

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

C.P. No. 3367/IBC/MB/2019

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

**Parco Engineers (M) Private
Limited**

(CIN: U2700MH1999PTC119337)
Having registered office at: 6-C,
Rustom Building, 2nd Floor, 29, Veer
Nariman Road, Fort, Mumbai-
400023

.....Operational Creditor

Vs

**Golden Beach Infracon Private
Limited**

(CIN: U70109MH2009PTC191338)
HDIL Tower, 4th Floor, Anant
Kanekar Marg, Bandra (East),
Mumbai- 400051

.....Corporate Debtor

Order delivered on: 29.07.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Ashish Mehta, Advocate

For the Respondent: Ms. Arushi Dube i/b M/s Rashmikant &
Partners

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by *Parco Engineers (M) Private Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Golden Beach Infracon Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 30,38,465/- (Rupees Thirty Lakhs Thirty-Eight Thousand Four Hundred Sixty Five Only) is due and payable by Corporate Debtor in which Principal amount of Rs. 25,42,044/- (Rupees Twenty-Five Lakhs Forty Two Thousand and Forty Four only) and interest @ 24% per annum of Rs. 4,96,421/- (Rupees Four Lakhs Ninety-Six Thousand Four Hundred and Twenty-One only).
3. The brief facts of case are as follows:-
 - a. The Corporate Debtor made enquiry vide their emails dated 6th and 7th September 2018 for the quotation of supply of TMT Steel FE-500 Grade of various sizes.
 - b. The Operational Creditor replied to the said emails quoting the charges applicable for the supply of the said goods.
 - c. The Corporate Debtor sent its purchase orders dated 7.09.2018 for the purchase of TMT bars of various sizes and quantities.

- d. The Corporate Debtor/Petitioner sold, supplied and delivered the said goods ordered by the Corporate Debtor under its Invoice Nos. PE/989/18-19 dt. 08.09.2018 and PE/994/18-19 dt. 10.09.2018. The said goods were sent with the support of the E-way bills and the Test Certification Report.
- e. The Corporate Debtor accepted the delivery of the said goods under Delivery Challan Nos. PE/989/18-19 dt. 08.09.2018 & PE/994/18-19 dt. 10.09.2018 without raising any objections whatsoever and duly acknowledged the same with the Rubber stamp & signatory of the Corporate Debtor.
- f. In spite of repeated reminders the Corporate Debtor failed and neglected to make payment.
- g. The Corporate Debtor issued three Post-Dated cheques bearing No. 204780, 204781 & 204782 dated 20.11.2018, 21.11.2018 and 22.11.2018 drawn on Union Bank of India, Khar Branch amounting to Rs. 10,00,000/-, Rs. 10,00,000/- and Rs. 5,08,090/- respectively in favour of Operational Creditor and said cheques were dishonoured with the remark **'DRAWERS SIGNATURE NOT AS PER MANDATE'**.
- h. The Corporate Debtor issued Statutory Notice under Form-3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 29th May 2019 demanding balance outstanding amount with interest by Registered Post A.D. and the Corporate Debtor duly received the said demand notice.
- i. The Corporate Debtor by its letter dated 08.06.2018 sent its reply and denied all the allegations alleged against them and further agreed to reconcile and settle the matter amicably.

- j. The Corporate Debtor through its advocates sent a rejoinder dated 17.06.2019 for confirming the meeting between both the parties to reconcile and to amicably settle the dispute. However, the Corporate Debtor failed and neglected to either send their proposal for settlement or attend the meeting on the date as agreed between the parties.
- k. The Corporate Debtor through its advocates sent a rejoinder dated 28.06.2019 to comply with the requisitions as demanded in the rejoinder failing which the Operational Creditor shall be constrained to adopt appropriate legal proceedings.

FINDINGS

1. The above matter was first listed on board on 23.09.2019. The Corporate Debtor put up appearance through M/s Rashmikant and Partners. On 18.02.2020, both sides appeared and made a representation before this Bench that settlement talks are going on between the parties and hence it was adjourned to 28.02.2020 and again to 27.03.2020. Due to pandemic, the matter was not listed and again was listed on 12.02.2021. Since the matter was listed from time to time, on 01.07.2021, the following order was passed by this Bench:

“...Counsel for the petitioner/OC, Mr. Ashish Mehta and counsel for the Respondent, Ms. Arushi Dubey are present through virtual hearing.

This matter has been filed on 07.09.2019 and counsel for the petitioner mentions that it has come up before the board on more than 5 occasions. The Bench notes, the Respondent has not even filed their reply in the matter. The Bench could

not hear the matter, as the counsel for the petitioner was unable to share screen documents with the Bench.

Matter is being listed for final hearing on 23.07.2021 is respective of whether a reply is filed or not. The matter will be heard and decided on its merits before the next date of hearing...”

2. In spite of passing the above order, the Corporate Debtor did not choose to file any reply and on the other hand the counsel appearing for the Corporate Debtor reported no instructions on 23.07.2021 when the matter was finally listed for arguments.
3. Heard the counsel appearing for the Operational Creditor and perused the record. The counsel appearing for the Operational Creditor invited the attention of this Bench to various invoices raised by the Operational Creditor along with delivery challans in support of their claim and also invited the attention of this Bench to the demand notice and the reply notice dated 08.06.2019 issued by the Corporate Debtor in response to the demand notice. The Corporate Debtor sent a very brief reply vaguely denying the demand of the Operational Creditor and expressed their willingness to sit across the table and settle the matter through mutual discussions and cooperation.
4. After receiving the said notice, the Operational Creditor arranged meeting on 27.06.2019 at 3:00 PM which was communicated to the Corporate Debtor vide their letter dated 17.06.2019 and sent the said communication through speed post. The Operational Creditor also annexed the copy of the speed post receipt in proof of dispatch of the above notice. As the Corporate Debtor failed to attend the settlement meeting, the Operational Creditor once

again sent a letter dated 28.06.2019 intimating the failure of the Corporate Debtor in attending the settlement meeting dated 17.06.2019 and also communicated their intention to initiate legal action under the provisions of IBC.

5. After going through the evidence placed before this Bench and upon observing the conduct of the Corporate Debtor, this Bench of the considered opinion that the Corporate Debtor has no valid defence to resist the claim of the Operational Creditor. This Bench further observed that the debt and default are clearly proved in this case and the debt claimed by the Operational Creditor is well within limitation and there were no pre-existing disputes between the parties. The Operational Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Hence this Bench has no option except to admit the above Company Petition since the above Company Petition satisfies all the necessary legal requirements for admission under Section 9 of the Code.
6. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -3367(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Golden Beach Infracon Private Limited.
- b. This Bench hereby appoints **Mr. Mahesh Sureka, M.R. Sureka and Co.**, Insolvency Professional, Registration

No: IBBI/IPA-001/IP-P00413/2017-18/10736 as the Interim Resolution Professional having registered office at 173, Udyog Bhawan, Sonawala Road, Goregaon (East) Mumbai- 400063 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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 subsection (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/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**