IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI MANOJ KUMAR DUBEY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 28/9/JPR/2020

(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:

INDOFIL INDUSTRIES LTD.

…Operational Creditor

Versus

WELFARE INFRASTRUCTURE PVT. LTD.

…Corporate Debtor

MEMO OF PARTIES

M/S INDOFIL INDUSTRIES LIMITED
R/o: Kalapatru Square, 4th Floor, Off
Andheri Kurla Road, Andheri (East),
Mumbai, Maharashtra- 400059

…Operational Creditor

VERSUS

M/S WELFARE INFRASTRUCTURE PRIVATE LIMITED
R/o: A-23C, Phase–1, RIICO
Industrial Area, Behror, Alwar,
Rajasthan- 301701

…Respondent/Corporate Debtor

FOR THE APPLICANT	:	Sandeep Pathak, Adv. Vartika Mehra, Adv.
FOR THE RESPONDENT	:	None Appeared

Order Pronounced On: 04.07.2023

ORDER

Per: Shri Manoj Kumar Dubey, Technical Member

1. This Application has been filed on 29.01.2020 by *M/s Indofil Industries Limited* ('Operational Creditor'/'Applicant'), seeking to initiate a Corporate Insolvency Resolution Process ('CIRP') against *M/s Welfare Infrastructure Private Limited* ('Corporate Debtor'/'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC'/'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') alleging a default of Rs. 29,90,946/- (Rupees Twenty-Nine Lakh Ninety Thousand Nine Hundred and Forty-Six Only).

2. The Applicant, *M/s Indofil Industries Limited*, bearing CIN No. U24110MH1993PLC070713 has filed this application through its authorized signatory Mr. Poovannan Krishnamurthy who has been duly authorized vide Board Resolution dated 21.08.2019. The copy of the Board Resolution is annexed as Annexure – 1 of the Application.

3. The Corporate Debtor is a Private Company incorporated under the provisions of the Companies Act, 1956 on 09.12.2011 bearing CIN No. U70101RJ2011PTC037284 having registered office at Plot No. A-23C, Phase-1, RIICO Industrial Area, Behror, Alwar, Rajasthan- 301701. The details of the transactions leading to the filing of this application averred by the Applicant are as follows:

3.1. The Corporate Debtor sought supply of Cemento CRP 365 (RDP) and Indocell HPMC 2100 from the Applicant against which various supply orders were issued. Three different purchase orders were raised by the Corporate Debtor dated 24.09.2018, 23.11.2018 and 28.12.2018 for supply of goods amounting to Rs. 11,96,520/- (Rupees Eleven Lakh Ninety-Six Thousand Five Hundred and Twenty Only), Rs. 9,05,532/- (Rupees Nine Lakh Five Thousand Five Hundred and Thirty-Two Only), and Rs. 5,23,920/- (Rupees Five Lakh Twenty-Three Thousand Nine Hundred and Twenty Only) respectively.

3.2. Subsequently, the Operational Creditor supplied the goods in accordance with the specifications as laid down in the Purchase Order and raised three invoices dated 24.09.2018, 23.11.2018 and 31.12.2018 for an amount of Rs. 11,96,520/- (Rupees Eleven Lakh Ninety-Six Thousand Five Hundred and Twenty Only), Rs. 8,31,900/- (Rupees Eight Lakh Thirty-One Thousand Nine Hundred Only) and Rs. 3,69,340/- (Rupees Three Lakh Sixty-Nine Thousand Three Hundred and Forty Only) respectively. As per the terms of the agreement between the parties, the Corporate Debtor was to make the payment within 60 days from the date of invoice. Further, the invoices issued carry an interest clause @ 24% p.a. in case of failure of payment on due date.

3.3. The Operational Creditor failed to make payment towards the invoices despite repeated reminders. The Corporate Debtor vide letter dated 03.05.2019 has given confirmation of the outstanding balance of Rs. 23,97,760/- (Rupees Twenty Three Lakh Ninety-Seven Thousand Seven Hundred and Sixty Only) as on 31.03.2019.

3.4. Therefore, the Operational Creditor issued a Demand Notice dated 30.08.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding a payment of Rs. 27,78,104/- (Rupees Twenty-Seven Lakh Seventy-Eight Thousand One Hundred and Four Only) including the principal amount of Rs. 23,97,760/- (Rupees Twenty-Three Lakh Ninety-Seven Thousand Seven Hundred and Sixty Only) and interest of Rs. 3,80,344/- (Rupees Three Lakh Eighty Thousand Three Hundred and Forty-Four Only) to which no reply was received.

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

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.	*Total amount of debt:* Rs. 27,78,104/- (Twenty-Seven Lakhs Seventy Eight Thousand One Hundred Four Only)
2.	Amount Claimed to be in default and the date on which the default	Amount of Rs. 23,97,760/- plus interest @ 24% p.a. upto 31.08.2019 amounting to Rs. 3,80,344/-)

	occurred (Attach the workings for such computation of amount and dates of default in tabular form)	<u>*Dates of Default of Invoices:*</u> i) Invoice dated 24.09.2018 for an amount of Rs. 11,96,520/-. Defaulted on 24.11.2018. ii) Invoice dated 23.11.2018 for an amount of Rs. 8,31,900/-. Defaulted on 23.01.2019. iii) Invoice dated 31.12.2018 for an amount of Rs. 3,69,340/-. Defaulted on 01.03.2019.

4. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply vide Dairy No. 2408/2022 dated 12.08.2022 contending that the Applicant failed to provide good quality material, thereby, defaulting the terms and conditions as described in the purchase orders. The Corporate Debtor raised a dispute regarding the poor quality of goods supplied to the Operation Creditor upon which, a team from the side of Applicant visited the plant of the Corporate Debtor assuring that they will provide a new credit note.

5. The applicant thereafter filed a rejoinder vide Diary No. 3035/2022 dated 13.10.2022 submitting that the Corporate Debtor did not make payments against the invoices raised even though the goods were accepted and consumed without any dispute or returns. Moreover, the Corporate Debtor neither notified the Applicant regarding the alleged poor quality of goods nor raised any dispute with the representatives of the Applicant as mentioned in the Invoices.

6. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder, and the documents enclosed with the application. The matter was proceeded ex-parte as even though reply was filed from the side of the Corporate Debtor, there has been no representation on behalf of the Corporate Debtor since 14.11.2022.

7. In the matter at hand, we are posed with the following questions to determine the admissibility of the Application under Section 9 of the Code::

   7.1. Whether there exists a valid Operational Debt between the parties to the case which has become due and payable?

   7.2. Whether there exists a dispute between the parties prior to issuance of demand notice?

8. It is admitted fact that the Corporate Debtor had preferred three purchase orders amounting to a total of Rs. 26,25,972/- (Purchase order dated 24.09.2018, Purchase Order dated 23.11.2018 and Purchase Order dated 28.12.2018). Against the same, the Applicant supplied goods and raised 3 invoices dated 24.09.2018, 23.11.2018 and 31.12.2018 amounting to a total payable amount of Rs.23,97,760/- (Rupees Twenty-Three Lakh Ninety-Seven Thousand Seven Hundred and Sixty Only). The purchase orders mention the Credit Terms as 60 days and it has been contended that as per the agreement between the parties the invoice was to be cleared within 60 days from the date of issuance, which has not been denied by the Corporate

Debtor. Hence the payment became due 60 days from the date of issuance of invoice by the Applicant i.e. 24.11.2018, 23.01.2019 and 01.03.2019.

9. Hence, it is clear that there exists a valid Operational Debt which has become due on part of the Corporate Debtor. The invoices carry terms and conditions as per which if the payment is made beyond the due date, it shall carry an interest @ 24% p.a. The Applicant has claimed an amount of Rs. 3,80,344/- (Rupees Three Lakh Eighty Thousand Three Hundred and Forty-Four Only) as interest upto 31.08.2018 which is in accordance with the invoices issued by the Operational Creditor at the time of supply of goods to the Corporate Debtor. The total amount due to be payable by the Corporate Debtor is Rs.23,97,760/-(Rupees Twenty-Three Lakh Ninety-Seven Thousand Seven Hundred and Sixty Only) as per the invoices along with interest of Rs. 3,80,344/- (Rupees Three Lakh Eighty Thousand Three Hundred and Forty-Four Only) calculated upto 31.08.2019. Therefore, the first question is answered in a positive light.

10. With respect to the question regarding presence of a pre-existing dispute between the parties, the Applicant contends that there does not exist any dispute whereas the Corporate Debtor has submitted that poor quality of goods were supplied against which the visiting team of the Applicant had assured issuance of a credit note. To lay rest to this question, we refer to the *Disclaimer and Limited Liability* term as enumerated in the invoices issued to the Corporate Debtor which reads as below:

> *"3. If the material is not found as per the agreed specifications the customer must notify us in writing within 7 working days of receipt of goods and discontinue the use of such materials forthwith. No such compliance will be entertained by the Company after the said period."*

11. The Corporate Debtor has not produced any document proving the communication of the alleged poor quality goods to the Applicant before or even after issuance of the Demand Notice under Section 8 of the Code on 30.08.2019. The stand of the Corporate Debtor does not seem tenable in the eyes of law and cannot be allowed to sustain without any substantial proof. Moreover, the Corporate Debtor had vide letter dated 03.05.2019 confirmed the outstanding balance of Rs. 23,97,760/- (Rupees Twenty Three Lakh Ninety-Seven Thousand Seven Hundred and Sixty Only) which amounts to a clear acknowledgement of debt. There is no pre-existing dispute between the parties. The bank statements annexed with the Application confirm the failure on part of the Corporate Debtor to meet its debt.

12. 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."

13. Therefore, to initiate CIRP in the present matter the conditions have to be satisfied. At this juncture it is also important to quote the judgment of the Hon'ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:

> *"32. ……… On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed."*

14. It has very well been established that under Section 9 of the Code, to initiate CIRP proceedings, the Applicant is required to prove that the debt is due, it has not been paid and the debt is an undisputed debt. In the matter at hand, it is clear that there exists an Operational Debt against the Corporate Debtor, the said debt has become due and payable and there is no pre-existing dispute

between the parties. Therefore, we are inclined to initiate CIRP in the present matter as all the ingredients under Section 9 of the Code are duly satisfied.

15. 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 that any person may be appointed as IRP. Hence, this bench can appoint the RP from the pool of RPs empaneled with the IBBI.

16. In view of this Ms. Garima Diggiwal, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P-02018/2020-2021/13158 (email: garima286@gmail.com), 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.

17. 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.

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

18.1. The IRP appointed by the Adjudicating Authority, Ms. Garima Diggiwal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by her 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.

18.2. 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.

18.3. 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.

18.4. 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.

19. Accordingly, CP No. (IB)-28/9/JPR/2020 is admitted.

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

-Sd-	*-Sd-*
MANOJ KUMAR DUBEY	**DEEP CHANDRA JOSHI**
TECHNICAL MEMBER	**JUDICIAL MEMBER**