

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 201
(IB)-23(ND)2021

IN THE MATTER OF:

VA Realcon Private Limited

Reg. Office at:
106 Palco House, T-10 Main Patel Road
Patel Nagar, New Delhi-110008

**... Applicant/
Operational Creditor**

Versus

Avail Holding Limited

Reg. Office at:
209, Bhanot Plaza-II, 3,
D.B. Gupta Road, New Delhi – 110055

**... Respondent/
Corporate Debtor**

Under Section: 9 of the IBC, 2016

Order delivered on: 29.01.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Mohd. Nazim Khan
For the Respondent : Advocate Shubham Rajput

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

As can be gathered from the contents of the application filed under Section 9 of IBC, 2016, the OC viz. VA Realcon Private Limited (under CIRP) is engaged in the business of construction. It had sold 1,16,620 shares of Macor Packaging Limited to the Corporate Debtor for an amount of Rs. 1,14,28,500/- on 14.10.2019. In the wake, the CD was liable to pay the aforementioned amount to the OC for which an invoice dated 14.10.2019 was raised. Despite the reminder letter issued by the OC to the CD on 18.09.2020, the CD did not make the payment. In the wake, the OC served a demand letter



upon the CD. The amount of debt defaulted to be paid and the date of default are mentioned in Part-IV of the petition which reads thus:

Part IV					
Particulars of Operational debt					
1	<table border="1" style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;">TOTAL AMOUNT OF DEBT,</td><td style="width: 50%; vertical-align: top;">Total amount of Debt: Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only) Detail of Transactions: a. The Operational Creditor is engaged in the business as owners, builders, colonizers, lessors, maintainers and residential, commercial and industrial buildings colonies, hotels, mill's and factory sheds and buildings and to deal in all kinds of immovable properties whether belonging to the Company or not. b. The Corporate Debtor is engaged in the business to invest, buy, sell, transfer, pledge deal in and dispose of any shares, stocks, bonds, debentures, units, securities, including securities of any govt and local authority. c. That the Operational Creditor and the Corporate Debtor came in contact of each other for trading in the shares of Macor Packaging Limited. d. On 14th October, 2019, the Operational Creditor sold 1,16,620 shares of Macor Packaging Limited at the rate of Rs. 98/- per share, amounting to Rs. Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only), to the Corporate Debtor. The contract note for the sale of aforesaid shares, dated 14th October, 2019,</td></tr><tr><td style="vertical-align: top;">DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE,</td><td></td></tr></table>	TOTAL AMOUNT OF DEBT,	Total amount of Debt: Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only) Detail of Transactions: a. The Operational Creditor is engaged in the business as owners, builders, colonizers, lessors, maintainers and residential, commercial and industrial buildings colonies, hotels, mill's and factory sheds and buildings and to deal in all kinds of immovable properties whether belonging to the Company or not. b. The Corporate Debtor is engaged in the business to invest, buy, sell, transfer, pledge deal in and dispose of any shares, stocks, bonds, debentures, units, securities, including securities of any govt and local authority. c. That the Operational Creditor and the Corporate Debtor came in contact of each other for trading in the shares of Macor Packaging Limited. d. On 14 th October, 2019, the Operational Creditor sold 1,16,620 shares of Macor Packaging Limited at the rate of Rs. 98/- per share, amounting to Rs. Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only), to the Corporate Debtor. The contract note for the sale of aforesaid shares, dated 14 th October, 2019,	DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE,	
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executed between the Operational Creditor and the Corporate Debtor is annexed herewith as **Annexure – C**. The Operational Creditor raised sale invoice No. 63/2019-20 dated 14th October, 2019 upon the Corporate Debtor for payment of Rs. 1,14,28,500/-The sale invoice raised by the Operational Creditor dated 14.10.2019 upon the Corporate Debtor is annexed herewith as **Annexure – D**.

e. The amount of Rs. 1,14,28,500/- stood due and payable on the date of transaction i.e. 14th October, 2019. The Operational Creditor contacted the Corporate Debtor for repayment of the outstanding dues several time while the Corporate Debtor always assure of the payment in a week and so, but always failed to honour its promises.

f. The Operational Creditor then served reminder letter dated 18th September, 2020 along with the account confirmation and summary of transactions between Operational Creditor. The Corporate Debtor assure Operational Creditor to clear the dues within the week, but the dues were never cleared. Copy of recovery letter and its annexures are attached herewith as **Annexure-E**.

g. The Corporate Debtor was liable to honour the sale invoice on the same day as it was raised, but till date no amount has been received inspite of several reminders.

h. The Operational Creditor finally issued demand notice upon the Operational Creditor in form 4 as prescribed under section 8 of the Insolvency and Bankruptcy



	<p>AND THE DATE FROM WHICH SUCH DEBT FELL DUE</p>	<p>Code, 2016 and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, on 06th November, 2020 to make the payment of outstanding dues immediately. The copy of demand notice along with service and delivery proof is annexed herewith as Annexure – F.</p> <p>i. That it is also pertinent to mention that Operational Creditor made all the efforts to maintain the business relation but ultimately, when Operational Creditor was left with none other option, the present application is hereby filed before the Hon'ble Tribunal.</p> <p>That it is humbly submitted before the Hon'ble Adjudicating Authority, National Company Law Tribunal, Delhi Bench that the Corporate Debtor was liable to make the payment against the sale invoice immediately, i.e. on 14th October, 2019. Thus the debt fell due w.e.f. 14th October, 2019.</p>
2	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED</p> <p>(ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>The total amount claimed to be in default as on date is Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only).</p> <p>The date of default is 14.10.2019 i.e. the day when the Corporate Debtor was liable to pay the amount, but failed.</p>

2. The Applicant has filed requisite affidavit in terms of the provisions of Section 9(3)(b) of the IBC, 2016. In the affidavit it has been categorical stated that no dispute has been raised by the CD regarding the amount defaulted to be paid. Para 2 of the affidavit reads thus:

“2. That subsequent to the dispatch and receipt of Demand Notice, I say no plausible notice of dispute has been raised by the Corporate Debtor relating to the unpaid operational debt nor any payment has been made by the Corporate Debtor to the Operational Creditor.”




3. The Applicant served notice in terms of the provisions of Section 8(1) of the IBC, 2016 upon the CD. A copy of the notice has been placed on record at Annexure F to the application. The relevant excerpt of the demand notice reads thus:

*“VA Realcon Private Limited, hereby provides notice for repayment of the **unpaid amount of Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only)** outstanding and payable to the Operational Creditor as per agreed terms with effect from 14.10.2019 that is in default as reflected in the invoice, contract note and ledger confirmation attached to this notice.*

In the event you do not repay the debt due to VA Realcon Private Limited within ten days of receipt of this notice, VA Realcon Private Limited may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process under Section 9 of the Code.”

4. It is not in dispute that no reply to the demand notice was given by the CD. Our attention could be drawn to the Contract Note dated 14.10.2019 (Annexure A-C) to the application as also to sales invoice No. 63/2019-20 dated 14.10.2019 raised upon the CD. The invoice placed on record reads thus:

BILL No. 63/2019-20		SALE BILL		Date 14/10/19	
From : VA REALCON PVT. LTD. (Dealing in Shares & Securities) 104A, Single Storey, Ramesh Nagar, New Delhi - 110015, Mob. : 8851750934 PAN No. : AADCV0080F			To: Avail Holdings Ltd 207, Okhla Phase II, B-08 Okhla Road, New Delhi - PAN No. : AAAC7284UE		
DATE	PARTICULARS	No. of SHARES	RATE	TOTAL	
14/10/19	macor Packaging Ltd 106 PALCO HOUSE, T-10, MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110008	116620	98/-	1,14,28,500/-	
E. & O. E. MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110008			Auth. Signatory 		

5. In the reply filed by the CD, it has been admitted that the amount of debt as also the default committed by it. Para 18-20 of the reply filed by the CD reads thus:



“18. *Reliance is placed on IDFC Bank Limited vs. Ruchi Soya Industries Limited whereby the Hon'ble Bombay High Court held that lenders may take appropriate legal steps as and by way of recovery process but the same may be decided only after rectification and restructuring are not found feasible, with a view to optimizing the efforts and results. If the recovery process is allowed to be proceeded with at a stage when the process of rectification or restructuring is being considered, the entire process of revival of the borrower by way of restructuring would be adversely affected. Thus, the present application preferred by the Applicant does not merit indulgence of this Hon'ble Tribunal at this stage where effective measures for restructuring are already being tried.*

19. *It is submitted that the current circumstances limit the Borrower's ability to manage this situation effectively and recover its financial standing. The constraints imposed by the intensely competitive market landscape have significantly hindered the Borrower's capacity to navigate these challenges and realign its business trajectory.*

20. *That the Respondent respectfully submits that it is imperative to grant a reasonable and sufficient duration to the Borrower, with the intent to settle the disputes with the Lenders and preventing the company from entering into CIRP.”*

6. As can be seen from the Section 9 of IBC, 2016, while examining an application filed by the CD, this Adjudicating Authority shall examine as to whether the application filed is complete, there is no payment of the unpaid operational debt, the invoice or notice for payment to the corporate debtor has been made or delivered by the operational creditor, no notice of dispute has been received by the CD or there is no record of dispute in the information utility and there is no disciplinary proceedings pending against the Resolution Professional proposed under Section 9(5)(e) of IBC, 2016. Section 9(5) of the IBC, 2016 reads thus:

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*
 - (a) the application made under sub-section (2) is complete;*
 - (b) there is no [payment] of the unpaid operational debt;*



- (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
- (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

7. In the present case, the CD could not draw our attention to any non-compliance of the aforementioned provision of IBC, 2016. Rather in the reply filed by it, the CD has admitted the default and has espoused for settlement. Today during the course of hearing, the Ld. Counsel for the CD submitted that the Corporate Debtor prayed for 6 months’ time to repay the amount defaulted to be paid by him. Nevertheless, Ld. RP for the Applicant submitted that the CoC has passed resolution only to give two months’ time to CD and not six months’ time for the purpose. It is settled position of law that it is not for this Tribunal to facilitate settlement between the parties. The scope of the IBC, 2016 is only to see that the CD is rescued and put back to its feet.

8. The captioned petition had come up come for hearing before this Tribunal and was dismissed in terms of the order dated 17.08.2022. The only ground for settlement was that the OC had not produced any proof that it was the owner or in possession of the Shares. Para 13 of the order passed by this Tribunal reads thus:

13. The Operational Creditor has annexed one contract note dated 14.10.2019, which is reproduced below :

MEMO OF CONFIRMATION CONTRACT NOTE

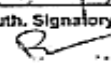
Bill No. : 0312/19-20 Date : 14/10/2019

From : VA REALCON PVT. LTD. (Dealing in Shares & Securities) 104A, Single Storey, Ramesh Nagar, New Delhi - 110 015, Mob. : 9951750934 PAN No. : AADCV0880F				To : Avail Holding Ltd 207, Grand Road, 2, Okhla Phase II, New Delhi - 110 025 PAN No. : AADCC7289MS			
BUY FROM YOU				SELL TO YOU			
DATE	NAME OF SECURITIES	NO. OF SHARES	RATE	DATE	NAME OF SECURITIES	NO. OF SHARES	RATE
	105 PRINCO HOUSE, T-10, MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110009			14/10/19	Avail Holding Ltd	116624	92
TOTAL				TOTAL			116624

NOTE : We have done the following transaction with you today. Please confirm same.
 E.S.O.E. 105 PRINCO HOUSE, T-10, MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110009 Auto Signatory



Further, the Applicant has also annexed an invoice dated 14.10.2019 issued to the Corporate Debtor, as reproduced below :

BILL No. 53/2019-20		SALE BILL		Date 14/10/19	
From : VA REALCON PVT. LTD. (Dealing in Shares & Securities) 104A, Single Storey, Ramesh Nagar, New Delhi - 110015, Mob. : 8851750934 PAN No. : AADCV0090F			To: Avail Holdings Ltd 247, Dharam Place II, 3-00 Conch Road, New Delhi - PAN No. : AADCT2896		
DATE	PARTICULARS	No. of SHARES	RATE	TOTAL	
14/10/19	Macor Packaging Ltd 103 PALCO HOUSE, T-10, MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110009	116620	72/-	114,28,500/-	
E. & O.E. MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110009			Auth. Signatory 		

While going through the records, we observe that the Operational Creditor has not placed or produced any proof that it was the owner or in possession of the above referred 1,16,620 shares of M/s. Macor Packaging Limited, which are reported to have been sold to the Corporate Debtor. Further, no Share Transfer Deed (Securities Transfer Form) in Form SH-4 or record of DMAT Account of the either parties has been placed or produced by the Operational Creditor, which could demonstrate that the shares were actually transferred from the Applicant to the Respondent/ Corporate Debtor.

9. Today when the matter came up for hearing, the Ld. Counsel for the CD did not raise any dispute regarding the ownership of the shares. Mr. Mohd. Nazim Khan, Ld. RP appearing for the Applicant could draw our attention to the share certificate available on record at page No. 179-180 of RA-159/2023. The share certificate at page No. 172-173 reads thus:

MACOR PACKAGING LIMITED

(Incorporated under the Companies Act, 1956)

Regd. Off.: 3198/15, 4th Floor, Gali No.1, Sangatrasan, Pahargan,
New Delhi-110055
CIN: L74950DL1996PLC018459

SHARE CERTIFICATE

This is to certify that the person(s) named in this Certificate is/are the Registered Holder(s) of the within-mentioned share(s) bearing the distinctive number(s) herein specified in the above Company subject to the provisions of the Memorandum and Articles of Association of the Company and that the amount endorsed hereon has been paid on each such shares.

EQUITY	SHARES	EACH	OF	RS. 10/- (RUPEES TEN ONLY)
AMOUNT	PAID-UP	PER	SHARE	RS. 10/- (RUPEES TEN ONLY)

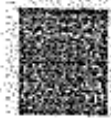
Share Certificate No : 0005	Share Ledger Folio No: G0001
Name(s) of holder(s): GAGAN SINGH	
No. of Share(s) Held : FOURTEEN THOUSAND SEVEN HUNDRED THIRTY TWO ONLY ***14732***	
Distinctive No.(s) : 072951-087322 (BOTH INCLUSIVE)	

GIVEN under the Common Seal of the Company at New Delhi on this 20th Day of March, 2014.

[Signature]
(Director)

[Signature]
(Director)

[Signature]
(Authorised Signatory)



Note: No Transfer of any Shares comprised in this certificate will be registered unless accompanied by the certificate.

MEMORANDUM OF TRANSFERS OF SHARE(S) MENTIONED OVERLEAF (FOR OFFICE USE ONLY)

DATE	TRANSFER NO.	REGISTER FOLIO NO.	NAME(S) OF TRANSFEREE(S)	INITIALS	AUTHORISED SIGNATORY
11/05/2019	TR-138	V0001	VA REALCON PVT. LTD.	<i>[Initials]</i>	<i>[Signature]</i>
14/10/2019	TR-150	A0064	Avail Holding Ltd.	<i>[Initials]</i>	<i>[Signature]</i>



10. From the aforementioned certificate it is clear that the Applicant before us is honoured.

11. Indubitably, the order passed by this Tribunal on 22.08.2022 (17.08.2022) has been set aside by the Hon'ble NCLAT in terms of the order dated 23.08.2022 passed in Company Appeal (AT) (Ins) 1279/2022. The para 7-8 of the order reads thus:

“7. We, thus, set aside the impugned order dated 17.08.2022 revive the application CP(IB) No. (23)/ND/2022 to be considered afresh.

8. The Respondents are allowed three weeks' time to file the reply to the Section 9 application.”

12. In the wake of the aforementioned order passed by the Hon'ble NCLAT, the present application could be heard afresh.

13. In the wake of the aforementioned, particularly the admission of the amount of debt in default in the reply filed by the CD as also by the Ld. Counsel during the course of the hearing, we have no option but to admit the present petition. Order accordingly. **The Petition stands admitted in terms of Section 9(5) of the IBC, 2016. Resultantly, a declaration with respect to moratorium is made under Section 13 for the purposes referred to in Section 14 of the IBC, 2016.** As the Operational Creditor has not proposed name of any Insolvency Professional to be appointed as IRP, in terms of the provisions of Section 13(1)(c) read with Section 16(3)(a) of the IBC, 2016, the Insolvency Professional namely, Mr. Parveen Bansal, having IBBI Registration No. IBBI/IPA-001/IP-P00175/2017-18/10344, email id: pkbansal00@gmail.com is appointed as IRP in the matter. The Court Officer/Registrar of this Tribunal/Adjudicating Authority is directed to inform the IRP about confirmation of his appointment forthwith. The term of the Interim Resolution Professional shall continue till the date of appointment of the Resolution Professional under Section 22 of the IBC, 2016 or the development if any under Section 12A of the Code or otherwise, whichever is earlier. The IRP is directed to act in terms of the provisions 13(1)(b) and Section 13(2) read with Section 15 of the IBC, 2016 immediately. In other words, the IRP shall cause a public announcement of initiation of Corporate



Insolvency Process qua the Corporate Debtor and call for submission of claim under Section 15 immediately. The public announcement shall contain the information stipulated in Section 15(1) of the IBC, 2016. We are sanguine that the IRP shall act in due deference to the provisions of IBC, 2016, particularly Section 12,15,17,18,20 & 21 thereof as also Regulation 6, 6A, 12A, 13, 14, 16A and 17 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. It goes without saying that in the wake of the moratorium, there shall be prohibition of all the following: -

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing off by the corporate debtor 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 corporate debtor 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 corporate debtor.

14. Nevertheless, it is made clear that a license, permit, registration, quota, concession, clearance or similar grant or right (if any) given by the Central Government, State Government, Local Authority, Sectoral Regulator or any Authority constituted under any other law for the time being in force shall not be suspended or terminated qua the Corporate Debtor on the ground of Insolvency, subject to the conditions that there is no default in payment of current dues arising for the use of continuation of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Besides, the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, except where the Corporate Debtor does not pay the dues arising from such supply during the moratorium period or any other explainable situation.



15. The Operational Creditor shall deposit an amount of Rs. 2,00,000/- with the IRP to enable him to meet the expenses to be incurred at the initial stage of the CIRP. The expenses shall be reimbursed by the Committee of Creditors, to the extent the same are ratified by it. The amount of expenses ratified by the Committee of Creditors shall be treated as CIRP cost. It goes without saying that in terms of Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the CoC shall fix the expenses to be incurred by the IRP/ RP and the expenses shall constitute IRP cost.

16. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Adjudicating Authority. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)