

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) 1630/MB/2017

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. Narsinha Engineering Private Limited
..... Operational Creditor
(Petitioner / Applicant)

v.

M/s. Tathya Engineering & Infraproject Private Limited
(Formerly known as Shambho Construction Private Limited)
..... Corporate Debtor
(Respondent)

Order Pronounced on : 16.11.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioner :

Mr. Monish K. Vig, Advocate – Advocates for the Petitioner / Operational Creditor.

For the Respondent :

None Present.

*Per: M. K. Shrawat, Member (J)***ORDER**

1. The Petitioner viz. 'M/s. Narsinha Engineering Private Limited' (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of 'Operational Creditor' on 20.11.2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, 'M/s. Tathya Engineering & Infraproject Private Limited' (Formerly known as Shambho Construction Private Limited) (hereinafter as

Debtor) having registered address at, 321, First Floor, Kumud Villa, V. P. Road, Mumbai, Maharashtra – 400004.

3. Further under the Head “Particulars of Operational Debt” the total amount in default is stated as ₹ 68,53,029/- which includes the Principal Amount of ₹ 34,40,150/- and further delayed Interest amount of ₹ 34,12,879/- @ 18% p.a.

4. Background of the Case :

- 4.1. The Debtor had approached the Operational Creditor for the supply of loose parts of Ghati Sheds. Consequently, the Debtor had placed oral orders to the Operational Creditors and accordingly the Operational Creditor has supplied the requisite goods / material to the Debtor.
- 4.2. For the said supply the Operational Creditor has raised the Invoices time to time. The total amount which was raised through Invoices was ₹ 1,15,32,808/-. However, the Debtor had made part-payment of 94,20,227/-. The supply was made during the period of year 2009 to 2011.
- 4.3. After the part-payment principal amount of ₹ 21,12,581/- was outstanding excluding the Interest amount of ₹ 12,51,814/-. In this connection the Operational Creditor has, time and again, requested the Debtor for making the payment. The Debtor has issued three Cheques, one amounting to ₹ 20,00,000/- dated 24.07.2009 and two cheques amounting to ₹ 15,00,000/- each, both, dated 05.08.2010. However, all these Cheques were not honoured by the Bank.
- 4.4. Therefore, the Operational Creditor had filed a Summary Suit bearing no. 41/2012 with the Jt. CJSD, Nashik, Maharashtra. The said Suit stood decreed by a Judgement and Order dated 04.09.2012 in favour of the Operational Creditor. Pursuant to the said Decree the Debtor was supposed to pay an amount of ₹ 33,64,395/- to the Operational Creditor.
- 4.5. The Debtor has failed to honour the said Decree and had not made the payment accordingly to the Operational Creditor. Hence, being aggrieved the Operational Creditor has issued a Notice U/s. 433 and 434 of the Companies Act, 1956 to the Debtor.
- 4.6. The Operational Creditor has also issued a Demand Notice U/s. 8 of the Code to the Debtor.

4.7. As the Debtor has failed to make the payment the Operational Creditor has filed this Petition invoking the provisions of S. 9 of the Code.

5. Submissions by the Creditor :

5.1. The Learned Advocate for the Operational Creditor has submitted that the Operational Creditor has supplied the material as per the request of the Debtor and raised Invoices for the said supply.

5.2. It is also submitted that the Debtor had made part-payment of ₹ 94,20,227/- towards the total liability of ₹ 1,15,32,808/-. This fact evidences that the Debtor is accepting its liability towards the Operational Creditor.

5.3. The Learned Advocate has drawn the attention of this Bench towards the fact that the Debtor had issued one Cheque of ₹ 20,00,000/- dated 24.07.2009 and two cheques of ₹ 15,00,000/- each, both, dated 05.08.2010 towards the outstanding amount. However, all the Cheques got dishonoured when presented for realisation.

5.4. Since the amount was outstanding the Operational Creditor has preferred the Summary Suit before the Civil Judge Senior Division, Nashik, Maharashtra. The said Suit stood decreed vide an Judgement and Order dated 04.09.2012. Following is the operative part of the Order :

“The suit is decreed with costs.

The Defendant do pay an amount of Rs. 33,64,395/- to the Plaintiff within a period of one month from the date of this order.

The Defendant is further directed to pay the interest at the rate of 18 % p.a. on decreetal amount from the date of filing the suit till its realization within one month from the date of this order.

In case, the Defendant failed to make the payment of decreetal amount as directed, the Plaintiff is entitled to recover it as per the provisions of law.”

5.5. It is further submitted that the Debtor, despite of the Decree, has failed to make the payment and therefore the Operational Creditor has issued a Statutory Demand Notice U/s. 433 (e) of the Companies Act, 1956 on 26.07.2016. The said notice has been duly served upon the Debtor but the Debtor had not replied to the same. Copy of the said notice is annexed with the Petition.

5.6. It is further submitted that, after enactment of the Code, the Operational Creditor has also issued a Demand Notice U/s. 8 of the Code dated 10.03.2017. To the said

notice the Debtor has replied vide a letter dated 25.03.2017. The Learned Advocate has informed that the Debtor, in the said reply, has taken the frivolous ground of dispute which was never raised by the Debtor. Copy of the said notice and its reply is annexed with the Petition.

5.7. The Learned Advocate has also drawn attention of this Bench towards the Certificate provided by the Bank where the Operational Creditor maintains its account which reveals that the Operational Creditor has not received the amount which is to be recoverable from the Debtor.

5.8. The Learned Advocate has further submitted that since the amount was not forthcoming from the Debtor the Operational Creditor has preferred this Petition U/s. 9 of the Code. It is also stated that the Petition was duly served upon the Debtor.

5.9. It is also stated that, after the Petition came up for hearing, the Debtor has also served the notices of hearing to the Debtor. It is also submitted that all those notices have duly been served upon the Debtor. To this effect an **Affidavit of Service** has also been placed on record

5.10. In light of above submissions it is vehemently argued that since there is admitted liability and no dispute in existence and moreover, despite the receipt of notices the Debtor is not willing to represent his case this Petition be Admitted for the commencement of the CIRP.

6. Findings :

6.1. The Bench has gone through the submissions made by the Learned Advocate for the Operational Creditor and also through the pleadings on record.

6.2. By going through the pleadings it is noticed that the Operational Creditor has duly supplied the goods / material, ordered by the Debtor, and raised valid Invoices for the same.

6.3. It is also noticed that, admittedly, the Debtor had made the part-payment towards the total amount which was raised. And also it is admitted position that the Cheques which were issued by the Debtor got dishonoured.

6.4. That, admittedly, the CJSD, Nashik, Maharashtra has passed a Decree in favour of the Operational Creditor but the Debtor has failed to honour the Decree.

- 6.5. Further that, the Debtor has replied to the Demand Notice which was issued U/s. 8 of the Code, raising the 'Dispute'. However, the existence of dispute remained unanswered by the Debtor's side.
- 6.6. The Bench has also gone through the Affidavit of Service furnished by the Operational Creditor and noticed that the notices have been duly received by the Debtor. It is also worth to place on record that this matter was first time came-up for hearing on 08.02.2018 and thereafter numbers of opportunities were granted, till date to the Debtor but no one has appeared on behalf of the Debtor.
- 6.7. Moreover it is also worth to place on record that the information about the case is duly available on the Tribunal's official website and it is well within the public domain. Therefore it can be concluded that the Debtor, if wanted to represent his case, could have appeared before this Bench by going through the data related to the case available at official website. Hence, in my opinion the Debtor does not want to represent his case and admittedly there is no 'dispute' with regard to the claimed amount.
- 6.8. By going through the facts and submissions of the case it is noticed that the Operational Creditor has established that the nature of Debt is an "Operational Debt" as defined under section 5 (21) of the Definitions under The Code.
- 6.9. Further, it has also been established that there is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
- 6.10. As a consequence, after the expiry of the period prescribed and keeping the admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been duly completed by the Petitioner / Applicant and hence, it is my conscientious view this Petition deserves '**Admission**' even-though the Debtor had not represented his case.
- 6.11. The Operational Creditor has proposed the name of Interim Resolution Professional. The Bench has gone through the consent form of the proposed Insolvency Professional and noticed that, there is no disciplinary proceeding is pending against the proposed IP. Consequently, this Bench hereby appoints, **Mr. Pramod Jain, R/at. C – 104, Water's Edge Society, Vishalnagar, Pimple Nilakh, Pune, Maharashtra – 411027** and having the Registration No. as

IBBI/IPA-001/IP-P00249/217-18/10479, as Interim Resolution Professional to initiate the Corporate Insolvency Resolution Process upon the Debtor.

6.12. Having admitted the Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP and the same shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

6.13. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

6.14. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. Liberty is granted to intimate the same even at an early date, if need be.

6.15. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of receipt of certified copy of the Order.

7. Ordered Accordingly.

Dated : 16.11.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash