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

CP (IB) 241/MB/C-I/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

M/s Live Stone

Through its Partner

FW-2110, Bharat Diamond

Bourse,Bandra Kurla Complex,

Bandra-East, Mumbai-400051

… Operational Creditor/Applicant

Versus

Interjewel Private Limited

[CIN: U74900MH2007PTC170147]

1508, Prasad Chambers Premises CSL,Opera HouseMumbai-400004

…Corporate Debtor/Respondent

Order Delivered on 09.02.2024

Coram:

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

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

Appearances:

For the Operational Creditor : Mr. Kanchi Vore a/w Mr.Viraj Parikh, Advocate.

For the Corporate Debtor : Ms.Simran Kasat a/w Ms. Saavi Dhaddha, Advocate

ORDER

Per: Prabhat Kumar (Technical)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Live Stone ("the Operational Creditor hereafter referred to as Petitioner")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Interjewel Private Limited ("the Corporate Debtor hereafter referred to as Respondent")** The Total **Amount of Debt is of Rs.3,17,57,034/-** (Rupees Three Crores Seventeen Lakhs Fifty-Seven Thousand and Thirty-Four Only) towards 8 invoices. The Date on which such debt fell due and as well the Corporate Debtor has Defaulted the loan amount on 06.09.2021.

2. The Corporate Debtor was incorporated on 20.04.2007 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is

U74900MH2007PTC170147.Its registered office is at 1508, Prasad Chambers Premises CSL, opera House, Mumbai-400004.

3. The Authorised Share Capital of Corporate Debtor is Rs 15,03,00,000 and Paid up share capital is Rs 3,92,24,000/-

Submissions made by the Petitioner:

4. The Corporate Debtor approached the Applicant to supply Diamonds, the applicant thereafter raised the Invoice for the same on Corporate Debtor. Despite the issuance of the invoice and the subsequent maturity of the payment obligation, the Corporate Debtor disregarded the matter entirely, persistently defaulting on the amount despite numerous reminders.

5. As per the order and Instruction from the Corporate Debtor the Operational Creditor supplied "various Goods of Diamond of Rs. 6,08,53,845 (Rupees Six Crores Eight Lakhs Fifty-Three Thousand Eight Hundred and Forty-Five Only) under various invoices. The debt is of an ongoing nature, and the last payment was of Rs. 5,00,000/- (Rupees Five Lakhs Only) in Kotak Mahindra Bank sent through RTGS by the Corporate Debtor and the same was remitted on September 6, 2021. Consequently, the default date is established as September 6, 2021.

6. The Applicant Submits that they have served the Demand Notice dated September 26th, 2022, in Form 3, and was dispatched to the registered office of the Corporate Debtor.

7. The brief facts of the case are as follows: -

a) Operational Creditor is a Partnership Firm and is in the business of Export, Import and Manufacturing of Diamonds.

b) The Operational Creditor and the Corporate Debtor were into Business transactions since January 2017.

c) As per Order and Instruction of the Corporate Debtor, the operational Creditor from time to time under various invoices supplied goods i.e. Diamond. There were 11 invoices, aggregating to a sum total of Rs.6,08,53,845/- (Rupees Six Crore Eight Lakhs Fifty-Three Thousand Eight Hundred and Forty-Five only) worth of goods have been delivered to and received by the Corporate Debtor.

d) That against the sum of Rs.6,08,53,845/, a sum of Rs 2,29,92,516/- has been paid and settled in full towards 3 out of 11 invoices and Rs.61,042,95/- has been adjusted as full payment towards a purchase made by the Operational Creditor from the Corporate Debtor.

e) Therefore Rs. 3,17,57,034/- (Rupees Three Crores Seventeen Lakhs Fifty-Seven Thousand and Thirty-Four Only) being total outstanding amount is still unpaid till date.

8. The Invoices were issued during the month of January 2017-June 2017. Accordingly, the limitation would expire during the Covid-19 Pandemic i.e. July 2020. The Hon'ble Supreme Court has excluded the covid Period from the Limitation. The Applicant further submitted that the Corporate Debtor made a payment on 06th September 2021, a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) from overall

outstanding, accordingly it was contented that the present petition is within the Limitation.

9. The Petitioner submitted that act of making part payments towards the outstanding dues tantamount to admission of liability.

10. The Petitioner submits that after setting off the amounts paid by the Respondent on account of other previous transactions is Rs. Rs.5,00,000/- and therefore, net amount of Rs. 3,17,57,034/- remained unpaid and unsettled till date.

11. The Petitioner has placed on record copy of the ledger account and computation of claim.

<u>Submissions made by the Respondent:</u>

12. Brief Facts Submitted by the Respondent:

a) The Respondent at the very Outset deny all the allegations purported by the Applicant.

b) That the Captioned Company Petition is Completely barred by the law of limitation under Section 238A of the Insolvency and Bankruptcy Code, 2016 (IBC) read along with Article 137 of the Limitation Act,1963 and deserve to be dismissed forthwith.

c) Article 137 of the Schedule of Limitation Act,1963 provides that, any other application for which no period of limitation is provided elsewhere in this Division, the period of limitation will be three years and time from which the period begins to run is when the right to apply accrues.

d) Learned Counsel for the Respondent Submits that the invoices Nos. LS/95/16-17; LS/105/16-17; LS/110/16-17; LS/03/17-18;LS/08/17-18;LS-09/17-18 and LS/38/17-18 which the operational Creditor has claimed to be allegedly outstanding , are all from the year 2017. Below is a table outlining the invoices asserted to be unpaid by the Corporate Debtor in the Company Petition, including the respective invoice dates and due dates:

Sr No.	**Invoice No.**	**Invoice date**	**Due Date**
1.	LS/95/16-17	19.01.2017	19.05.2017
2.	LS/105/16-17	02.02.2017	02.06.2017
3.	LS/110/16-17	08.02.2017	08.06.2017
4.	LS/03/17-18	03.04.2017	03.09.2017
5.	LS/03/17-18	06.04.2017	06.07.2017
6.	LS/09/17-18	06.04.2017	06.08.2017
7.	LS/19/17-18	27.04.2017	27.08.2017
8.	LS/38/17-18	26.06.2017	26.10.2017

e) The argument posited is that, in accordance with industry standards, the due date of payment deadline is generally set at one month from the Date of Acceptance (DA) indicated on the invoices. Consistent with this practice, the Operational Creditor has openly acknowledged interpreting the due dates as one month following the Date of Acceptance.

f) The Respondent submits that, for the purpose of computing the limitation period, the crucial dates for alleged defaults should correspond to the invoice due dates. Significantly, all the invoices in question were purportedly due in the year 2017, with an assumed conclusion of due dates by the year 2020. Nevertheless, the operational creditor filed the Company Petition in January 2023, rendering it time-barred under the Law of Limitation.

g) The Learned Counsel for the Corporate Debtor submits that there is a pre-existing dispute between the Corporate Debtor and Operational Creditor with respect to the Invoices. It is submitted that owing to some account's discrepancies with respect to the Invoices between the Operational Creditor and Corporate Debtor, the parties collectively approached the Diamond Committee, which is a body formed by traders in the Diamond Committee was approached between August 2017 to October 2018 with the aim of resolving the dispute between both the parties. Pertinently, the Operational Creditor had placed its claim of the alleged debt before the Diamond Committee and the issue was thereafter deliberated upon .

h) In accordance therewith, the Corporate Debtor supplied diamonds valued at INR 1,89,69,174 (Indian Rupees One Crore

Eighty-Nine Lakhs Sixty-Nine Thousand One Hundred and Seventy-Four Only), estimated at USD 2,70,988 (US Dollars Two Lakhs Seventy Thousand Nine Hundred and Eighty-Eight Only) in 2017 to the Operational Creditor through the Diamond Committee. This transaction aimed to definitively settle the dispute regarding the purported dues of the Operational Creditor. It is asserted that the Diamond Committee consisted of five members, namely, Mr. Arvind Sanghavi, Mr. Himanshu Mehta, Mr. Nilesh Mehta, Mr. Sohit Mehta, and Mr. Sachin Parekh. It is noteworthy that numerous meetings of the Diamond Committee took place between September 2017 and October 2018 to resolve disputes between the parties. During these sessions, the directors of the corporate debtor were in attendance, and representatives of the operational creditor were also present.

i) Significantly, any disputes between the parties regarding the invoices were effectively addressed during the meetings in 2017 and 2018. Notably, due to the resolution of these disputes, the Operational Creditor sustained its business relationship with the Corporate Debtor, as evident from the entries in the operational creditor's ledgers. Following these meetings, the Operational Creditor continued to supply diamonds to the Corporate Debtor, and corresponding invoices were issued, prompting payments from the Corporate Debtor on March 26, 2019; March 06, 2020; and September 06, 2021. Subsequently, business transactions between the parties came to a halt, and there ensued a period of no communication or correspondence between them.

j) In accordance with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Operational Creditor is obligated to submit an application in Form-5 as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). It is pertinent to highlight that Regulation 2B of the CIRP Regulations mandates an Operational Creditor to provide pertinent extracts from Form GSTR-1 and Form GSTR-3B, submitted under the relevant provisions of the Goods and Services Tax (GST), along with copies of e-way bills, when applicable. However, notwithstanding the alleged supply of diamonds to the Corporate Debtor, the Operational Creditor has failed to furnish GSTR Forms or e-way bills in the Company Petition, thus contravening Regulation 2B.

k) Moreover, Form-5 stipulates that the operational creditor must furnish "A statement of bank account where deposits are made, or credits received normally by the Operational Creditor in respect of the debt of the Corporate Debtor." It is asserted that, for all transactions documented in the Operational Creditor's ledger, the Corporate Debtor made deposits in USD through bank account no. 00608900000015, as explicitly indicated in the invoices. These payments were processed through JP Morgan Chase Bank New York, directing funds to the operational creditor's bank accounts held in HDFC Bank and Kotak Mahindra Bank. However, the Operational Creditor has selectively included Annexure-IV in the Company Petition, presenting only the bank statement of Kotak Mahindra Bank and neglecting to attach bank statements from HDFC Bank and JP Morgan Chase Bank New York.

l) The learned Counsel representing the Corporate Debtor contends that Rule 5(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, states: "A copy of Demand Notice or invoice demanding payment served under this rule by an Operational Creditor shall also be filed with an information utility, if any."

m) Significantly, the Operational Creditor asserts to have issued a demand notice on September 26, 2022, as attached in Annexure-II of the Company Petition. However, the Operational Creditor has omitted to provide evidence of having filed the aforementioned demand notice, as mandated by Rule 5(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

n) The Corporate Debtor submits that the Operational Creditor didn't comply as per the Regulation 20(1A) of the IBBI (Information Utilities) before filing this Petition.

o) The Corporate debtor bring forth this fact that the Demand Notice was not served in the registered office of the Corporate Debtor as per the records maintained under the MCA website.

p) Interestingly it's worth noting that the Operational Creditor appears to be an unregistered partnership firm which is contended by the Corporate Debtor, it is also submitted that as per Section 69 of the Indian Partnership Act, 1932 only a registered partnership firm has the right to initiate legal proceedings. In fact, section 69 also states that only person whose names appears as partners of the firm in the Register of Firms can initiate proceedings.

Findings:

1. Heard learned Counsel for both the parties and perused the material available on record.

2. The Operational Creditor issued a Demand Notice Form- 3 dated **26th September 2022**, to the Corporate Debtor for an amount of Rs. 3,17,57,034. /- (Rupees Three Crore Seventeen Lakhs Fifty-Seven Thousand and Thirty-Four Only) Amount towards the balance outstanding against the Invoices raised against various Purchase Orders under the provision of the Insolvency and Bankruptcy Code, 2016, and the petition was filed on **10.01.2023**. From the records it is evident that the Demand Notice was not served at the Registered office of the Corporate Debtor instead it was served at the residential address of director of Respondent. The total number of invoices raised by the Applicant is 8 from 19.01.2017(date of first invoice) to 26.06.2017.In the written Submission it is admitted by the Operational Creditor that Respondent made two payments of Rs. 10,00,000/- and Rs.5,00,000/- on 6th March 2020 and 6th September 2021. Rule 5(2) of the IBBI (Application to Adjudicating Authority) Rules, 2016 allows service to the Whole-time director or key managerial person also. Accordingly, Service to a director is valid.

3. The recording of the default under regulation 20(1A) of information utility regulations is directory in nature as section 9(3)(d) requires of furnishing of any default with the information utility and the use of word 'any' signifies that annexing the default with the application is not mandatory.

4. The learned Counsel for the Respondent submits that the Captioned Company Petition is Completely barred by the law of limitation under Section 238A of the Insolvency and Bankruptcy Code, 2016 (IBC) read along with Article 137 of the Limitation Act,1963 and deserve to be dismissed forthwith.This bench is of the view that the Corporate Debtor made last payment of Rs. Rs.5,00,000/- (Rupees Five Lakhs only) towards the total outstanding debt on 6th September 2021. This payment constitutes acknowledgement of debt and the period of limitation stands further extended. In view of this, we find that the present petition is within limitation.

5. This Petitioner was allowed the opportunity to cure the defect pertaining to non-filing of Copy of application with the IBBI, which has subsequently been cured.

6. The Corporate Debtor emphasized that in accordance with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Operational Creditor is obligated to submit an application in Form-5 as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). It is pertinent to highlight that Regulation 2B of the CIRP Regulations mandates an

Operational Creditor to provide pertinent extracts from Form GSTR-1 and Form GSTR-3B, submitted under the relevant provisions of the Goods and Services Tax (GST), along with copies of e-way bills, when applicable. We are of the view that the Central Goods and Service tax ,2017 came into force on 8th July,2017 as the last invoice was raised by the Petitioner on 26.06.2017, when GST Laws didn't come into effect.

7. The contention that an unregistered firm cannot be maintained against the corporate debtor has no merit. It is trite law that the application under section 9 is not a civil suit hence the bar to file civil suit as applicable to unregistered partnership firm is not applicable to the present case. Nonetheless we note that this application has been filed by the applicant through its partner, in which case also the objection does not survive

8. Considering the above facts and circumstances, the debt and default stands established. Since, we do not have any evidence of disputed in relation to debt in default.

9. In the backdrop of above facts and circumstances, we are of the view that the Corporate Debtor has defaulted in the payment of the outstanding debt.

10. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the

admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

11. The Petition bearing CP (IB) 241/MB/C-I/2023 filed by **M/S Live Stone**, 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 Interjewel Private Limited [CIN: U74900MH2007PTC170147]**, the Corporate Debtor, is admitted.

12. **Mr. Vakati Balasubramaniam Reddy, Registration No IBBI/IPA-001/IP-P00662/2017-2018/11131**, Email Id: Vbsreddy7@gmail.com, is hereby appointed as Interim Resolution Professional (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.

a. There shall be a moratorium under section 14 of the IBC, in regard to the following:

b. 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;

c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

d. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

e. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

f. 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;

iii. 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.

iv. 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.

v. 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.

vi. 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).

vii. 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.

viii. 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.

ix. Ordered accordingly.

Sd/-	**Sd/-**
Sh. Prabhat Kumar	**JUSTICE V.G Bisht**
Member (Technical)	**Member (Judicial)**