



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 888/IBC/MB/2022

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule, 2016

In the matter of

Praveen Mangilal Jain

Managing Partner

M/s Vardhaman Cables &
Conductors

Having its registered office at:

129/C, Shinoli B.K Tal, Chandgad,
Kolhapur - 416507, Maharashtra,
India

**...Operational Creditor
Verses**

**NEC Electromech (India) Private
Limited**

Shop No-14, Shah Heritage Plot No.9,
Sector-42A, Nerul Navi Mumbai- 400
706 Maharashtra

.....Corporate Debtor

Reserved for order on: 08.02.2023

Order Pronounced on: 02.03.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)



For the Petitioner: Mr. Shravan Chandrashekhar, Advocate

For the Respondent: Mr. Nikhil Adkina, Advocate a/w Mr. Ashish
Agarkar, Advocate

Per: Madhu Sinha, Member (Technical)

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1. This Company petition is filed by *Praveen Mangilal Jain, Managing Partner of M/s Vardhaman Cables & Conductors* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *NEC Electromech (India) Private Limited* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a sum of Rs. 1,97,27,552/- (One Crore Ninety Seven Lakhs Twenty Seven Thousand Five Hundred and Fifty Two only) [Principle Rs. 1,12,15,690/- (One Crore Twelve Lakhs Fifteen Thousand Six Hundred and Ninety only) along with interest of Rs. 85,11,862/- (Eighty Five Lakhs Eleven Thousand Eight Hundred Sixty Two only)] being an Operational Debt due and payable by the Corporate Debtor.
 2. The brief facts of the case are as follows:
 - i. On 10.07.2017, the Corporate Debtor i.e., NEC Electromech (India) Private Limited, approached the Operational Creditor, i.e., M/s Vardhaman Cables & Conductors, for placing a purchase order of supplying LT Cable for Vashi IDPS T-230 Project ("Project"). Pursuant to their meeting, the Corporate Debtor issued the purchase order dated 17.07.2017 for the supply of LT Cables for the aforesaid Project from the Operational Creditor. During the period of August 2017, February



2018 and August 2018, the Operational Creditor issued ten (10) invoices amounting to a total of Rs. 1,62,15,690/- (Rupees one Crores Sixty-Two Lakhs Fifteen Thousand Six Hundred and Ninety only) against the supplied goods for the aforementioned Project of the Corporate Debtor, as specified in the original purchase order and the subsequent telephonic orders.

- ii. The goods supplied by the Operational Creditor were duly received by the Corporate Debtor, to its complete satisfaction. The confirmation of receipt of goods by the Corporate Debtor was given vide receipt of goods through various LR's. That against the invoices issued by the Operational Debtor for the supplied goods, the Corporate Debtor made payments till the month of October 2017, with delayed credit terms i.e., sixty (60) days, to the tune of Rs. 50,00,000/- (Rupees Fifty lakhs Only). Thereafter, the Corporate Debtor defaulted in making payments to the Operational Debtor.
- iii. That the payment term clause in the original purchase order mandated that the Corporate Debtor shall make the payment for the supplied goods within 60 days after the receipt of the goods. The table hereinafter highlights/illustrates various occasions at which the Corporate Debtor defaulted in making payments to the Operational Creditor.

No. of Invoices	Date of Invoices	Date of Shipment	Date of Default [60 days after date of shipment]
1	09.08.2017	08.08.2017	08.10.2017



1	11.08.2017	11.08.2017	10.10.2017
2	12.08.2017	12.08.2017	11.10.2017
1	15.08.2017	15.08.2017	14.10.2017
2	23.08.2017	23.08.2017	22.10.2017
1	16.02.2018	16.02.2018	17.04.2018

- iv. On account of the continuing default in payment of the due and payable operational debt, the Operational Creditor issued Demand Notice under Section 8 of the IB Code on 04.12.2021 which was duly received by the Corporate Debtor vide email on 04.12.2021, and by speed post on 15.12.2021. Subsequent to the Demand Notice issued on 04.12.2021, the Operational Creditor made various endeavours to inform Corporate Debtor by re-serving the Demand Notice to the Corporate Debtor (including its known persons/affiliates) on multiple occasions and through multiple modes of service.
- v. No response to the same has been received by the Operational Creditor from the Corporate Debtor till date, and thus the same gives rise to cause of action in favour of the Applicant Operational Creditor in terms of Section 9 (1) of the IBC to file the instant Application. Accordingly, the total unpaid Operational Dues owed by the Corporate Debtor to the Operational Creditor is Rs.1,97,27,552/- up to November 30,2021, including interest at the rate of 18% (Per annum) and the penal interest is still continuing thereafter till the date of realization.
- vi. Further, Dhanalaxmi Electricals Private Limited (Corporate Debtor being a sister concern of Dhanalaxmi



Electricals Pvt. Ltd.) issued a counter guarantee vide a letter dated 22.07.2017 in favour of Operational Creditor, for payments as per the original purchase order of the Corporate Debtor.

vii. That there is no dispute which has been raised or intimated by the Corporate Debtor as regards the said Operational Debt which is admittedly due and payable, and there is a clear default in payment of the same till date.

viii. Hence, the present Application under Section 9 of the IBC for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

ix. Therefore, the Operational Creditor has filed the present application under Section 9 of the I.B. Code, 2016 to recover the total debt amount of Rs. 1,97,27,552/- (One Crore Ninety Seven Lakhs Twenty Seven Thousand Five Hundred and Fifty Two only) [Principle Rs. 1,12,15,690/- (One Crore Twelve Lakhs Fifteen Thousand Six Hundred and Ninety only) along with interest of Rs. 85,11,862/- (Eighty Five Lakhs Eleven Thousand Eight Hundred Sixty Two only)].

3. The Counsel for the Corporate Debtor Mr. Adesh Agarkar appeared on 15.11.2022 undertook to file Reply and Vakalatnama within two weeks. Further, he did not choose to file any reply even after taking number of adjournments, the Corporate Debtor was set ex-parte vide order dated 04.01.2023 and the matter was listed for ex-parte arguments.
4. Heard the counsel appearing for the Operational Creditor. The Ld. Counsel appearing for the Operational Creditor invited the attention of this Bench to the Purchase Order dated 17.07.2017 annexed to the Company Petition as Annexure – A4. He also



invited the attention of this Bench to the copies of outstanding invoices along with confirmation receipts acknowledging delivery annexed to the Company Petition as Annexure – A5 basing on which the above Company Petition is filed. The Counsel for the Operational Creditor also brought the attention of this Bench to the Email dated 23.08.2021 wherein the Corporate Debtor duly accepted the outstanding principal amount of Rs. 1,12,15,690/- which is due and payable to the Operational Creditor as of 12.08.2018 annexed to the Company Petition as Annexure – A9. He also invited the attention of this Bench to the Demand Notice dated 04.12.2021 issued by the Operational Creditor to the Corporate Debtor and its known persons along with proof of delivery annexed to the Company Petition as Annexure – A8. The Corporate Debtor having received the Demand Notice did not send any reply nor paid the amount to Operational Creditor.

5. After briefly hearing the submissions of Operational Creditor this bench made a query as to how the above Company Petition is within limitation since the invoices pertain to 2017 and 2018, for which the Learned Counsel appearing for the Operational Creditor submitted that the last date for filing the above petition falls during the period of COVID-19 and thereafter gets extended in view of the Suo Moto order passed by the Hon'ble Supreme Court extending the period of Limitation for filing cases and proceeding before all the courts and tribunals throughout the country due to COVID-19 and the above company petition being filed on 15.09.2022 is therefore within the limitation period allowed under the Limitation Act, 1963.
6. The learned counsel appearing for the Operational Creditor also relied on the judgment of Hon'ble Supreme Court in the case of



SUO MOTU WRIT PETITION (C) NO. 3 OF 2020 wherein the Hon'ble Supreme Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

7. The counsel appearing for the Operational Creditor invited the attention of this Bench to the relevant invoice dated 09.08.2017 to 16.02.2018 (annexed to the Company Petition as Annexure – A5 at Page no. 60 to 86) based on which the above Company Petition is filed along with the demand notice dated 04.12.2021, issued by the Operational Creditor to the Corporate Debtor demanding the payment of the Operational Debt for which no reply has been received from the Corporate Debtor.
8. After hearing the submissions and upon perusing the material available on record this Bench is of the opinion that the Company Petition has been filed within the period of limitation allowed under the Limitation Act, 1963, hence is not time barred.
9. In view of the above, this Bench feels that the Petitioner has successfully demonstrated the existence of “debt” and “default” committed by the Corporate Debtor in this case and the debt is also within limitation period. Since the Corporate Debtor did not file any reply, the claim of Operational Creditor remained unchallenged. Thus, Company Petition satisfies all necessary legal requirements for admission under Section 9 of the IBC Code, 2016. Accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. 888/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against NEC Electromech (India) Private Limited, under Section 9 of the IBC Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule, 2016.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Bijendra Kumar Jha**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00712/2017-2018/11227, having email: cabkj12@gmail.com and having phone no. (+91) 9769515005 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d. That this Bench 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, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its 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



Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest 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 moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is **admitted**.



The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)