtor had committed default much prior to the COVID-19 pandemic.

6.2. It is submitted that the application has been filed by the Applicant on the basis of the default committed by the Corporate Debtor on 19.10.2019 and not on the basis of the dishonor of cheques issued by the Corporate Debtor to the Operational Creditor. Even the Applicant has not made any submission with regard to the dishonor of the cheques in their application and therefore, the contention of the Corporate Debtor that the default took place on 29.01.2021 is misleading. However, the dishonor of cheques also prove that the Corporate Debtor is an insolvent and unable to pay its debt.

6.3. It is further submitted that the entire amount of the invoices which has been marked as Annexure-4 in the application became due for payment on 19.10.2019, however the corporate debtor having failed to make the payment in its entirety has committed default. Payment of a part amount does not change the date of the default and therefore, Section 10A is not applicable in the present case.

6.4. It is submitted that the notice dated 18.02.2021 has been issued for an offence committed u/s 138 of the Negotiable Instrument Act, 1881 and has nothing to do with the present insolvency application, which has been filed independently on the basis of the default committed by the Corporate Debtor. The seizure of the document by

the Enforcement Directorate on 10.12.2021 ensued much after the filing of the application.

7. The Applicant has filed its written submissions vide diary No. 1777/2023 dated 21.07.2023 and submitted the following:

7.1. The Applicant submitted that it had supplied the material to the Corporate Debtor through various invoices which dated 20.04.2019 to 19.09.2019. Each invoice contains a condition that interest @ 24% will be charged, if the payment is not made within 30 days of the date of invoice. It is clear that each invoice became due and payable 30 days after the date of the invoice. Since the last invoice is dated 19.09.2019, therefore all the invoices became due and payable on or before 19.10.2019. It is crystal clear that the amount mentioned in the invoices became due & payable just after the expiry of 30 days of the invoice date and all the said dates fall prior to 25.03.2020, therefore there is a clear default within the meaning of the provision.

7.2. Further, the Corporate Debtor has cited a judgment of NCLT, Kochi Bench wherein the Operational Creditor supplied the material to the Corporate Debtor on 21.03.2020, 23.03.2020 and 30.05.2020. The Adjudicating Authority deprecated the process adopted by the Operational Creditor for getting the date of default changed during the pendency of the application and observed that the application

purposefully sought amendment of the date of default in the application to fall outside the purview of Section 10A of the Code. It was therein concluded that an attempt was made to deliberately misuse the provision of IBC defeating the very intent for which it was enacted. The said judgment has no applicability in the present facts & circumstances for the reason that in the present matter the goods were supplied to the Corporate Debtor approximately 6 months before the onset of Covid- 19 Pandemic.

7.3. The Applicant has relied upon following judgments:

7.3.1. Judgment of the Hon'ble NCLAT in *Vishal Agarwal Erstwhile Director of Gagan I-Land Township Pvt. Ltd. v/s ICICI Prudential Real Estate AIF-1 & Anr., (2023)ibclaw.in*  
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7.3.2. Judgment of the Hon'ble Supreme Court Judgment in *Mobilox Innovations Pvt. Ltd. v/s Kirusa Software Pvt. Ltd.,MANU/SC/1196/2017.*

8. The Written Submissions filed by Corporate Debtor vide Diary No. 1745/2023 dated 18.07.2023 reiterate the contentions presented in the Reply. The main contention of the Learned Counsel for the Corporate Debtor is that Application filed by Operational Creditor is not maintainable under purview of Section 10(A) of IBC.

9. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder and Written Submissions along with the documents enclosed with the application.
10. Learned Counsel for the Respondent has relied upon the judgment passed by the Co-ordinate Bench of NCLT, Kochi dated 15.10.2021 in *CP (IB)/10/KOB/2021* in the matter of *Srimona Aqua Traders versus Ocean Gems Exports India Private Limited*. In the said matter, the Corporate Debtor received products in various lots on 21.03.2020, 23.03.2020 and also on 30.05.2020. Part payments were made on 28.05.2020 and 28.07.2020 in the bank account of Operational Creditor against the total amount due. The Adjudicating Authority held that 21.03.2020 was only date of the order and the same cannot be considered date of default. In the said matter, the Applicant therein purposefully sought amendment of date of default in the Application so as to ensure that the Application falls outside purview of Section 10(A) of IBC.
11. Reliance was also placed upon the judgment passed by NCLT, Hyderabad Bench in *Mundra Enterprises "Ajay Arcade" versus Goldfish Pharma Pvt. Ltd.* In this case, the Adjudication Authority held that the account of the Corporate Debtor maintained by the Applicant is a running account and the date of raising invoices cannot be the starting point for computation of Limitation; moreover, part payments will give fresh period of limitation. Learned Counsel for the Corporate Debtor has also

referred to the judgment of the Hon'ble Supreme Court in *Sesh Nath Singh & Anr. Versus Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.* (Civil Appeal No. 9198/2019) decided on March 22, 2021. In this matter, the Hon'ble Court has held that period of limitation for filing an Application under Section 7 and 9 has to be three years from the date of default. With regard to the matter of the *MCC Concrete versus Northway Spaces Ltd.*, the Hon'ble NCLAT, New Delhi has held that the ledger account is a running account which shows that on 05.11.2015, the Corporate Debtor had made payment of Rs. 12 lakhs to Appellant and from this date of acknowledgement within 3 years, i.e., on 15.01.2028, the application is filed; thus within limitation.

12. The Judgments referred by Learned Counsel for the Respondent are distinguishable from the facts presented before us in the current application as in the present matter the issue of Limitation is not involved. Rather in view of IBC (Second Amendment Act, 2020) (17 of 2020), dated 23.09.2020, w.e.f. 05.06.2020 this Adjudicating Authority has to see whether default arises on or after 25.03.2020 and the default in the application falls inside the purview of Section 10(A) of IBC. The Corporate Debtor in its reply has not disputed the existence of debt and only contended that the Application is not maintainable in view of Section 10(A) of Code.

13. The Operational Creditor has furnished the details of bills raised from Invoice No. 15 dated 20.04.2019 to Invoice No. 62 dated 19.09.2019 in which total invoice amount shown is Rs. 1,32,02,266/- (Rupees One Crore Thirty-Two Lakhs Two Thousand Two Hundred and Sixty-Six Only) and outstanding amount is also shown as Rs. 1,32,02,266/- (Rupees One Crore Thirty-Two Lakhs Two Thousand Two Hundred and Sixty-Six Only), thereby indicating that the Corporate Debtor has not disbursed any payments towards the invoice raised by the Operational Creditor. The details of the bills is reiterated as below for reference:

S. No	Invoice No.	Date	Invoice Amount	Amount	
				Paid	Outstanding
1.	15	20.04.2019	412504	Nil	412504
2.	16	20.04.2019	120360	Nil	120360
3.	17	21.04.2019	793660	Nil	793660
4.	18	23.04.2019	382332	Nil	382332
5.	19	25.04.2019	382332	Nil	382332
6.	20	04.05.2019	301490	Nil	301490
7.	21	07.05.2019	382332	Nil	382332
8.	22	09.05.2019	644280	Nil	644280
9.	23	09.05.2019	369340	Nil	369340
10.	24	10.05.2019	391763	Nil	391763
11.	25	10.05.2019	109694	Nil	109694
12.	26	11.05.2019	322859	Nil	322859
13.	27	14.05.2019	141035	Nil	141035
14.	28	14.05.2019	66198	Nil	66198
15.	29	15.05.2019	369340	Nil	369340
16.	30	16.05.2019	131633	Nil	131633
17.	40	19.06.2019	509758	Nil	509758

18.	41	22.06.2019	421177	Nil	421177
19.	43	22.06.2019	134767	Nil	134767
20.	44	22.06.2019	212602	Nil	212602
21.	45	22.06.2019	130065	Nil	130065
22.	46	22.07.2019	369340	Nil	369340
23.	47	24.07.2019	485786	Nil	485786
24.	48	25.07.2019	470116	Nil	470116
25.	50	27.07.2019	369340	Nil	369340
26.	51	28.07.2019	470116	Nil	470116
27.	54	20.08.2019	462757	Nil	462757
28.	55	28.08.2019	474454	Nil	474454
29.	56	28.08.2019	383271	Nil	383271
30.	57	03.09.2019	454639	Nil	454639
31.	58	11.09.2019	739607	Nil	739607
32.	59	14.09.2019	716685	Nil	716685
33.	60	15.09.2019	369340	Nil	369340
34.	61	16.09.2019	487566	Nil	487566
35.	62	19.09.2019	219728	Nil	219728
<b>TOTAL AMOUNT DUE</b>					<b>1,32,02,266/-</b>

14. The Corporate Debtor has paid a sum of Rs. 10 lakhs on 01.02.2020, Rs. 3 Lakhs on 17.07.2020 and Rs. 5 lakhs on 13.10.2020. After deduction of paid amount and adding interest @ 24% as per the invoices, the total balance amount comes to the tune of Rs. 1,39,51,142/- (Rupees One Crores Thirty-Nine Lakhs Fifty-One Thousand One Hundred and Forty-Two Only).
15. The Corporate Debtor has contended that continuous payments were being made to the Operational Creditor. Due to COVID-19, for the first time on 10.07.2020, the Corporate Debtor could not make the payment.

The accounts were settled between the Corporate Debtor and the Applicant on January, 2021 pursuant to which cheques were issued to Applicant which were dishonored on 29.01.2021. The default occurred only when the cheques submitted by Operational Creditor were dishonored. However, it is apparent that the invoices submitted by the Operational Creditor mention the provision of 24% interest if the payment is not made within 30 days of the Bill due. Hence, the default occurred with regard to all the invoices after 30 days from the date of the invoices. The details of Bills show that invoices were raised from 20.04.2019 to 19.09.2019 for which no payment was made after completion of 30 days.

16. The Corporate Debtor by issuance of cheques and in the event of the cheques being dishonored seeks to shift the date of default from actual date of default to the date when the cheques were dishonored. It is not the intent of the Legislature to disqualify any Applicant from filing an application under Section 7 and 9 of the IBC, 2016 for the default arising before 25.03.2020. Under Section 10(A) of the Code, applications filed for any default arising on or after 25.03.2020 for a period of six months as such other period, not exceeding one year were barred.
17. On perusal of the detail of Bills, it is apparent that the last bill shown is dated 19.09.2019 and due to non-payment of due amount by the Corporate Debtor, the date of default shall be computed after 30 days

from the date of invoice. Hence, in the present matter, the application filed by the Applicant is outside preview of Section 10(A) of IBC.

18. It is important to refer to the ingredients which have to be satisfied for the present matter to be admitted under Section 9 of the Code. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to 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.”*

19. Therefore, on being satisfied regarding the fulfilment of the ingredients prescribed under Section 9 of the Code, we are hereby inclined to initiate CIRP of the Corporate Debtor on account of default committed in repayment of the Operational Debt.

20. 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 proposed the name of *Mr. Satyendra Prasad Khorania* to be appointed as IRP for the purpose of CIRP of the Corporate Debtor.
21. In view of this, *Mr. Satyendra Prasad Khorania*, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002 (email: [skhorania@live.com](mailto:skhorania@live.com); mobile no. +91 9352132134), is hereby appointed as the IRP. The said IRP is directed to file his written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. 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 in accordance with the provisions of the Code, and Rules and Regulations thereunder.
22. Consequences of initiation of CIRP shall be inter-alia as follows:
- 22.1. The IRP appointed by the Adjudicating Authority, *Mr. Satyendra Prasad Khorania*, 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 issue of 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.

22.2. Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to 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 in relation to the Corporate Debtor.

22.3. The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs 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. In terms of Section 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.

- 22.4. 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.
23. The Registry is directed to communicate this order to the parties and the IRP appointed herein.
24. Accordingly, CP No. (IB)- 18/9/JPR/2021 stands admitted. Pending Applications, if any, shall stand disposed off.

**-Sd-**  
**DEEP CHANDRA JOSHI,**  
**JUDICIAL MEMBER**

**-Sd-**  
**ATUL CHATURVEDI,**  
**TECHNICAL MEMBER**