

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

CP (IB) NO. 2981 of 2019

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

J. K. & Sons Impex Pvt. Ltd.

[CIN:U51909MH2005PTC154648]

... Operational Creditor/Applicant

Versus

Nectar Prints Pvt. Ltd.

[CIN:U22200MH1998PTC116968]

... Corporate Debtor/Respondent

Order Pronounced On 09.05.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Ms. Dipti Shah, Advocate.
For the Corporate Debtor : None.

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief Facts:

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) by **J. K. & Sons Impex Pvt. Ltd. ("hereinafter referred to as Operational Creditor/Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Nectar Prints Pvt. Ltd. ("hereinafter referred to as Corporate Debtor /Respondent")**.
2. The Applicant bearing CIN U51909MH2005PTC154648 has its registered office at 274, Perin Nariman Street, Elite Square, 6th Floor, Bazar Gate, Fort, Mumbai-400001.
3. The Respondent was incorporated on 27.10.1998 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U22200MH1998PTC116968. Its registered office is at Bungalow no.7, Gulab Park, Dr. C. G. Road, Near Basant Cinema, Chembur, Mumbai-400074. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
4. The Respondent has defaulted in the payment of Rs. 16,98,197/- (Rupees Sixteen Lacs ninety-eight thousand one hundred ninety-seven Only) for the period from 16/11/2016 to 01/07/2017 along with an Interest @ 24% p.a. of Rs. 9,88,148/- as on 25/07/2019 aggregating to Rs. 26,86,345/- and further interest 25/07/2019 till realisation.
5. That the Corporate Debtor despite of various reminders has failed to pay the amount of various Invoices along with interest amounting to Rs. 26,86,345/- along with further interest till date of realisation to the Operational Creditor.
6. The transaction in brief is an under: -
 - i. The Operational Creditor is in the business of writing and printing papers. The Corporate Debtor approached the Operational Creditor for placing the order on or about in the year 2016.
 - ii. The Operational creditor supplied writing and printing papers from time to time i.e. from November 2016 to July 2017 to the Corporate Debtor.
 - iii. Pursuant to the orders placed by the Corporate Debtor, following Purchase Orders were raised and the same were duly

received and accepted by the Corporate Debtor and the amount is remaining due and payable under said Invoice:

Purchase Order no./Invoice no.	Date	Amount
Purchase Order No. 7496, Invoice no. 8875	16/11/2016	Rs. 7,41,392/-
Invoice no. 9043	19/11/2016	Rs. 25,405/-
Purchase order No. 7521, Invoice no. 9297	25/11/2016	Rs. 11,947/-
Purchase order No. 7538, Invoice no. 9611	02/12/2016	Rs. 30,469/-
Purchase order No. 7605, Invoice no. 10237	15/12/2016	Rs. 99,966/-
Invoice no. 10480	20/12/2016	Rs. 41,822/-
Purchase order No. 7628, Invoice no. 10998	29/12/2016	Rs. 14,580/-
Purchase order No. 7642, Invoice no. 11107	31/12/2016	Rs. 32,521/-
Purchase order No. 7674, Invoice no. 11647	11/01/2017	Rs. 19,576/-

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Purchase order No. 7677, Invoice no. 11703	12/01/2017	Rs. 8,130/-
Purchase order No. 7694, Invoice no. 11905	17/01/2017	Rs. 42,307/-
Purchase order No. 011 & 012, Invoice no. 11970	18/01/2017	Rs. 92,602/-
Purchase order No. 021, Invoice no. 12023	19/01/2017	Rs. 29,474/-
Purchase order No. 026, Invoice no. 12082	20/01/2017	Rs. 65,661/-
Purchase order No 033, Invoice no. 12199	23/01/2017	Rs. 4,353/-
Purchase order No. 036, Invoice no. 12253	24/01/2017	Rs. 1,73,661/-
Purchase order No. 071 & 072, Invoice no. 12305	25/01/2017	Rs. 1,39,350/-
Purchase order No. 050, Invoice no. 12460	30/01/2017	Rs. 55,900/-
Purchase order No. 046 & 050, Invoice no. 12503	31/01/2017	Rs. 2,45,562/-

Purchase order No. 319, Invoice no. 2662	10/06/2017	Rs. 70,164/-
Purchase order No. 368, Invoice no. 3487	01/07/2017	Rs. 3,54,747/-

- iv. The Corporate Debtor had even given cheques bearing no. 000411, 000723 and 000724 towards part payment of the Invoice amounts, however, the said cheques were not honoured on its presentation and on request of the corporate debtor. Since the Corporate Debtor promised to pay the amount the operational creditor didn't take any legal action.
- v. When the Corporate Debtor failed to make the payment despite of repeated requests and reminders, Operation Creditor sent demand notice dated 26/09/2018 addressed by Adv. K.R. Shah which was duly received by the corporate debtor. The Operational Creditor issued a Demand Notice dated 01/07/2019 u/s 8 of the Insolvency and Bankruptcy Code, 2016 inter alia demanding payment in respect of unpaid operational debt amounting to Rs. 16,98,197/- (Rupees Sixteen Lacs ninety-eight thousand one hundred ninety-seven only) being the principal amount along with 24% simple interest per annum on respective invoices till 01/07/2019 i.e Rs. 9,61,349/- (Rupees Nine lacs sixty-one thousand three hundred forty-nine only) therefore aggregating to a total sum of Rs. 26,59,546/- (Rupees Twenty-six lacs fifty-nine thousand five hundred forty-six only).
- vi. The Operational Creditor had for the recovery of the money, preferred Mediation before the Hon'ble Bombay City Civil Court bearing no. 374/19 against the Corporate Debtor. However, the Corporate Debtor failed to co-operate in the Mediation proceedings. However, report of the said Mediation proceedings has not been placed on record before this Tribunal.
- vii. The Corporate Debtor till date has neither paid the amount, despite constant reminders by the Operational Creditor. The debt fell due from the due date of Invoices.

Findings

7. We have heard the submissions of the learned Counsel for the Applicant and perused the record.
8. The learned Counsel for the Operational Creditor submitted that the client is ready to proceed further in the matter, provided the initial CIRP cost be reduced to the tune of Rs. 2,00,000/-.
9. From the record, it is seen that the Corporate Debtor has neither transferred the amount towards the debt owed to the Applicant nor replied to the notice of payment dated 26.09.2018 & 01.07.2019 issued by the Applicant, which has been duly delivered to the Corporate Debtor. The Corporate Debtor has not issued notice of any dispute and the Applicant has placed on record on 05.02.2024 the affidavit in this relation in terms of Section 9(3)(b) of the Code.
10. Therefore, the Corporate Debtor's right to file Affidavit in Reply was forfeited vide order of this Tribunal dated 26.07.2023.
11. Considering the above facts and circumstances, the debt and default stands established and no dispute in relation to such debt in default has been brought on record.
12. The application made by the Applicant 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.
13. The Petition bearing **CP (IB) 2981/MB/2019** filed by **J. K. & Sons Impex Pvt. Ltd.** [CIN:U51909MH2005PTC154648], 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 **Nectar Prints Pvt. Ltd.** [CIN:U22200MH1998PTC116968], the Corporate Debtor, is **admitted**.
14. There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
15. 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;
16. 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.
17. 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.
18. The Applicant has not submitted name of any Interim Resolution Professional (IRP). We hence, hereby appoint **Mr. Milind Kasodekar** having registration no. **IBBI/IPA-002/IP-N00116/2017-18/10285**, **Mobile no. 9822394380** and **email ID milind.kasodekar@kmdscs.com** as the 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.

19. 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.
20. 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).
21. 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.
22. 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.
23. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

/MK/

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)