

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**RCP. (IB) NO. 8 of 2023**

**CP (IB) NO. 3971 of 2018**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

**In the matter of**

**IC Point through its Proprietor,**

**Mr. Bhavanimal Ranjeetmal Janikar**

Having Registered Office at -

101, Riddhi Siddhi Apartment,

Satrasta, KK Marg, Mumbai - 400011

**... Operational Creditor/Petitioner**

Versus

**DSK Milkotronics Private Limited**

**[CIN: U29300PN2012PTC143326]**

Having Registered Office at -

DSK Sunderban, S.No.173,174,175,

Sadestranali,

Hadpsar, Pune Maharashtra, India, 411028

**...Corporate Debtor/Respondent**

**Order Delivered On : 14.02.2024**

***Coram:***

Hon'ble Member (Judicial) : Sh. Justice Virendrasingh G Bisht (Retd.)

Hon'ble Member (Technical): Sh. Prabhat Kumar

***Appearances:***

For the Operational Creditor : Mr. Nishant Sangle, Advocate

**ORDER**

***Per: Virendrasingh G Bisht, Member (Judicial)***

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) by **IC Point through its Proprietor, Mr. Bhavanimal Ranjeetmal Janikar (“Operational Creditor/Petitioner”)**, seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against **DSK Milkotronics Private Limited (“Corporate Debtor/Respondent”)**.
2. The Respondent was incorporated on 09.05.2012 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U29300PN2012PTC143326. Its registered office is at DSK Sunderban, S.No.173,174,175, Sadestranali, Hadpsar, Pune Maharashtra, India, 411028.
3. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

**Brief Facts of the case:**

4. The Corporate Debtor, DSK Milkotronics Private Limited had approached the Operational Creditor for supply of various industrial electronics components in September, 2014.
5. The Petitioner agreed and supplied goods in accordance with the purchase orders placed by the Respondent and raised invoices from time to time between September, 2014 and August, 2016. The invoices raised by the Petitioner are placed on record at ‘Annexure A-1 to Annexure A-135’ of the Petition.

6. The Petitioner submits that the goods were delivered to the Respondent and the said goods were accepted by the Respondent without raising any dispute or demur with respect to the quality of the goods supplied by the Petitioner, nor did the Respondent raise any grievance in that regard to the Petitioner. However, the Respondent has failed to pay the outstanding amount in terms of the invoices.
7. The Petitioner submits that the total amount of outstanding debt is Rs.18, 50, 758/- (Rupees Eighteen Lakhs, Fifty Thousand, Seven Hundred and Fifty Eight Only), exclusive of interest. The Petitioner states that they are entitled to charge interest per annum from due date of the invoices raised between 15.09.2014 to 25.09.2016 and further interest per annum from 24.09.2016 till the date of payment and/or realisation. The Particulars of Claim are placed on record at 'Annexure F' of the Petition.
8. The Petitioner maintained a "running account" with the Corporate Debtor and the Respondent made the last payment on 25.08.2016. Thereafter, the Petitioner called for payment of outstanding dues on numerous occasions. The Respondent vide emails dated 19.08.2016 and 07.10.2016 expressed their distressed financial situation resulting in inability to pay the outstanding dues and assured the Petitioner of fulfilling their obligations.
9. The Petitioner on realising that Respondent was unable/incapable of paying the Petitioner, served upon the Respondent Demand Notice dated 13.08.2018 in Form 3 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. However, the Demand Notice could not be delivered and was returned on 17.08.2018. The Petitioner states that they do not have any other address of the Respondent.

10. The Petitioner in support of its claim has placed on record the following documents:

- i. Invoices raised by the Petitioner on the Respondent.
- ii. Ledger Account Statement.
- iii. Statement of Accounts.
- iv. Copy of e-mails dated 19.08.2016 and 07.10.2016.

**Findings**

11. We have heard learned Counsel for the Petitioner and perused the records.

12. This Tribunal had issued a Court Notice dated 19.12.2018 asking the Petitioner to serve the same on Respondent. The Affidavit of Service filed by the Counsel of the Petitioner stated that the notice issued returned with the remark “LEFT ADDRESSEE”. The Demand Notice served by the Applicant was also returned with the remark “LEFT ADDRESSEE”. On verification of the details of the Corporate Debtor on the MCA portal, it is seen that the Registered office of the Corporate Debtor is stated to be situated at DSK Sunderban S.No.173,174,175, Sadestranali, Hadpsar, Pune, Maharashtra, India, 411028, and the Demand Notice as well as Court Notice was issued to be served on this address only. This Tribunal vide Order dated 01.02.2019 had allowed the Petitioner’s prayer to serve notice on the Respondent by way of publishing a notice in the newspaper. In compliance with the said Order, the Petitioner had served notice on the Respondent by way of paper publication and filed an affidavit of service. This Tribunal had held such service sufficient vide Order dated 12.04.2019. In spite of service of the notice there was no representation from the Respondent.

13. This Tribunal vide Order dated 26.08.2019 had dismissed this Company Petition in default of the parties. However, it was restored by this Tribunal vide Order dated 02.12.2019.
14. On 10.06.2022, this Tribunal observed that the Respondent chose not to appear before this Tribunal in spite of sufficient service and hence, the Respondent was set ex-parte. This Tribunal on 05.01.2023 had passed the Order for dismissal, and for convenience, an extract from the same is quoted below :

*"It is to be noted that today the matter is listed under the caption "either for appearance or for passing dismissal order", today we thus find no merit in the submission made by the Counsel appearing on behalf the Operational Creditor; hence, we are not inclined to give further opportunity regarding adjournment in the matter. Therefore, in the above facts and circumstances, the main Company Petition bearing No. C.P.(IB) 3971/MB/2018, dismissed for non-prosecution. File consigned to be record."*

15. Subsequently, a Restoration Application was filed on 27.01.2023 by the Petitioner u/s 60(5) of the Code seeking recall of the Order dated 05.01.2023 passed by this Tribunal. The Bench considered it appropriate to grant one opportunity to the Applicant to prosecute their case and vide Order dated 13.09.2023 allowed Restoration Application No. 19/2023 and restored CP (IB) 3971/2018, renumbering it as Restored Company Petition 8/2023.
16. The Petitioner has claimed the invoices raised from 15.09.2014 to 25.08.2016 and the last payment is stated to have been received on 22.08.2016. The total outstanding as per Ledger Account is Rs.18,50,758/- (Rupees Eighteen Lakhs, Fifty Thousand, Seven Hundred and Fifty Eight Only). Total amount of bill raised from

01.04.2016 to 15.06.2016 is Rs. 6,84,076/- (Rupees Six Lakhs, Eighty Four Thousand and Seventy Six Only) and only a sum of Rs. 1,00,000/- (Rupees One Lakh Only) is stated to be paid during that period. Accordingly, the debt due and in default even in relation to invoices falling due in April, 2016 exceed Rs. 1,00,000/- (Rupees One Lakh Only), i.e., the threshold limit u/s 4 of the Code in relation to the date of filing of the Petition. Accordingly, this Petition is maintainable. Since Petition is complete in all respects, we are of the considered view that present Petition deserves to be allowed.

17. The Bench later sought clarification and recorded the following in Order dated 07.12.2023 -

*“On perusal of records while preparing the order it was noticed that the Petitioner has not filed an affidavit in terms of Section 9(3)(b) of the Code which is a mandatory requirement. Since it is curable defect, this matter is deserved by us to give the Petitioner 7 days’ time in accordance with Section 9(5) of the Code to cure the defect. Petitioner may take up appropriate action accordingly.”*

18. Accordingly, the Petitioner placed on record the Affidavit dated 12.01.2024 as stipulated under Section 9(3)(b) of the Code.
19. Accordingly, the application made by the Petitioner is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority **admits** this Petition and orders initiation of CIRP against the Corporate Debtor.
20. The Petition bearing CP (IB) No. 3971 of 2018 filed by **IC Point through its Proprietor, Mr. Bhavanimal Ranjeetmal Janikar**, the

Operational Creditor, under section 9 of the Code read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **DSK Milkotronics Private Limited**, the Corporate Debtor, is **admitted**.

21. There shall be a moratorium under Section 14 of the IBC, in regard to the following:
  - i. 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;
  - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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 (SARFAESI) Act, 2002;
  - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
22. Notwithstanding the above, during the period of moratorium: -
  - i. 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;

- ii. That the provisions of Sub-Section (1) of Section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- 23. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, as the case may be.
- 24. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 25. **Mr. Anshul Gupta**, having Registration No. IBBI/IPA-002/IP-N00310/2017-2018/10899 and Email Id: contactanshulgupta@gmail.com, Mobile No: 7738342001 is hereby appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- 26. 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 of the IBC. 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 within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.



27. The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses shall be treated as interim advance to fund the CIRP cost which shall be subject to approval by the Committee of Creditors (CoC). However, it is clarified that this amount shall be treated as interim finance for treatment under CIRP.
28. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
29. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.
30. Ordered accordingly.

Sd/-

**Prabhat Kumar**  
Member (Technical)

/SP/

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)