



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.131/MB/2017

[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:

VINAR SYSTEMS PRIVATE LIMITED

[CIN: U29192WB1972PTC028222]

9C, Lord Sinha Road

Kolkata-700071

West Bengal.

...Operational Creditor

Vs.

IMAX ELECTROTEK PRIVATE LIMITED

[CIN: U31200PN2002PTC017497]

CONQUUISTA, 1st Floor, S.No.105/1/1

Baner, Near Balewadi Sports Complex

Mumbai-Bangalore Highway

Pune-411045

Maharashtra.

...Corporate Debtor

Pronounced: 28.10.2024

CORAM:

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

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Operational Creditor: Adv. Sunil Kumar & Adv. Mukti Singh.

Corporate Debtor : None.



ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This Application bearing C.P.(IB) No.131/MB/2017 was filed by Vinar Systems Private Limited, the Operational Creditor, on 14.07.2017 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, for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Imax Electrotek Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor had supplied goods, specifically conveyor machinery and its parts and also installed and commissioned the same for various projects of the Corporate Debtor against purchase orders raised by the latter. However, the Corporate Debtor only made part payment and failed to settle the full amount. Consequently, the Operational Creditor issued statutory notice dated 08.10.2015 to the Corporate Debtor as per the provisions of Sections 433, 434 and 439 of the Companies Act, 1956, seeking payment of the total debt of Rs.11,56,031.27/- including interest of Rs.1,80,351/- charged @ 18% per annum.
- 1.3 Despite service of this notice, the Corporate Debtor neither replied thereto nor made any payment of the aforementioned debt that was due and payable to the Operational Creditor. Therefore, the Operational Creditor preferred a Winding-Up Petition bearing CP (L) No.51 of 2016 under the



provisions of the Companies Act, 1956 before the Hon'ble High Court of Bombay. However, the matter was later transferred from the Hon'ble High Court to this Tribunal.

- 1.4 The Operational Creditor issued a fresh Demand Notice dated 13.07.2017 under Section 8 of the Code demanding payment of total debt of Rs.11,56,031.27/- comprising principal sum of Rs.9,75,680.30 plus 18% interest accrued on the outstanding principal. However, the Corporate Debtor again failed to make any payment or furnish reply to the said notice. This led the Operational Creditor to prefer the present Application seeking initiation of CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF THE OPERATIONAL CREDITOR

- 2.1 In June 2014, the Corporate Debtor through its representatives, approached the Operational Creditor to supply conveyor machinery and parts for various projects. The Corporate Debtor also undertook to make payments to the Operational Creditor for the supplied conveyor machinery and parts without any delay.
- 2.2 As per the understanding, the Corporate Debtor, on and from 07.07.2014, raised various purchase orders in favour of the Operational Creditor for purchasing, installing and commissioning conveyor parts. Considering the representatives of the Corporate Debtor to be true and *bona fide*, the Operational Creditor agreed to supply conveyor and parts to the Corporate Debtor.
- 2.3 As per the specifications mentioned in the purchase orders, the goods were delivered to the Corporate Debtor, who accepted and acknowledged receipt



of the goods through respective challans. The Operational Creditor after despatching the goods also notified the Corporate Debtor by email, providing all details of the consignment, including challan number, excise invoice number and value of the materials. Further, the Operational Creditor raised Tax Invoices on the Corporate Debtor which were accepted without any objections.

- 2.4 The Corporate Debtor accepted and acknowledged receipt of the aforementioned products and never raised any objection regarding the quality or quantity. The Corporate Debtor duly accepted the invoices and never disputed the amounts mentioned therein.
- 2.5 The Corporate Debtor after accepting the invoices was legally obliged to pay as per the agreed terms. The parties maintained a running and continuous account and the Operational Creditor regularly forwarded statements of account relating to the purchases of conveyor machinery and parts to the Corporate Debtor who never raised any objections to these statements.
- 2.6 The Operational Creditor raised bills on the Corporate Debtor after supplying the products as per the general course of business. The bills raised by the Operational Creditor on several dates amounted to Rs.90,70,479.20/- of which the Corporate Debtor made installment payments totalling Rs.70,44,479.20/- as on 08.06.2015. Thus, as on 08.06.2015, a sum of Rs. 20,25,680.30/- remained due and payable to the Operational Creditor by the Corporate Debtor.
- 2.7 The Operational Creditor accommodated the Corporate Debtor on the outstanding payments in the past based on the business relationship and



continuous oral promises given by the Corporate Debtor. However, the Corporate Debtor was not ready to pay the legitimate dues. Therefore, the Operational Creditor, through its advocate forwarded a letter dated 08.06.2015 to the Corporate Debtor categorically stating that a sum of Rs.20,25,680.30/- was due and payable. After receiving the legal notice, the Corporate Debtor made a further payment of Rs.10,50,000/- on 25.06.2015 but the Corporate Debtor failed to pay the balance amount.

2.8 After making the aforementioned payment, the Corporate Debtor also forwarded a reply to the said notice through its advocate on 02.07.2015, making baseless allegations of deficiency of service for the first time. It was alleged that the clients of the Corporate Debtor were having certain problems due to the unsatisfactory functioning/operation of the conveyors, thereby causing losses to the Corporate Debtor.

2.9 The Operational Creditor denies all allegations made in the letter dated 02.07.2015 stating that they are not supported by any valid document. Further, the Operational Creditor's engineers inspected the quality of the products supplied to the various clients of the Corporate Debtor and found them functioning properly. For instance, with regard to one client, M/s Mobin Suspension Pvt Ltd, the payment was released to the Corporate Debtor after job completion and there was no defect in the conveyor quality. Similarly, the conveyor supplied to Tata Motors Ltd. was satisfactory and the conveyors supplied to M/s Kirloskar Toyota Textile Machinery Ltd. were running fine. The Operational Creditor's engineers met officials from Tractor & Farm Equipment Ltd. and Polyplastic Limited, Baval, Haryana who confirmed that the conveyors were running smoothly without any issues.



The Corporate Debtor thus made such allegations only to create a dispute and avoid paying the legitimate dues.

2.10 The Corporate Debtor never disapproved of the quality nor raised any issues with the conveyors but instead resorted to false allegations to cover up the unreasonable delay in paying the legal dues of the Operational Creditor. The Operational Creditor on 30.07.2015 forwarded a detailed reply to the advocate's letter categorically denying the allegations. The reply also clarified that the clients of the Corporate Debtor had no issues with the conveyors supplied by the Operational Creditor. However, the Corporate Debtor after receiving the reply did not dispute the alleged deficiency of service or the amount of interest claimed in the letter dated 30.07.2015. The Operational Creditor repeatedly called the concerned persons of the Corporate Debtor but the Corporate Debtor consistently avoided releasing the balance sum on various pretexts.

2.11 Finding no alternative, the Operational Creditor issued statutory notice to the Corporate Debtor on 08.10.2015 under Sections 433, 434 and 439 of the Companies Act, 1956 which was served by the Operational Creditor's advocate through registered post. Despite receiving the statutory notice of demand, the Corporate Debtor failed to pay the admitted dues to the Operational Creditor.

2.12 After accounting for all part payments and receipts, as on 08.10.2015, a sum of Rs.11,35,514.80/- (Eleven Lakhs Thirty-Five Thousand Five Hundred and Fourteen Rupees and Eighty Paise) remained as the outstanding debt including accrued interest. The Operational Creditor is entitled to further interest at 18% per annum on the outstanding principal



sum until realisation. The rate of interest is rational, considering the commercial relationship between the parties.

2.13 Lastly, the Corporate Debtor is now commercially insolvent and unable to clear the outstanding dues. The Corporate Debtor has accepted and acknowledged the pending liability but, due to insolvency, is unable to clear the outstanding balance.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 It is seen from the record that the Corporate Debtor appeared before Court-II, Mumbai Bench on 07.02.2024 and sought time for filing reply which was allowed. However, the Corporate Debtor was absent at the time of next hearing of the matter on 13.03.2024.

3.2 Subsequently, this C.P. was transferred to this Bench. By an order dated 23.04.2024, we directed the Registry that one more notice be served on the Corporate Debtor intimating the next date of hearing. Notice dated 26.04.2024 was accordingly issued to the Corporate Debtor intimating the next date of hearing, i.e., 09.05.2024. However, the notice sent to the Corporate Debtor was returned with the endorsement "*Not delivered. Addressee left without instructions*". Counsel for the Corporate Debtor screen-shared the email sent to the Corporate Debtor and proof regarding physical delivery of notice with signature and stamp of the Corporate Debtor. In view of the above, the right of the Corporate Debtor to file reply was forfeited *vide* order dated 09.05.2024. Taking note of the fact that in spite of receipt of notice taken out by the Operational Creditor, the Corporate Debtor had chosen not to represent and agitate the matter, this Bench *vide* order dated 16.05.2024 set the Corporate Debtor *ex-parte*.



- 3.3 In the absence of any pleadings or reply by the Corporate Debtor, the Application is disposed of based on the pleadings of the Operational Creditor and the materials available on record.

4. ANALYSIS AND FINDINGS

- 4.1 Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor, our findings in the matter are as under:-
- 4.2 As stated above, despite multiple opportunities provided to the Corporate Debtor to appear and present its case, the Corporate Debtor failed to take any steps to furnish its reply or present any defence. Consequently, the Corporate Debtor was set *ex-parte* on 16.05.2024 and the matter was heard based on the pleadings in the Application and arguments presented by the Ld. Counsel for the Operational Creditor.
- 4.3 On perusal of the Application, we find that the principal debt of Rs.9,75,680/- (rounded off) claimed to be in default in Part-IV is on account of supply of goods to the Corporate Debtor under various invoices and thus the same constitutes “operational debt” within the meaning of Section 5(21) of the Code.
- 4.4 In order to prove the existence of operational debt and the amount in default, it is noticed that the Operational Creditor has produced on record, *inter alia*, copies of Purchase Orders, relevant invoices along with challans raised by the Operational Creditor for the goods supplied to the Corporate Debtor, e-mails sent to the Corporate Debtor giving details of goods despatched *vide* each consignment, Ledger Account of the Corporate Debtor, its own bank statement, legal notice dated 08.06.2015 issued to the Corporate Debtor,



statutory notice of demand dated 08.10.2015 under the Companies Act, 1956 and statutory Demand Notice dated 13.07.2017 addressed to the Corporate Debtor under the Code. In this manner, the Operational Creditor has been able to discharge the onus to establish the existence of operational debt and default in payment thereof by the Corporate Debtor.

- 4.5 It is observed that the Operational Creditor through its Advocate served a legal notice on 08.06.2015 seeking payment of principal sum of Rs.20,25,680/- together with interest @18% per annum from the Corporate Debtor. Thereafter, the Corporate Debtor made a part payment of Rs.10,50,000/- on 29.06.2015 to the Operational Creditor on account of Euro American Plastic Private Limited. Further, in response to the said notice *vide* letter dated 02.07.2015, the Corporate Debtor pointed out that though supplies were made, it had retained some payments due to unsatisfactory working or functioning of the conveyors supplied by the Operational Creditor and installed at the factory premises of five clients of the Corporate Debtor. However, the Corporate Debtor did not provide any satisfactory evidence to substantiate its claim. After having meetings with the said five clients, the Operational Creditor responded to the aforementioned reply of the Corporate Debtor *vide* letter dated 30.07.2015 informing that either the payment had been released to the Corporate Debtor by those clients after satisfactory and successful completion of the job or the concerned clients had confirmed that the conveyors were running absolutely fine and they were having no issues in this regard. In view of above, we find that the claims made by the Corporate Debtor regarding unsatisfactory functioning of conveyors without any concrete documentation or supporting evidence cannot be considered as a valid pre-existing dispute.



Further, in our considered opinion, the Corporate Debtor's reply dated 02.07.2015 acknowledging that it had retained a certain amount of dues payable to the Operational Creditor can be taken as an admission of debt.

4.6 Thereafter, the Operational Creditor served the Corporate Debtor statutory notice dated 08.10.2015 under Sections 433, 434 and 439 of the Companies Act, 1956 demanding payment of outstanding debt within stipulated period of 21 days. However, the Corporate Debtor failed to make any payment thereafter. We find that the failure of the Corporate Debtor to make any payment within this period i.e., 29.10.2015 constitutes an event of default/date of default. The present Application was filed on 14.07.2017 which is well within the three-year limitation period from the date of default. Further, we find that out of total outstanding operational dues of Rs.20,25,680.90/-, a sum of Rs.9,75,681/- (rounded off) still remained due and payable by the Corporate Debtor after adjusting the part payment of Rs.10,50,000/- which exceeds the threshold limit of Rs.1,00,000/- prescribed under Section 4 of the Code applicable at the relevant time when the Application was filed and subsequently transferred to this Tribunal.

4.7 It is noticed from the record that following the transfer of the original petition under Section 434 of the Companies Act, 1956, the Operational Creditor filed Form-5 and served the statutory Demand Notice dated 13.07.2017 on the Corporate Debtor under Section 8 of the Code, although it was not mandatory. It is pertinent to note that the present Application is a continuation of the winding-up proceedings initially filed before the Hon'ble Bombay High Court, but the Operational Creditor still chose to comply with the procedural requirements under the Code.



- 4.8 As regards the Operational Creditor's claim for interest of Rs.1,80,351/- (rounded off) at 18% per annum to be treated as 'operational debt', it is observed that neither the Purchase Orders nor the Invoices contained any stipulation for charging of interest for delayed payment. In the absence of mutual agreement, the Operational Creditor's claim for treating the said interest as operational debt cannot be sustained, because such interest does not arise out of any provision or supply of goods or services. It is now settled in the context of the Code that if interest is not agreed upon between the parties, it cannot form a part of 'operational debt' within the meaning of Section 5(21) of the Code and that no such interest can be claimed in an application under Section 9 of the Code. Therefore, the claim made by the Operational Creditor is legally untenable.
- 4.9 In view of above discussions, we are of the considered opinion that the Operational Creditor has successfully proved the existence of the outstanding operational debt amounting to Rs.9,75,681/- due and payable by the Corporate Debtor and the default in payment thereof. Pursuant to the service of the statutory Demand Notice, the Corporate Debtor has failed to show any genuine pre-existing dispute with regard to the said amount. It is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt to the Operational Creditor exceeding the threshold of one lakh rupees under Section 4 of the Code prevailing on the date of the present 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. In view of the above, we find that the matter satisfies all necessary legal requirements and is fit for



admission under Section 9(5)(i) of the Code. The Operational Creditor has not proposed the name of any IP to act as the IRP. Therefore, this Bench has been requested to appoint a suitable IP/IRP from the panel approved by the Insolvency and Bankruptcy Board of India.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.131/MB/2017 filed under Section 9 of the Code by Vinar System Private Limited, the Operational Creditor, for initiating CIRP in respect of Imax Electrotek Private Limited, the Corporate Debtor is **admitted**.

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

1. We prohibit-
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 Corporate Debtor in respect of its property including any action under the Securitisation 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 possession of the Corporate Debtor.
2. 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.
 3. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
 4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 5. That this Bench hereby appoints Ms. Sapna Chourasia, **a registered Insolvency Professional** having **Registration Number IBBI/IPA-002/IP-N00943/2020-2021/13033** and **e-mail address sapna.chourasia@gmail.com** having valid Authorisation for Assignment up to 18.01.2025 as the IRP to carry out the functions under the Code.
 6. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
 7. That 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 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor are 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/RP 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.

8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.2,00,000/- (Two 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 Financial 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.
10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
11. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
12. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.



13. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

//LRA-Deepa//

Sd/-

**K. R. SAJI KUMAR
MEMBER(JUDICIAL)**