

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 87/CTB/2019

CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

In the Matter of:

An application 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;

-And-

In the Matter of:

M/s. Veer Wires Private Limited, having its registered office situated at- 304, Kshiteej Apartment, Near Sai Baba Char Rasta, Behind Bhatia School, Kandivali West, Mumbai- 400 676.

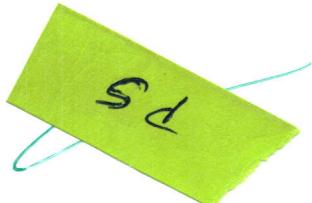
.... **Operational Creditor/Applicant**

-Versus-

In the Matter of:

M/s. Barbik Project Limited, having its registered office situated at - (i) Nehru Park Road, Surajpur, Chhattisgarh- 497 229, (ii) A-24, Ashoka Millenium, Ring Road, New Rajendra Nagar, Raipur, Chhattisgarh – 492 001 and (iii) Unit No.- 7A-01, Sangeeta Apartment, Juhu, Near SNDT College, Santacruz West, Mumbai, Maharashtra – 400 049.

.... **Corporate Debtor/Respondent**



Counsels appeared for the Petitioner(s)

1. Rakesh Kumar Mallick

Counsels appeared for the Respondent(s)

1. Sidhart Dwibedi
2. Pritish Kumar Behera
3. Sheshadeba Das

Date of pronouncement of Order: the 16th day of December, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. The applicant/Operational Creditor **M/s. Veer Wires Private Limited** is represented by Mr. Pankaj Chhabildas Sheth. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC) for initiation of Corporate Insolvency Resolution Process of respondent/Corporate Debtor **M/s. Barbik Project Limited.**

Sd

Sd +

2. The respondent/Corporate Debtor is **M/s. Barbik Project Limited.** registered under Companies Act, 1956 and **CIN:** **U70101CT2008PLC020626.**

3. The registered office to the respondent/Corporate Debtor is within the state of Chhattisgarh, hence, this Adjudicating Authority has jurisdiction.

4. The applicant/Operational Creditor is engaged in fabrication and manufacturing of engineering items and other Mild Steel equipment's including barricades and other products that are required in construction activities. In course of business the applicant/Operational Creditor raised forty-one invoices cum Way Bills for a cumulative amount of Rs. 94,75,416/- raised by the applicant/Operational Creditor without any demur, objection dispute.

5. The respondent/Corporate Debtor received & acknowledged the invoices dated between 05.03.2018 to 23.04.2018. hence, this application well within the period of limitation.

94

sd

6. The applicant/Operational Creditor submits that as per the purchase order, the applicant/Operational Creditor had supply 500 pieces of MS Barricades, on agreed terms and conditions and at agreed rates, to the respondent/Corporate Debtor.

7. The applicant/Operational Creditor submits that part payment of sum of Rs. 20,00,000/- on 05.04.2018 and another Rs. 20,00,000/- totalling to Rs. 40,00,000/- were received from the respondent/Corporate Debtor. However, the total outstanding amount of Rs. 54,75,416/- is due and payable.

8. The applicant/Operational Creditor states that they are entitled to a payment of Rs. 14,07,163/- towards interest calculated @ of 24% thereon as 31.03.2019 in accordance with payment terms of which the respondent/Corporate Debtor has not made the payments even after the stipulated time period of 7 days from the date of dispatch of the materials in accordance with the condition mentioned in the purchase order and the respective invoices raised by the applicant/Operational Creditor regarding the aforesaid transaction. The applicant/Operational Creditor has charged an interest @ 24% p.a. on such unpaid dues. Hence, the applicant/Operational Creditor entitled to a claim of sum of Rs. 68,82,579/-.

9. The respondent/Corporate Debtor has filed its reply dated 28.08.2019. The respondent/Corporate Debtor submits that vide letter dated 28.03.2018 and 22.04.2018 informed the applicant/Operational Creditor that there were few defects were in the barricades supplied by the applicant/Operational Creditor. The respondent/Corporate Debtor submits that the defects were not be rectified.

10. The applicant/Operational Creditor has filed rejoinder stating that the letter dated 28.03.2018 and 22.04.2018 have never been issued to the applicant/Operational Creditor, it is purely created to mislead this Court. Further, the applicant/Operational Creditor submits that July, 2018 to 19.11.2018 respondent/Corporate Debtor sent few emails, and applicant/Operational Creditor also sent emails seeking payment of outstanding dues.

11. The respondent/Corporate Debtor has not raised any disputes regarding defects in the goods it is purely an afterthought. Further, these alleged letters are false and fabricated. The respondent/Corporate Debtor has only issued a reply by email dated 19.11.2018 wherein the respondent/Corporate Debtor has categorically accepted and confirmed the liability due towards the outstanding invoices. Hence, the

respondent/Corporate Debtor's stand in the reply filed, and letter dated 28.03.2018 and 22.04.2018 are wrong and completely false and fabricated documents.

12. The respondent/Corporate Debtor has filed his reply to the rejoinder filed by the applicant/Operational Creditor. However, the respondent/Corporate Debtor has not produced any document in support of the statement that letter dated 28.03.2014 and 22.04.2014, were actually served on the applicant/Operational Creditor. Hence, the stand taken by the respondent/Corporate Debtor cannot be accepted. Meanwhile, after the matter was reserved for order, the respondent/Corporate Debtor has filed IA No. 135/CTB/2019 with the prayer to direct the applicant/Operational Creditor to accept the principal amount of Rs. 54,75,416/. The respondent/Corporate Debtor has also enclosed copy of the Cheque for the payment of the accepted amount. However, this IA No. 135/CTB/2019 has been dismissed by the Adjudicating Authority. The offer of payment by way of the cheque for the principal amount by the respondent/Corporate Debtor clear amounts to admission of the dues.

13. The matter was listed for pronouncement of order on 19.11.2019. Before the pronouncement, the counsel for the Corporate Debtor filed an application stating that principal amount tune of Rs. 54,75,416/- has been paid to the Operational Creditor. Hence, this application ought to be

dismissed. However, the Operational Creditor submits that as per the invoices the debt ought to be paid within seven days from the date of invoices, failing which the Operational Creditor is entitled to charge interest @ 24% per annum. Hence, the Corporate Debtor is bound by the contractual obligation as per the invoices. The Operational Creditor has claimed 14,07,063/- towards interest on Forty-one invoices. The definition of “Operational Debt” includes interests. Since, the interest claimed by the Operational Creditor is part of the Contractual obligation and there is no dispute regarding the invoices and the rate of interest the debts claim includes interest. Hence, we are inclined to admit the application.

14. We have perused the application, reply, documents, affidavits. We have heard both the parties. In result, this application is **ADMITTED**.

ORDER

(i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s. Barbik Project Limited.**

(ii) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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

Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The order of moratorium shall affect the date of admission 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(vii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.

(viii) **Mr. Shikhar Chand Jain** having **Registration No.:** **IBBI/IPA-001/IP-P00495/2017-18/10883** and **E-mail Id.:** **kaijain92@gmail.com** residence of ADB & Company, Chartered Accountants, 1st Floor, Mahavir Gousala Complex, Moudhapara, Raipur, Chhattisgarh – 492 001, is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

(ix) We direct the Operational Creditor to deposit a sum of Rs. One Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of

receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

- (x) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- xii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

Interim Resolution Professional to file 1st Progress Report on

20.01.2020.

List the matter on **20.01.2020**.

Let the certified copy of the order be issued upon compliance
with requisite formalities.

Sd

Shri Satya Ranjan Prasad
Member (T)

Sd

Ms. Sucharitha R.
Member(J)

Signed on this, the 16th day of December, 2019

Nishi(Steno)