



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI
CP/IB/173(CHE)/2023**

*(filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6
of the Insolvency and Bankruptcy (Application to Adjudicating Authority),
Rules, 2016)*

In the matter of M/s. CEMA Electric Lighting Products India Private Limited

M/s. Overdrive Electronics (P) Ltd.,
CIN: U72200DL2005PTC136715
C-1/1621, Vasant Kunj
New Delhi-110070

...Applicant/Operational Creditor

-VS-

M/s. Cema Electric Lighting Products India Private Limited.,
CIN: U31501TN2007PTC061950
No.5 Nehru Nagar, Second Street
Adyar, Chennai-600020

... Respondent / Corporate Debtor

Order Pronounced on 9th July, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKAT RAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

<i>For Applicant</i>	:	Anuj Kumar Solanki, Advocate
<i>For Respondent</i>	:	S.Raghunathan, Advocate



ORDER
(Hearing conducted through hybrid mode)

This Application has been filed by the Operational Creditor viz. *M/s. Overdrive Electronics Private Limited* against the Corporate Debtor viz. *CEMA Electric Lighting Products India Private Limited*. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC', 2016) read with Rule 6 of Insolvency and Bankruptcy(Application to Adjudicating Authority) Rules, 2016 seeking to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

2. Part – I of the Application provides that the Operational Creditor (*Hereinafter OC*) is a Private Limited Company. Part – II of the Application sets out the details of the Corporate Debtor (*hereinafter CD*) that the Corporate Debtor was incorporated on 04.01.2007 and the Registered office address of the Corporate Debtor is situated at No.5 Nehru Nagar Second Street Adyar, Chennai-600020. In Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same.



3. Part – IV of the Application states that the Corporate Debtor is liable to pay to the Operational Creditor a principal amount of Rs.1,80,02,528 (INR One Crore Eighty Lakhs Two Thousand Five Hundred Twenty Eight Only) and Interest thereon up to 07.09.2023 at the rate of 18% per annum i.e Rs.40,01,206 (INR Forty Lakhs One Thousand Two Hundred Six Only) totaling to an amount of Rs.2,20,03,735 (INR Two Crores Twenty Lakhs Three Thousand Seven Hundred Thirty Five Only). It is stated that the date of default is 45 days after the Date of Invoice, thus the first date of default is on 18/04/2022.

4. It is stated that, the Operational Creditor is engaged in the business of Manufacture, design, assemble, prepare, fabricate, produce, install, equip, maintain and run, buy, sell, import and export of energy-efficient lighting products like LED lights, etc. Further stated that, the Operational Creditor supplied various LED light products such as LED Bulbs, LED downlighter, etc., to the Corporate Debtor. (The copies of the unpaid tax invoices and courier receipts are annexed with this Application and marked as **ANNEXURE 5.**)



5. It is stated that, the Operational Creditor in compliance with the requirements stipulated under Regulation 2B of IBBI(Insolvency process for Corporate Persons) Regulations, 2016 has filed the copies of extracts/screenshots of FORM – GSTR-1, Form GSTR-3B, and E-way Bills. (The copies of the same are annexed in this Application as **Annexure 6.**)

6. It is stated that, the Operational Creditor made several telephonic communications, email, etc. from time to time, but the Corporate Debtor under one pretext or another avoided the payment and made false commitment to the Operational Creditor. (True Copy of the exchange of Emails between the Operational Creditor and Corporate Debtor demanding the payment of outstanding dues is collectively annexed as **Annexure 7** along with this Application.)

7. It is stated that, the Operational Creditor has raised several tax invoices against Corporate Debtor and the same are reflected in FORM 2A/2B in Corporate Debtor's GST Account on GST website. It is averred that, all of the goods have been accepted by the Corporate Debtor without any objections.

8. It is stated that, the business between the Operational Creditor and the Corporate Debtor commenced on 31.03.2014. It ran smoothly till February,2022, despite some acceptable delay in payment; thereafter the Corporate Debtor stopped/delayed to make payment to the Operational



Creditor for the supplied goods with mala-fide intention to grab the hard-earned money of the Operational Creditor. (Copy of the ledger from the date of unpaid tax invoices and complete ledger from the date of start of business between the Operational Creditor and the Corporate Debtor maintained by the Operational Creditor in its Books of Accounts are annexed and marked as **Annexure 8** of this Application.)

9. It is stated that as the Corporate Debtor defaulted and failed to clear the outstanding amount, the Operational Creditor sent a demand notice along with relevant documents dated 08.09.2023 to Corporate Debtor under Section 8 of the IBC, 2016. (The copy of demand notice dated 08.09.2023 sent by OC to CD is annexed as **Annexure 9** in this Application.)

10. It is stated that, after sending the demand notice under Section 8 of the IBC, 2016, the Corporate Debtor gave its reply dated 17.09.2023 to the demand notice dated 08.09.2023. It is averred that, the Corporate Debtor has made vague, frivolous, and baseless statements/objections that were never raised before the demand notice was sent. (The reply to the demand notice is annexed and marked as **Annexure 10** with this Application.)

11. The reply is extracted as under:



CEMA ELECTRIC LIGHTING PRODUCTS INDIA PVT. LTD.
Reg. Office : No. 5, Nehru Nagar, Second Street, Adyar,
Chennai - 600 020
www.cemalighting.com

Annexure 10

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TO,

M/s Overdrive Electronics Pvt Ltd

17th September 2023

C-1/1621, Vasanthkunch,

New Delhi - 110070

CIN - U72200DL2005PTC136715

CC:

ANUJ SOLANKI, Advocate

ANUJ SOLANKI & ASSOCIATES, NEW DELHI

Reply send via RPAD & email

Sub : Reply to Form 4 Demand Notice dated 08/09/2023 Under Rule 5 of the Insolvency Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

Dear Sir,

With respect to Form 4 Demand Notice dated 08/09/2023 Under Rule 5 of the Insolvency Bankruptcy
(Application to Adjudicating Authority) Rules, 2016, received on 14th Sep 2023 at our Office. We would
like to inform you that, there is discrepancy in the amount demanded and also there are defectives
under warranty returned from the market lying in our various warehouses which we are quantifying and
we will inform the value through debit note.

Please confirm

Truly Yours


Nandakumar C

Director.



A SARATOGA USA GROUP COMPANY

Corp. Office : #34/389 C, Mullassery, Padivattom, Edappally Po, Cochin - 682 024, T : + 91 484 2809 341/42, F : + 91 484 2803 573

Factory : Malavada Road, Limbasi - 387 520. Tal. : Matar, Dist. : Kheda (Gujarat) India, T : + 91 2694 283 692/137, F : + 91 2694 283 611



12. It is stated that, an Affidavit in support of the present Application has been filed by the Operational Creditor to the effect that the Corporate Debtor had not sent any notice or raised any dispute regarding unpaid operational debt until before sending the demand notice dated 08.09.2023 under Section 8 of the IBC, 2016. (The Affidavit is marked and annexed as **Annexure-11** along with this Application.)

Counter filed by the Corporate Debtor

13. It is stated by the Corporate Debtor through its counter that, the Application filed by the Operational Creditor is wholly vexatious, premature and contrary to law. Further, the allegations set out in the Application filed by the Operational Creditor are denied in their entirety.

14. It is stated that, the Corporate Debtor Company had placed orders on the Operational Creditor for the manufacture and supply of LED Bulbs based on the purchase orders placed by the Corporate Debtor Company from time to time on the Operational Creditor. The Operational Creditor had extended a warranty for a period of 30 months from the date of sale of the products supplied by it to the Corporate Debtor.



15. It is stated that, upon receipt of the said products from the Operational Creditor, the Corporate Debtor had to sell the same to its distributors/retailers, who in turn were finally to sell it to their end user/customers. It is further averred that, as per the trade practice in the lighting industry, in the event of the said product failing to perform during the warranty period, the same is liable to be replaced by the Operational Creditor on the basis of the manufacturer's warranty. In the event of end consumer finding the said product defective, he returns the defective product to the distributor of Corporate Debtor. The said defective products are then returned to Corporate Debtor which in turn would collect and consolidate in the ware house belonging to Corporate Debtor. Further, the authorized representative of Operational Creditor would inspect the said defective products along with Corporate Debtor's representative and issue credit notes in favour of Corporate Debtor Company to the value of the said defective products.

16. It is stated that, upon receipt of the said credit notes issued by Operational Creditor for the defective products, after adjusting the value of the said credit notes to the outstanding, the Corporate Debtor



would only then be liable. It is further stated that, in the absence of having carried out the inspection of the defective products this Application is not maintainable.

17. It is stated that, the Corporate Debtor had from time to time made *ad hoc* payments to the Operational Creditor towards the value of the products but not on invoice to invoice basis. Further in the absence of inspection and reconciliation of accounts between the Operational Creditor and Corporate Debtor, it would be presumptuous on the part of the Operational Creditor to unilaterally assume that the amount claimed in this Application is an admitted liability.

18. It is stated that, the Corporate Debtor, without prejudice to the rights of the Corporate Debtor, is ready and willing to cooperate with the Operational Creditor in fixing a date for the inspection and examination of the defective products and for carrying out the reconciliation of accounts.

Rejoinder filed by the Operational Creditor



19. It is stated by the Operational Creditor that, the Corporate Debtor has filed the reply through Mr. Nandakumar without any authorization or Power of Attorney. Mr. Nandakumar has failed to file any documents, board resolution or power of attorney authorizing him to appear, sign, reply and file any documents on behalf of the Corporate Debtor. It is averred that, the reply of Corporate Debtor is liable to be rejected and not to be taken on record in the absence of any authorization provided by the Corporate Debtor.

20. It is stated that, the Corporate Debtor in its reply has neither denied about the receipt of goods from the Operational Creditor nor has denied the default of payments towards the supply of goods, which prima facie establishes the fact that there exists a debt and default from the Corporate Debtor.

21. It is stated that, the Corporate Debtor has availed the GST input deposited by the Operational Creditor on entire amount of Tax invoices in favour of Corporate Debtor which establishes that there is no dispute of amount between the parties. It is clear from the reply that the Corporate Debtor has failed and defaulted to make payment.



22. It is stated that, the Corporate Debtor has taken feeble, vexatious spurious defense of reconciliation of accounts just to avoid liability of Corporate Debtor and never raised any issue of reconciliation of account before sending of demand notice under Section 8 of the IBC,2016.

23. It is stated that, the Corporate Debtor has raised false, vexatious defense of reconciliation of accounts of parties and claimed that it has returned defective goods to the operational creditors. It is averred that, the Corporate Debtor never raised any debit note for the alleged defective goods.

24. It is stated that, the Corporate Debtor acknowledged the debt amount by availing the GST input deposited on invoices which is more than the threshold under the IBC,2016 and the debt is defaulted as admitted in the reply filed by the Corporate Debtor. Further it is averred that, there is no preexisting dispute between the parties.

Memo Filed by the Corporate Debtor

25. Pursuant to the order dated 30.01.2024 by this Tribunal, the Corporate Debtor filed a memo on 15.03.2024. It is stated that, the



Corporate Debtor wants to reconcile the accounts but the Operational Creditor failed to conduct the inspection of the defective products. The Corporate Debtor submits that the claim amount is speculative and notional given that the inspection needs to be done and the reconciliation of the accounts is an ongoing process.

26. It is stated that, the Operational Creditor after filing this Application has given credit to a sum of Rs.4,53,941(Four Lakhs Fifty Three Thousand Nine Hundred And Forty One) for the defective products, which is evident to show that the claim is notional, speculative and premature.

Observations of this Tribunal

27. We have heard the Counsel for both the parties. We have also gone through the pleadings and records.

28. In this case, the Operational Creditor has claimed a principal amount of Rs. 1,80,02,528 (One Crore Eighty Lakhs Two Thousand Five Hundred and Twenty Eight Rupees) and Interest thereon up to 07.09.2023 at the rate of 18% per annum i.e., Rs.40,01,206 (Fourty Lakhs One Thousand Two Hundred and Six Rupees) totaling to Rs.



2,20,03,735 (Two Crores Twenty Lakhs Three Thousand Seven Hundred and Thirty Five Rupees) against the invoices for goods supplied to the Corporate Debtor. The Operational Creditor has annexed the copy of computation of unpaid amount with interest thereon as **Annexure 4** along with this Application. The date of default as per the invoice is 45 days from the date of invoice. The first date of default is stated to be 18.04.2022.

29. It is the case of the Operational Creditor that it has raised the Invoices to Corporate Debtor and filed required GST invoices which in turn was availed by Corporate Debtor wholly without any dispute. The Operational Creditor has annexed the Copy of FORM- GSTR 1, Form GSTR-3B and E way Bills as **Annexure 6** along with this Application.

30. It is the case of the Operational Creditor that it had demanded the payment from the Corporate Debtor through various modes of communication but the Corporate Debtor on one pretext or another delayed the payment and made false commitment to the Operational Creditor. Further, the Operational Creditor has sent a demand notice dated 08.09.2023 under Section 8 of IBC, 2016 to Corporate Debtor.



31. It is stated that there were no preexisting disputes relating to unpaid operational debt between the Operational Creditor and the Corporate Debtor prior to sending the demand notice dated 08.09.2023. The Corporate Debtor had sent a reply dated 17.09.2023 to the demand notice and stated that there is discrepancy in the amount demanded and there are defective products under warranty returned from the market need to be quantified.

32. The Corporate Debtor has filed its reply/counter affidavit and stated that there are defective products and reconciliation of accounts needs to be done. It is the case of the Corporate Debtor that, the Operational Creditor has to do the inspection of damaged goods that are in the warehouse of Corporate Debtor; once the defective goods are quantified, the Operational Creditor will provide the credit note which will be adjusted with the alleged outstanding payable to the Operational Creditor.

33. It is observed that the Corporate Debtor in its counter affidavit has not denied the existence of debt. Moreover, the Corporate Debtor has not shown any documents to prove that there were preexisting dispute in relation to the operational debt between the parties.



34. In the rejoinder filed by the Operational Creditor, it is contended that Mr. Nandakumar has filed the affidavit on behalf of Corporate Debtor without proving any authorization from the Corporate Debtor's company and thus, the reply/counter affidavit filed by Corporate Debtor needs to be rejected. Nonetheless, in the reply/counter affidavit filed by the Corporate Debtor, a verifying affidavit has been filed by Mr. Nandakumar swearing in that he is the director of the Corporate Debtor and the authorized person appointed by the Board Resolution of the Corporate Debtor to file this reply/counter affidavit. Thus, the reply/counter affidavit filed by Corporate Debtor is taken on record.

35. The Operational Creditor has contended that there was no preexisting dispute between the parties prior to sending the Demand notice dated 08.09.2023 under Section 8 of IBC,2016. Further, the Corporate Debtor never raised a debit note for the alleged defective products before sending the Demand notice.

36. It is also recorded in the order dated 25.01.2024 by this Tribunal that, the Respondent had shown interest to settle the dues. Thus, this



Tribunal ordered via the said order to reconcile the accounts with the Operational Creditor.

37. Pursuant to the order dated 25.01.2024 the Corporate Debtor filed a memo on 15.03.2024 stating that, the Operational Creditor did not conduct the inspection to reconcile the accounts. Per contra, the counsel for the Operational Creditor stated that there were no pre-existing dispute between the parties and no debit note was raised for the alleged defective products prior to the Demand Notice dated 08.09.2023 under Section 8 of IBC.

38. At this juncture after having heard learned Counsels for the Applicant and the Corporate Debtor and after having given due weightage to the aforesaid submissions, we quote the relevant observations made by the Hon'ble Supreme Court of India in the landmark case of *Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software Pvt. Ltd., reported in MANU/SC/1196/2017*

Para 25 - 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 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.

.....

Para 40 –

..... the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

39. In this present case, a) Firstly, the Operational Creditor has shown that there is a debt i.e., principal amount of Rs.1,80,02,528 (INR One Crore Eighty Lakhs Two Thousand Five Hundred Twenty Eight Only) and Interest thereon up to 07.09.2023 at the rate of 18% per annum i.e Rs.40,01,206 (INR Forty Lakhs One Thousand Two Hundred Six Only)



totaling to an amount of Rs.2,20,03,735 (INR Two Crores Twenty Lakhs Three Thousand Seven Hundred Thirty Five Only) and which is exceeding the threshold limit of 1 crore and the Corporate Debtor has defaulted the payment.

b) Secondly, the Operational Creditor has shown the documentary evidence of raising multiple invoices in the name of Corporate Debtor. Moreover, the Corporate Debtor has availed the GST Input deposited by the Operational Creditor on the entire amount of Tax invoices.

c) Thirdly, The Corporate Debtor has neither shown any proof of preexisting dispute nor denied the existence of debt towards the operational creditor. It was only upon receipt of demand notice under Section 8 of IBC,2016, the Corporate Debtor raised a spurious defense of preexisting dispute.

40. The sum in default is more than Rs. 1 crore which is above the threshold limit to file a Application under Section 9 of IBC. Moreover, by looking at the date of default, it is clear that the Corporate Debtor is ineligible to take shelter under Section 10A of IBC, 2016.



41. We also quote the observation of Hon'ble National Company Law Appellate Tribunal, Chennai Bench in *Nandamuri Meenalatha vs. Quality Steels and wire products and others* MANU/NL/0614/2023

Para 87-

It must be borne in mind that an 'Exact Sum of Claim' of an 'Operational Creditor', is not relevant for an 'Admission' of an 'Application', of course , during the course of 'Corporate Insolvency Resolution Process', the exact 'Claim Amount', can be determined, by an 'Interim Resolution Professional'/'Resolution Professional', and in the instant case, 'Parties', are free to approach the 'Interim Resolution Professional'/'Resolution Professional', in the course of 'Corporate Insolvency Resolution Process

42. In regards to the contention of Corporate Debtor in relation to credit notes for defective products, we are of the view that the exact sum of claim in precise need not be ascertained at this stage. As such the Corporate Debtor claims credit value for defective products under the warranty. We are of the view that the warranty is a contract that can subsist independent to the invoices that were raised. Also, the Corporate Debtor has failed to show existence of any documents/contract to prove that the invoices will be paid only after the deduction of credit value for the defective products that are under



warranty. Thus, the defense taken by the Corporate Debtor is held as spurious and illusory.

43. We are therefore of the considered view that the Operational Creditor has successfully demonstrated and shown the existence of debt and the default committed by the Corporate Debtor. Hence the Application, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. We order accordingly. The Operational Creditor has not named any Insolvency Resolution Professional in Part – III of the Application and therefore this Tribunal appoints *Mr. Sushil Kumar Singhal*, with *Registration No: IBBI/IPA-001/IP-P-01655/2019 -2020/12536 (email id: ip.sksinghal66@gmail.com)* who is having Authorization for Assignment till 14.12.2024, as a “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the



CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

44. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other



law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

45. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in



consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

46. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

47. The Operational Creditor is directed to pay a sum of **Rs.3,00,000/- (Rupees Three Lakhs only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her



in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

48. Based on the above terms, the Application **CP/IB/173(CHE)/2023** stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named is also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

Kishore P

-Sd-

SANJIV JAIN
Member (Judicial)