

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No.4372/MB/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:

E-COMPLEX PRIVATE LIMITED

[CIN: US1100MH2006PTC159890]

Registered Office: 2nd Floor, South Wing, Reliance Centre
Off Western Express Highway
Santacruz (E)
Mumbai- 400055.

...Operational Creditor

VERSUS

DOJAHAN TRADING PRIVATE LIMITED

[CIN:U63000GJ1995PTC026113]

Registered Office:102, Kushal Bhavan
65, Marutin Mandir Marg, 5th Kumbharwada Lane
Girgaum, Mumbai- 400004.

...Corporate Debtor

Pronounced: 23.04.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Siddhartha Pamecha

Corporate Debtor: Adv. Rajesh Dubey

ORDER

[Per: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

1.1 This Application bearing C.P.(IB) No.4372/MB/2019 was filed by E-Complex Private Limited, the Operational Creditor on 02.12.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as “the AA Rules”] for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Dojahan Trading Private Limited, the Corporate Debtor.

1.2 The Operational Creditor had been supplying steel materials to the Corporate Debtor based on their orders and had consistently raised invoices for the supplied steel materials since 2013. However, the Corporate Debtor had failed to make payments for three invoices dated 21.08.2013 aggregating Rs.6,02,83,233/- (Six Crores Two Lakhs Eighty-Three Thousand Two Hundred and Thirty-Three Rupees) plus interest amounting to Rs.6,77,58,354/- (Six Crores Seventy-Seven Lakhs Fifty-Eight Thousand Three Hundred And Fifty-Four Rupees) calculated at the rate of 18% per annum from the due dates of the respective invoices till 20.11.2019.

1.3 In view of non-payment of aforesaid amount of operational debt, a Demand Notice dated 26.12.2018 was issued by the Operational Creditor to the Corporate Debtor, as required under Section 8 of the Code which was duly served on the Corporate Debtor. In its reply to the Demand Notice *vide* letter dated 14.01.2019, the Corporate Debtor outrightly denied having any amount of operational debt due and payable to the Operational Creditor. Consequently, the Operational Creditor filed the present Application seeking initiation of CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF THE OPERATIONAL CREDITOR

2.1 As per the Corporate Debtor's requests and orders, the Operational Creditor had supplied substantial quantities of S.S. Pipes to the Corporate Debtor since 2013. The Corporate Debtor had neither raised any disputes regarding the delivery, quality or product specifications outlined in the invoices nor returned the goods so supplied.

2.2 The Operational Creditor had raised three invoices on 21.08.2013 towards supply of S.S. Pipes to the Corporate Debtor aggregating Rs.6,02,83,233/-. Copies of relevant tax invoices and delivery challans have been annexed to the Application. The Operational Creditor approached the Corporate Debtor several times to clear the outstanding dues. Despite repeated and persistent efforts by the Operational Creditor to seek settlement of its dues, the Corporate

Debtor failed to make any payments, thereby adversely affecting the Operational Creditor's regular business operations.

- 2.3 The Operational Creditor submits that the Corporate Debtor maintained a running and current account with the Operational Creditor making on-account payments. However, the Corporate Debtor failed to make payments for aforesaid invoices resulting in a default of the principal sum of Rs.6,02,83,233/- (Six Crores Two Lakhs Eighty-Three Thousand Two Hundred and Thirty-Three Rupees) as on 22.08.2013.
- 2.4 Due to the non-payment of the outstanding amount, a Demand Notice in prescribed form was issued under Section 8 of the Code to the Corporate Debtor on 26.12.2018. In response to this notice, the Corporate Debtor *vide* its reply dated 14.01.2019 denied liability to pay under the aforesaid invoices. The Corporate Debtor claimed that some of the materials supplied were of sub-standard quality and were rejected raising various debit notes against such rejected materials. The Corporate Debtor also contended that the alleged claim of the Operational Creditor was already time-barred.
- 2.5 The Operational Creditor submits that due to changes in management over time, it was unable to keep track of the timeline of the invoices with respect to limitation. However, in the second half of 2018, after the current management took charge, it decided to take necessary steps to realise the outstanding debt owed by the Corporate Debtor.

Consequently, the Operational Creditor promptly filed the present Application within the period of limitation.

3. CONTENTIONS OF THE CORPORATE DEBTOR

The Corporate Debtor in its Affidavit-in-Reply has denied all allegations and contentions of the Operational Creditor and opposed the present Application on various grounds.

3.1 The present Application is clearly time-barred due to the invoices dating back 21.08.2013. The explanation provided by the Operational Creditor regarding changes in management over time does not justify the delay in filing the Application, as it finds no legal basis. Therefore, the Operational Creditor's admission of the present Application being barred by limitation is evident from its own statement.

3.2 The Demand Notice dated 26.12.2018 was sent by way of Form 3 by one Mr. Nikhil Jain who is allegedly the authorised person on behalf of the Operational Creditor. A perusal of internal page 3 of the said Notice shows that the said Mr. Nikhil Jain is the Chief Financial Officer (CFO) of one M/s. Reliance Naval and Engineering Limited. The said company i.e., M/s. Reliance Naval and Engineering Limited is in no manner connected with the Operational Creditor and, therefore, the said Mr. Nikhil Jain is clearly not an authorised signatory of the Operational Creditor. Further, the Operational Creditor has not annexed any letter giving authority to the said Mr. Nikhil Jain to

address the said notice on behalf of the Operational Creditor.

Therefore, it is clear that the said Notice has been addressed without any authority and by a person who is not even an authorised signatory of the Operational Creditor.

3.3 The Corporate Debtor had no privity of contract in any manner whatsoever with the said M/s. Reliance Naval and Engineering Limited. In fact, a bare perusal of the Registered Office address of the two companies shows that the companies are separate legal entities located at distinct locations and having separate Registered Office addresses. Thus, on this count also, the Demand Notice is faulty. Reliance is placed on judgment of **Hon'ble NCLAT** dated 03.05.2017 in CA (AT)(Ins) No. 31 of 2017 in the case of **Era Infra Engineering Ltd vs. Prideco Commercial Projects Pvt. Ltd** wherein it has been held that provisions of Section 8 of the Code read with Rule 5 of the AA Rules are strictly required to be complied with, failing which the application under Section 9 of the Code deserves to be dismissed.

3.4 There has been no transaction of supply of any material by the Operational Creditor to the Corporate Debtor as alleged. Further, it is stated that none of the invoices bears the Corporate Debtor's acknowledgment and, therefore, there is no question of supply of any material. The Corporate Debtor accuses the Operational Creditor of forging and fabricating documents with ulterior motives. Additionally, the absence of transportation details/lorry receipts on the delivery

challans further invalidates the documents, showing them to be fabricated.

- 3.5 No such transaction had taken place between the Operational Creditor and the Corporate Debtor and no purchase order or any agreement or any communication in this behalf had been entered into between the Operational Creditor and the Corporate Debtor. The absence of any communication exchanged between the parties for over five years regarding such substantial amounts raises suspicion of fraudulent intent on the part of the Operational Creditor. The Corporate Debtor questions how such high-value transactions could occur without any formal agreement, indicating that the demand is fraudulent and aimed solely at extracting money from the Corporate Debtor.
- 3.6 The Corporate Debtor has referred to the judgment of Hon'ble Kerala High Court in ***P. Nanikutty and another V. K. U. Kalpakadevi and others [2023 SCC OnLine Ker 3270]*** and argued that the rejoinder filed by the Operational Creditor after receiving the Affidavit-in-Reply of the Corporate Debtor should not be entertained and the pleadings incorporated therein should not form part of the application/record, as per the rules of pleadings contained in Order VI and Order VII of the Code of Civil Procedure, 1908 (CPC).

4. REJOINDER BY THE OPERATIONAL CREDITOR

In its rejoinder dated 17.10.2023, the Operational Creditor has made certain clarifications to the contentions of the Corporate Debtor as under :-

4.1 As regards the contention raised by the Corporate Debtor that the Application is barred by limitation, the Operational Creditor has furnished copies of Audited Financial Statements of the Corporate Debtor for the financial years ended on 31.03.2015 and 31.03.2017. A perusal of these documents reveals that there is a disclosure of an outstanding amount of Rs.6,02,83,233/- payable by the Corporate Debtor to the Operational Creditor under the head “Trades Payables-Sundry Creditors for Goods” as on 31.03.2015 and 31.03.2017. In view of the acknowledgment of the principal operational debt by the Corporate Debtor as on 31.03.2015 and 31.03.2017, it is submitted that the Application filed by the Operational Creditor on 02.12.2019 is well within the limitation period.

4.2 With regard to the contention that Form 3 (Demand Notice) is defective, it is submitted that the minutes of meeting of the Board of Directors of the Operational Creditor dated 12.10.2017 declared that Mr. Nikhil Jain, among others, was an Authorised Signatory of the Operational Creditor. A copy of the said minutes dated 12.10.2017 has been placed on record.

4.3 Further, it is noted that the NCLT, Ahmedabad Bench *vide* order dated 09.12.2020 in CP(IB) No. 563/9/NCLT/AHM/2018 had initiated CIRP against the Operational Creditor. It is noticed that the NCLT Ahmedabad Bench-I *vide* Order dated 04.12.2023 has approved the Resolution Plan submitted by Invent Assets Securitization and Reconstruction Private Limited. The said Successful Resolution Applicant has expressed its desire to pursue the present Application and authorised M/s. Thodur Law Associates to represent the matter before this Adjudicating Authority.

4.4 It is further submitted that the consolidated value of the three invoices raised by the Operational Creditor amounts to Rs.6,02,83,233/-, excluding interest calculated at 18% from the date of default to the present. It is pertinent to note that the Corporate Debtor has acknowledged the exact outstanding amount of Rs.6,02,83,233/- being the consolidated amount of the three invoices in its successive financial statements, as brought out above. This acknowledgment establishes the crystallisation of the operational debt, which has become due and payable along with interest calculated at 18% from the date of default. Therefore, the Corporate Debtor's contention that there were no transactions of supply of material by the Operational Creditor to the Corporate Debtor or that the invoices raised by the Operational Creditor were forged and fabricated is patently false.

5. ANALYSIS AND FINDINGS

Upon due consideration of the pleadings as well as written submissions along with the materials available on record and hearing the Counsel for the Operational Creditor and Corporate Debtor, our findings in the matter are as under:-

- 5.1 It is noticed that the Operational Creditor has placed on record copies of tax invoices and delivery challans duly acknowledged by the Corporate Debtor in respect of supply of steel materials amounting to Rs.6,02,83,233/- on 21.08.2013. The Operational Creditor has also annexed copy of the Demand Notice dated 26.12.2018 calling upon the Corporate Debtor to pay the outstanding operational debt within 10 days from the receipt thereof. Further, the Operational Creditor has placed on record copies of audited financial statements of the Corporate Debtor for the accounting periods ended on 31.03.2015 and 31.03.2017 showing outstanding dues of Rs.6,02,83,233/- owed to the Operational Creditor. Thus, the existence of principal operational debt due and payable to the Operational Creditor to the tune of Rs.6,02,83,233/- stands duly corroborated from the audited accounts of the Corporate Debtor. The Corporate Debtor's plea regarding alleged fabricated invoices issued and fraudulent claim made by the Operational Creditor has thus no legs to stand and is accordingly rejected. Thus, the Operational Creditor has provided sufficient

documentary evidence to substantiate its claim of existence of aforesaid amount of operational debt due from the Corporate Debtor.

5.2 A perusal of the tax invoices issued by the Operational Creditor reveals that no specific terms of payment have been mentioned therein. This indicates that the invoices were due and payable on the respective dates only. It is noticed that the Corporate Debtor failed to make payment of the outstanding dues to the Operational Creditor even after receipt of Demand Notice dated 26.12.2018. Thus, it is clear that the Corporate Debtor had committed default in payment of outstanding operational dues to the Operational Creditor.

5.3 It is noticed that the Corporate Debtor in its Affidavit-in-Reply has not raised any plea of pre-existing dispute with the Operational Creditor. Rather, the Corporate Debtor has outrightly denied having any such transactions with the Operational Creditor. Such denial is, however, found to be contrary to its own audited financial statements for the accounting periods ended on 31.03.2015 and 31.03.2017 wherein the amount of operational debt of Rs.6,02,83,233/- is clearly and categorically shown as payable to the Operational Creditor. Although the Corporate Debtor in reply to the Demand Notice *vide* letter dated 14.01.2019 had alleged supply of sub-standard quality of goods by the Operational Creditor leading to raising of debit notes against rejected goods, it is noticed from the record that such allegation/claim was nothing more than a moonshine defence in view of corroboration of

outstanding amount of debt owed to the Operational Creditor from the audited financial statements of the Corporate Debtor itself, as brought out above. The so-called dispute raised by the Corporate Debtor with regard to alleged sub-standard quality of goods is found to be not supported by any evidence and hence such claim must be rejected as being frivolous, spurious and vexatious. It is observed that the Corporate Debtor has failed to bring relevant materials before this Adjudicating Authority to establish the factum of a real and genuine pre-existing dispute. Thus, we find that the operational debt in question is an undisputed and crystallised debt owed by the Corporate Debtor to the Operational Creditor.

5.4 Let us now deal with the question whether the present Application filed on 02.12.2019 on the basis of invoices raised on 21.08.2013 is barred by limitation, as contended by the Corporate Debtor. In this connection, it is noticed that the Operational Creditor in its rejoinder has placed on record audited balance sheets of the Corporate Debtor perusal of which clearly reveals that the Corporate Debtor had acknowledged the operational debt of Rs.6,02,83,233/- owed to the Operational Creditor as on 31.03.2015 and 31.03.2017 as part of its Trade Payables. It is now settled that entries of liabilities reflected in audited balance sheets constitute acknowledgment of debt within the meaning of Section 18 of the Limitation Act, 1963 thereby giving rise to a fresh period of limitation starting from 31.03.2017. Therefore, we find that the

Application has been filed well within the extended limitation period.

Thus, the plea taken by the Corporate Debtor on this account is rejected as untenable.

5.5 Section 2(8) of the Code defines “corporate debtor” as a corporate person who owes debt to any person. Section 2(7) of the Code defines “corporate person”, *inter alia*, to mean a company defined under Section 2(20) of the Companies Act, 2013. The term “person” is defined under Section 3(23), *inter alia*, to include a company. The expression “corporate debtor” means a corporate person who owes debt to any person. Further, the term “debt” is defined in Section 2(11) of the Code as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. Section 5(21) categorically defines “operational debt” as a claim in respect of goods or services. The term “default” means non-payment of debt when the whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or corporate debtor. On a careful consideration of the above definitions and the overall scheme of the Code, we feel that a harmonious interpretation is appropriate while dealing with an application under Section 9 of the Code. Existence of operational debt and default on part of the Corporate Debtor are proved in the instant matter. Section 8 notice was sent to the Corporate Debtor by Mr. Nikhil Jain, who was one of the Directors of the Operational Creditor. He was also holding

the position as Chief Financial Officer (CFO) of M/s Reliance Naval and Engineering Limited, which was the holding company of the Operational Creditor. In view of the above, simply because Mr. Nikhil Jain signed the Demand Notice in the capacity as CFO of the holding company it does not make the notice defective, especially when the minutes of the meeting of the Board of Directors dated 12.10.2017, authorised Mr. Jain to initiate required steps to protect the legal rights and interests of the Operational Creditor. Moreover, such a claim of defective notice was not raised by the Corporate Debtor at the first instance, in its reply to Section 8 notice. It can, therefore, be safely concluded that this objection of the Corporate Debtor is an afterthought.

- 5.6 With regard to the objection raised by the Corporate Debtor as to the admissibility of the Rejoinder filed by the Operational Creditor, it is noticed that the Rejoinder was filed in response to the reply filed by the Corporate Debtor. In this regard, the Corporate Debtor's reliance on the judgment of Hon'ble Kerala High Court in **P. Nanikutty** (supra) is not apposite, because the provisions of the CPC have not been made applicable to the Code and rather the issue will be governed by the provisions of the NCLT Rules. Rule 42 of NCLT Rules vests this Tribunal with the discretion to allow the petitioner to file rejoinder to the reply filed by the respondent for the purpose of "just decision" of the case. It is noticed from the record that the Operational Creditor's

request for filing rejoinder to the reply filed by the Corporate Debtor was allowed by this Adjudicating Authority *vide* order dated 15.09.2023. Moreover, such a plea cannot be permitted to be raised by a Corporate Debtor which has not come to this forum with clean hands. It is pertinent to mention that the reply furnished by the Corporate Debtor suffered from gross misrepresentation and suppression of material facts and was a deliberate and wilful attempt to mislead the Adjudicating Authority. Had the rejoinder accompanied by audited financial statements of the Corporate Debtor for financial years ended on 31.03.2015 and 31.03.2017 not been filed by the Operational Creditor, exposing the Corporate Debtor's bluff, there would have been grave miscarriage of justice in so far as the case of the Operational Creditor is concerned, as the Application would have been dismissed at the very threshold on the ground of limitation.

- 5.7 It is also seen from the records that there was no provision for charging of interest under the terms of the Tax Invoices raised by the Operational Creditor on the Corporate Debtor. It is well-settled that the charging of interest ought to be an actionable claim enforceable under law, provided it was properly agreed upon between the parties. The Operational Creditor has not furnished any basis or justification for charging interest @ 18% per annum from the Corporate Debtor in respect of the unpaid invoices. In the absence of mutual agreement, the Operational Creditor's claim for interest from the Corporate Debtor amounting to Rs.6,77,58,354/- is found to be untenable.

5.8 From the above discussions, it is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt owed to the Operational Creditor exceeding Rs.1,00,000/- (One Lakh Rupees), being the threshold monetary limit under Section 4 of the Code prevailing on the date of filing of the Application. Thus, this Application under Section 9 of the Code preferred by the Operational Creditor is found to be maintainable. The Application is complete and has been filed in the prescribed form. There is no payment of the unpaid operational debt. The Demand Notice along with copies of relevant invoices was delivered by the Operational Creditor to the Corporate Debtor on 05.01.2019 and no notice of any real or genuine dispute regarding the unpaid operational debt was received by the Operational Creditor *vide* reply of the Corporate Debtor dated 14.01.2019. The Operational Creditor has proposed the name of Mr. ManojKumar Babulal Agarwal, a registered Insolvency Professional with Registration Number IBBI/IPA-001/IP-P00350/2017-2018/10651 and email ID: charuduttm.yahoo.co.in and valid Authorisation for Assignment up to 02.01.2025 as the Interim Resolution Professional (IRP). The proposed IRP has furnished his written consent in prescribed Form-2 dated 20.11.2019 certifying that there are no disciplinary proceedings pending against him. In view of the above, we find that all requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

ORDER

This Application bearing **C.P.(IB) No.4372/MB/2019** filed under Section 9 of the Code by E-Complex Private Limited, the Operational Creditor, for initiating CIRP in respect of Dojahan Trading Private Limited, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as follows:

- a) There shall be a moratorium under Section 14 of the IBC.
- b) That the order of Moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicatory Authority approves the resolution plan under sub-section (1) of Section 31 of the IBC or passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be.
- c) That public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and other Rules and Regulations made thereunder.

- d) This Adjudicatory Authority 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 and further prohibits every authority from transferring, encumbering, alienating or disposing of any of the Corporate Debtor's assets or any legal right or beneficial interest therein; 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 SARFAESI 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 the moratorium period.
- f) That this Adjudicatory Authority hereby appoints **Mr. ManojKumar Babulal Agarwal, a registered Insolvency Professional having the Registration Number- IBBI/IPA-001/IP-P00350/2017-2018/10651** and **email-charuduttm@yahoo.co.in** as the Interim Resolution Professional (IRP), having valid Authorisation for Assignment up to 02.01.2025, to carry out the functions under the Code in terms of Regulation 7A of the Insolvency

and Bankruptcy Board of India (IBBI) (Insolvency Professional) Regulations, 2016.

- g) That the fee payable to IRP/RP, shall be in accordance with such Regulations, Circulars and Directions as may be issued by the IBBI. The IRP shall carry out his functions as contemplated under the provisions of the Code.
- h) That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 or Section 25 of the Code. The Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. 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/IP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.
- i) That the IRP/IP shall submit to this Adjudicatory Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

- j) In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Operational Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses, incurred by IRP out of this fund, are subject to approval by the CoC.
- k) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post and email and WhatsApp.
- l) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- m) Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.
- n) **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

SANJIV DUTT
MEMBER(TECHNICAL)
Deepa/JNK

Sd/-

K. R. SAJI KUMAR
MEMBER(JUDICIAL)