

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1582/IBC/NCLT/MB/MAH/2018

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. Chamunda Earthmover
..... Operational Creditor
(Petitioner)

V.

M/s. Girna Infraprojects Private
Limited
..... Corporate Debtor
(Respondent)

Heard on: 27.03.2018
Order delivered on: 26.04.2018

Coram :

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

For the Petitioner :

1. Priti Tare, Authorized Representative for the Petitioner

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

ORDER

1. The Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in the capacity of "Operational Creditor" on 09.11.2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code.
2. In the requisite Form, under the Head "Particulars of Operational Debt" the total Principal amount in default is stated to be ₹7,81,344/- (Seven Lakhs Eighty One Thousand Three Hundred and

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Forty Four Only). The amount mentioned therein is exclusive of interest claimed at 18% p.a. from date of default to date of realization.

3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. Girna Infraprojects Private Limited, having its registered address at Shivneri 43/A Mahatama Nagar, Road 'A', Off. Trimbak Road, Nashik- 422 011.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the Corporate Debtor undertook to take over, develop, construct, carry out transfer the infra structure projects such as a construction of buildings, roads, bridges, tunnels, earthworks, dams, wells, tanks, industrial parks etc. for excavation work at Military Camp site Pune and Operational Creditor has subsequently provided services, as per Work Order No. GIRNA DGMAP UNE-II/2015/08/212 issued by Corporate Debtor. The nature of service was supply of Hiring Poclain/Excavator-EX-300, Tata Hitachi on monthly Basis at rate of Rs. 3,20,000/-
5. Further it is submitted that after successful execution of work as per above mentioned Work Order for period 31.07.2015 to 31.08.2015, the Operational Creditor raised Bill Numbered CE/053/2015-16 dated 02.10.2015 for amount of Rs. 3,64,800/-. Similarly for Period 01.09.2015 to 24.09.2015, a bill of Rs. 2,49,901/- was raised vide Bill No. CE/EB6/2015-2016 dated 22.10.2017; and for period 01.10.2015 to 31.10.2015, a bill of Rs. 1,66,643/- was raised vide Bill No. CE/065/2015-16 dated 20.11.2015. The Copy of 3 Bills mentioned herein are annexed to the Petition.
6. Further it is submitted that the Bill dated 02.10.2015, 22.10.2015, and 20.11.2015, as mentioned hereinabove, were verified and checked by the Office of Corporate Debtor.
7. Hence, on account of non-payment, the Petitioner has issued a Notice under section 8 on prescribed Form No. 3 on 14.08.2017 by Speed Post to the Registered Address, and Corporate office of the



Corporate Debtor. And the said notice was served on Registered Office Address and Corporate Address of the Corporate Debtor.

8. It is submitted that, the Corporate Debtor has not raised any dispute/objection to the Demand Notice of the Operational Creditor till the filing of this Application under I&B Code, 2016.
9. The Bank Certificate issued from Union Bank dated 17.10.2017, certifying that, in the account of the Operational Creditor no payment has been received in respect of amount of Rs. 7,81,344/- from M/s Girna Infraprojects Private Limited from 31.07.2015 to date of certificate i.e. 17.10.2017. The Bank Certificate is annexed to the Petition.
10. Since inception of the petition and after due service of the Petition the respondent had never attended the proceedings. Even after intimation from the Learned counsel for Petitioner about the next date of hearing, the Corporate Debtor remained absent from the proceedings before this bench. The affidavits of service intimating date of hearing are placed on record by the Learned Counsel for Petitioner.
11. The non-appearance or non-communication of the Corporate Debtor has thus established that it has nothing to say in defence in respect of the impugned outstanding amount.
12. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that even though there was admitted outstanding dues in respect, the same remained unpaid.
13. This bench has perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and if the Respondent wanted to place on record evidence of 'dispute' then he could have

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raised the objection within 10 days as prescribed under section 8(2) of The Code which had also lapsed now.

14. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner this bench is of the conscientious view that this Petition deserves '**Admission**'.
15. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Prakash Nath Mishra having IBBI No. IBBI/IPA-003/IP-N000115/2017-18/11219 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
16. 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 order 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.
17. 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.
18. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.



19. The IRP so appointed shall also comply the other provisions of the Code including section 15 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. A liberty is granted to intimate even at an early date, if need be.
20. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 26.04.2017

Anuj

Certified True Copy
Copy Issued "free of cost"
On 31/05/2018


Assistant Registrar

National Company Law Tribunal Mumbai Bench

