

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

**C.P. (IB)- 1792 (MB)/ 2018**

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

*In the matter of*

**Nangalwala Industries (P) Limited,**

Having its registered office at: LU-8, Morya Enclave, Pitampura, New Delhi- 110 034

.....Operational Creditor

Vs.

**KGEPL Engineering Solutions Pvt. Ltd.,**

(CIN No.: U40102PN2007PTC130881)

Having its Registered Office at: S. No. 49, Industry House, Opposite Kalyani Steels Ltd., Mundhwa, Pune- 411 036 (Maharashtra).

.....Corporate Debtor

**Order delivered on:- 14.07.2023**

***Coram:***

**Hon'ble Member (Technical)**

**Shri Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**Shri Kuldip Kumar Kareer**

***Appearances:***

For the Operational Creditor : Mr. Shashwat Rai, Advocate

For the Corporate Debtor : None

**ORDER**

***Per : Shyam Babu Gautam, Member Technical***

1. This Company Petition is filed by *Nangalwala Industries (P) Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *KGEPL Engineering Solutions Pvt. Ltd.* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of **Rs.88,61,687/-** (Rupees Eighty-Eight Lakhs Sixty-One Thousand Six Hundred Eighty-Seven Only) together with interest at the rate of 18% amounting to **Rs. 43,30,612/-** (Rupees Forty-Three Lakhs Thirty Thousand Six Hundred and Twelve only) aggregating to a sum of **Rs.1,31,92,299/-** (Rupees One Crore Thirty-One Lakhs Ninety-Two Thousand Two Hundred and Ninety-Nine only) as on 15<sup>th</sup> April 2018.
3. The Operational Creditor is engaged in the business of manufacture and supply of PVC cable, wiring harness, auto cable etc. The Corporate Debtor, in the course of their business, approached the Operational Creditor for supply of wires and

cables and placed Purchase Orders between 15<sup>th</sup> November 2013 and 5<sup>th</sup> November 2014. The Operational Creditor supplied the aforesaid products between February 2015 till April 2016 and raised various invoices upon the Corporate Debtor. The products were duly received by the Corporate Debtor. Whenever any amount was paid by the Corporate Debtor, it was adjusted by the Operational Creditor against the invoices on First-in-First-out basis. It was agreed that the payment will be made within 30 days of submission of invoices. The purchase orders along with the invoices have been duly attached to this Petition.

4. The Operational Creditor submits that the last invoice was raised on **30<sup>th</sup> April 2016** which became due by **30<sup>th</sup> May 2016**. Since various such invoices were due and payable, the Operational Creditor was constrained to stop its business with the Corporate Debtor. Despite several requests and reminders, no initiative was taken by the Corporate Debtor to make the outstanding payments. It is further submitted that no dispute has ever been raised by the Corporate Debtor with respect to the products supplied by the Operational Creditor at any stage whatsoever. Copies of the outstanding invoices have been annexed to this Petition. Consequently, the Operational Creditor issued a **Demand Notice dated 15<sup>th</sup> January 2018**, a copy of which has been attached to this Petition. The Corporate Debtor did not reply to the said Notice. Subsequently, the Operational Creditor filed the instant **Petition on 16<sup>th</sup> May 2018**.

5. During the course of the final hearing, the Operational Creditor submitted that the Corporate Debtor already made a part payment of Rs. 57 Lakhs towards the operational debt and this is also recorded in **Order dated 24<sup>th</sup> October 2018** in the following words:

*“Meanwhile Respondent Debtor as a goodwill gesture has handed over a Cheque of Rs. 57,36,341.82/- in favour of Nangalwala Industries (P) Ltd. Bearing Cheque No. 114089 drawn on ICICI Bank dated 22.10.2018. This Cheque is delivered and accepted by the Petitioner without prejudice to their respective Legal Rights and subject to settlement of final Balance amount.”*

Further, vide **Order dated 5<sup>th</sup> December 2018**, the said payment was confirmed and the following was recorded:

*“From the side of the Respondent Debtor the Ld. Representative informed that the cheque issued on the last occasion for Rs. 57,36,341/- has been cleared and undertakes to settle rest of the amount, hence seeking time.”*

### **FINDINGS**

6. We have heard the submissions of the Counsel appearing for the Operational Creditor. On perusal of the Ledger records and other Financial Statements annexed to this Petition, it is evident that an aggregate operational debt of Rs.1,31,92,299/- existed as on the date of filing this Petition, however, subsequently on **22<sup>nd</sup>**

**October 2018**, the Corporate Debtor made a part payment of Rs.57,36,341/- (Rupees Fifty-Seven Lakhs Thirty-Six Thousand Three Hundred and Forty-One only). Hence, as of today, an amount of **Rs. 31.25 Lakhs** remains outstanding. On perusal of the order sheet, it is seen that the Corporate Debtor has remained continuously absent on various occasions when the matter was listed on Board. In any case, we observe that the Corporate Debtor has admitted its liability to repay the aggregate amount by making the aforesaid part-payment while initiating settlement of the operational debt in full. This has been duly recorded in the Orders dated **24<sup>th</sup> October 2018** and **5<sup>th</sup> December 2018**.

7. It is further noted that there is no pre-existing dispute between the parties. The date of default is recorded as **30<sup>th</sup> April 2016** which was the date of the last invoice raised by the Operational Creditor. It is therefore observed that the Petition is not barred by limitation.
8. The Operational Creditor has thus successfully demonstrated and proved the debt and default in this case and has also proved that there is no credible reason for the Corporate Debtor to put the payment of the outstanding amount on hold indefinitely. We, therefore, conclude that this Petition satisfies all the necessary requirements for admission under Section 9 of the Code.

9. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

**ORDER**

- a. **The above Company Petition No. (IB) -1792 (MB)/2018 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **KGEPL Engineering Solutions Pvt. Ltd.**
- b. This Bench hereby appoints **Mr. Rajesh Ramesh Kamath**, Insolvency Professional, Registration No: IBBI/IPA001/IPP01606/2019-2020/12481 as the Interim Resolution Professional having email address [iprrkamath@gmail.com](mailto:iprrkamath@gmail.com) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the

Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate

Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately.

**Sd/-**

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**

Anusha  
14.07.2023