

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.431/Chd/Hry/2019

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

K.Selvam,
Proprietor of M/s Clarion Enterprises,
Principal Place of Business at SP-92, Ambattur Industrial Estate,
Chennai- 600058
Email:- clarionenterprises@gmail.com
Contact No.9500086985

...Petitioner/Operational Creditor

Versus

Binzy Fab Erect Private Limited
CIN: U29219HR2001PTC034682
Registered Address at CG-36, Pushp Complex
Delhi Road, Hissar
Email: rkbhutani.ca@gmail.com
Contact No.9946100073, 9446454949

...Respondent/Corporate Debtor

Judgment delivered on: 29.09.2022

**CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Operational Creditor : Mr. G.S. Sarin, Practicing Company
Secretary

Respondent/Corporate Debtor proceed *ex-parte* vide order dated 01.08.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as the '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as the '**Rules**') by Mr. K. Selvam, Proprietor

of M/s Clarion Enterprises (for short hereinafter referred to as the '**operational creditor/petitioner**') for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against Binzy Fab Erect Private Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Kannaia Pillai Selvam, Proprietor of the operational creditor and the same is at page 159-161 of the petition.

2. The corporate debtor, namely, Binzy Fab Erect Private Limited, is a company incorporated on 21.05.2005 under the Companies Act, 1956, having CIN U29219HR2001PTC034682 and its registered office is at CG-36 Pushp Complex Delhi Road, Hissar. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure-II(B) at 51 of the petition.

3. The brief facts, as stated in the petition, are that the operational creditor, supplied various types of electrodes to the corporate debtor on the purchase orders issued by the respondent/corporate debtor from time to time. It has been stated that the operational creditor supplied electrodes of different types which were used as consumables and it raised 14 invoices from 12.01.2017 to 20.05.2017 for an amount of Rs.7,74,398/- out of which it received an amount of Rs.18,385/- and 12 boxes of electrodes amounting to Rs.25,200/- against Bill No.1174 and balance amount of Rs.7,30,813/- still remains to be paid towards principal. Copies of unpaid invoices have been annexed as Annexure 1. Further, it has been stated that interest @24% has been computed for these outstanding invoices, as per the terms and conditions agreed between the parties. Summary details/working of the transactions regarding outstanding payment is as under:-

S.No.	Bill No.	Date of the Bill	Amount due from the Bill
1.	1174	12.01.2017	61,625.00
2.	1292	13.02.2017	92,925.00
3.	1293	13.02.2017	99,780.00
4.	1436	17.03.2017	9,810.00
5.	0002	03.04.2017	92,321.00
6.	0004	03.04.2017	58,410.00
7.	0035	12.04.2017	80,531.00
8.	0075	21.04.2017	5,880.00
9.	0082	24.04.2017	37,800.00
10.	0101	28.04.2017	13,388.00
11.	0128	08.05.2017	66,780.00
12.	0150	17.05.2017	40,163.00
13.	0157	18.05.2017	37,485.00
14.	0160	20.05.2017	33,915.00
	Total		7,30,813.00

Part Payment received against the above bills	Rs.18,385/-
Sales Return	Rs.25,200/-
Principal Amount	Rs.7,30,813/-
Interest Charged	Rs.3,49,992/-
(For the period from 11.02.2017 to 04.04.2019)	
Total Amount Outstanding	Rs.10,80,735/-

4. Further, it has been stated that the operational creditor made several requests and reminders, one being sent on 07.06.2017, to the corporate debtor for payment of outstanding amount of Rs.7,30,813/- as on 20.05.2017 and an e-mail regarding the same was also forwarded on 28.07.2017 and 16.08.2017 to the corporate debtor. Thereafter, the operational creditor also contacted Contractors of the corporate debtor for the payment and payment reminder was again given to the corporate debtor for outstanding amount, however, despite repeated requests and reminders no payment was made by the corporate debtor.

5. Since, the respondent/corporate debtor failed to make the payment, the operational creditor sent a Demand Notice dated 24.04.2019 in Form 3 and Form 4 dated 24.04.2019 (Annexure A-I) on the registered office as well as on Thiruvananthapuram Office of the corporate debtor, calling upon the corporate

debtor to repay the unpaid operational debt in full within 10 days from the date of receipt of notice. A perusal of the tracking report shows that the demand notice sent at Thiruvananthapuram's Office of the corporate debtor was served, however, the demand notice sent at registered address of the respondent/corporate debtor was not served and was returned with the remarks '*insufficient address*'. Copies of the tracking reports are at Pages 43-45 of the petition.

6. When the matter was listed before this Bench on 26.08.2022, the operational creditor was directed to file the unserved demand notice which was returned with an endorsement '*insufficient address*'. In compliance thereof, the petitioner filed affidavit vide Diary No.4517 dated 02.09.2019 enclosing therewith the undelivered speed post article, which was sent to the registered address of the respondent/corporate debtor as available on the master data. Thus, vide order dated 04.10.2019, it was observed by this Bench that *since the petitioner sent the demand notice to the address of the corporate debtor as available in the master data, the same is treated as a proper service on the respondent-corporate debtor*. Vide the said order, notice of the petition was also issued to the respondent/corporate debtor to show cause as to why the petition be not admitted.

7. Vide Diary No.6786 dated 02.12.2019, affidavit of service was filed on behalf of the petitioner/operational creditor, wherein it was deposed by learned Practising Company Secretary representing the operational creditor that in compliance of order dated 14.10.2019 notice of the petition was sent to the respondent/corporate debtor through e-mail, as provided in the master data of the corporate debtor and the same has not bounced back. Further, it has been stated that notice was also sent at registered address of the corporate debtor as provided

in the master data of the corporate debtor and the same was delivered. Copy of e-mail, postal receipt and tracking report has been annexed with the said affidavit.

8. Thereafter, several opportunity have been granted to the respondent/corporate debtor for filing the reply, but it chose not to appear before this Tribunal. When the matter was listed on 17.05.2022, the Authorized Representative appearing for the petitioner/operational creditor was again directed to inform the next date of hearing to the respondent/corporate debtor so that effective proceedings could be taken on the next date of hearing. In compliance of the same, the Authorized Representative appearing for the petitioner/operational creditor filed compliance affidavit wherein, it has been deposed that in compliance of order dated 17.05.2022 passed by this Bench, next date of hearing was informed to the respondent/corporate debtor through e-mail as available on the master data of the corporate debtor and that the same has not bounced back. Copy of the same has been annexed with the compliance affidavit. Thus, it can be fairly inferred that after grant of sufficient opportunities to the respondent/corporate debtor, it neither chose to file any reply nor chose to appear before this Tribunal. Thus, respondent/corporate debtor was set *ex-parte* vide order dated 01.08.2022 and after hearing the arguments of learned Practising Company Secretary for the petitioner, the matter was reserved on 12.09.2022.

9. We have heard the learned Practising Company Secretary for the petitioner and have gone through the records carefully.

10. The first issue for consideration is whether the demand notice dated 24.04.2019 was properly served. As discussed above, the demand notice sent at registered address of the respondent/corporate debtor as available on the master

data of the corporate debtor was not served and was returned with the remarks '*insufficient address*'. Thus, vide order dated 04.10.2019 passed by this Bench, it was observed that *since the petitioner sent the demand notice to the address of the corporate debtor as available in the master data, the same is treated as a proper service on the respondent-corporate debtor.*

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit under Section 9(3)(b) of the Code, wherein it has been deposed that it has not received any reply to the demand notice dated 24.04.2019 and that it has not been served upon with any notice by the corporate debtor about any dispute in terms of Section 8(2) of the Code.

12. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the application was filed vide Diary No.3619 dated 24.07.2019, whereas the date of default is 11.02.2017, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

13. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt of ₹10,80,735/-, as claimed in the petition. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copy of ledger account statement, and invoices. Accordingly, the petitioner/operational creditor has established the debt and the default, which is more than Rupees one lakh i.e. the threshold limit (pre-revised).

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed and established. Also, there is no rebuttal to the claim filed by the petitioner as the respondent/corporate debtor did not choose to contest the present petition. Accordingly, the petitioner proved the debt and the default which is above threshold limit.

15. In Part-III of Form No. 5, Mr. Ashok Kumar Jain, has been proposed as Interim Resolution Professional by the petitioner/operational creditor. Form No. 2 dated 06.06.2019 submitted by the proposed IRP has been annexed with the petition at Annexure VI, wherein it has been stated that there are no disciplinary proceedings pending against the professional with the Board or the Insolvency Professional Agency of Institute of Cost Accountants of India.

16. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP in the case of the corporate debtor, Binzy Fab Erect Private Limited.

17. We also direct moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

18. It is further directed that 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. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till 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.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ashok Kumar Jain from the online database provided by the IBBI and there is nothing adverse against him. In view of the above, we appoint Mr. Ashok Kumar Jain, having Registration No. IBBI/IPA-003/IPA-ICAI-N-00205/2018-2019/12362, E-mail: akjbaddi@gmail.com, Mobile No.8168170469, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Ashok Kumar shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim

Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with

the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. The Interim Resolution professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of

his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

21. The petitioner is directed to deposit an amount of ₹50,000/- (Rupees Fifty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

22. This petition is accordingly allowed and admitted.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

September, 29TH, 2022