

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

CP No. 312/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, 2016se

In the matter of

European Projects & Aviation Limited
..... Operational Creditor
(Petitioner/Applicant)

v.

Spruce Trading Private Limited
..... Corporate Debtor
(Respondent)

Heard on : 11.09.2018
Order delivered on : 12.09.2018

Coram :

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

For the Petitioner: Balasaheb S. Yewale, Advocate

For the Respondent: None Present

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

ORDER

1. European Projects & Aviation 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 23.02.2018 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, Spruce Trading Private Limited (hereinafter as **Debtor**) having registered address at Flat No.2898, Building No. 67, 1st Floor, Gandhinagar Jalkiran CHS Ltd., Bandra East, Mumbai-400051.
3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹5,69,74,044/- (Rupees Five Crores Sixty Nine Lacs Seventy Four Thousand Forty Four Only) payable as on 31.01.2018.



Submissions by the Operational Creditor :

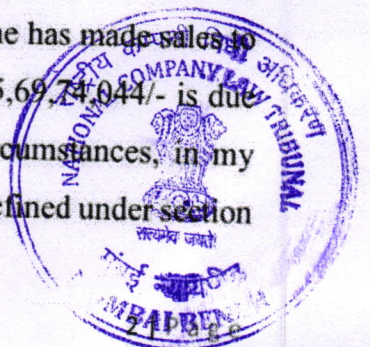
4. The Operational Creditor had raised sales invoices amounting to ₹29.36 crore on the Corporate Debtor in the year 2011-12 and ₹7.67 crores pertaining to earlier financial years. The Corporate Debtor was unable to pay the said amount to the Operational Creditor.
5. It is further stated that several correspondence and meetings were held in between the Operational Creditor and Corporate Debtor for recovery of outstanding dues. The Corporate Debtor executed an agreement for settlement of claims (Annexure B1 of the Petition). As per the terms thereof, the Corporate Debtor agreed to transfer investments to the Operational Creditor and pay the balance dues within a short period of time. In view of the said part settlement, the amount of liability was reduced to ₹11.11 Crores.
6. Thereafter, in the Financial Year 2016-17, the Corporate Debtor remitted an amount of ₹3 Lacs in the month of August, 2016 and entered into an assignment agreement (Annexure-C) for its assets amounting to ₹5,38,09,984/-. In view of the said assignment agreement, the amount of liability was reduced to ₹5,69,74,044/-.
7. The Operational Creditor has issued a 'Demand Notice' U/s. 8 of the Code in Form 3 dated 03.02.2018 by hand delivery and the said notice is duly served upon the Debtor. But even after service of this Notice, the Debtor has neither paid the Demanded Amount nor raised a dispute with regard to the 'Debt' within the stipulated time of 10 days. The Corporate Debtor did not even reply to the said Demand Notice.
8. Hence, the Operational Creditor has filed this Petition/Application to initiate CIRP over the Debtor. It is stated that as the Debtor has neither paid the amount nor contesting the admission of this Petition/Application for Commencement of CIRP, therefore, the petition deserves to be admitted.

No Submissions by the Debtor :

9. The Learned Advocate for the Debtor has not appeared before this Bench. The Affidavit of Service of notice of hearing is placed on record. None attended. The correspondences between the Operational Creditor and the Corporate debtor reveal that the debt is an admitted debt.
10. Since the Debtor has not appeared before this Bench, it is presumed that there is nothing much to say in defence.

Findings :

11. I have gone through the submissions and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that he has made sales to the Corporate Debtor in the year 2012 for which an amount of ₹5,69,74,044/- is due and a default has also occurred. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an 'Operational Debt' as defined under section



5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.

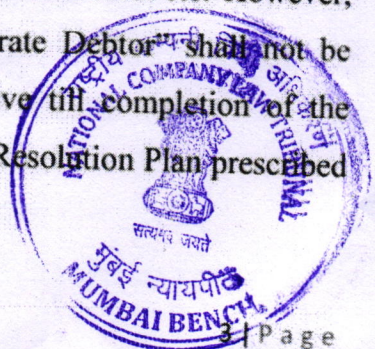
11.1 The reply of Corporate Debtor to the letters sent by Operational Creditor on 05.09.2013 and 10.07.2015 is evident of the fact that the Corporate Debtor has admitted its liability and is only lingering on the payments in the garb of financial difficulty and thus asking for more time. Further, the Operational Creditor extended the time for repayment for 18 months vide letter dated 15.07.2015 and directed the Corporate debtor to clear its dues on or before 10.01.2017. However, out of ₹11.11 Crores, the liability of only ₹5,38,09,984/- was cleared by transferring some investment by the Corporate Debtor to the Operational Creditor and the balance ₹5,69,74,044/- was never paid. Various letters dated 10.04.2017 and 21.08.2017 were sent by the Operational Creditor calling up the Corporate Debtor to repay its dues but the Corporate Debtor neither replied to the letters nor paid the dues.

12. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that the Debtor has received the same but has not paid the amount of unpaid dues. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt. Instead, debtor never appeared before the Bench during the entire proceedings in this matter.

13. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor has not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Operational Creditor. It is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.

14. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mrs. Subha Pal**, having registration no. as IBBI/IPA-001/IP-P01051/2017-18/11734, having address at 475, Sector-A, Pocket-C, Vasant Kunj, New Delhi-110070 as Interim Resolution Professional for initiation of CIRP.

15. Having admitted the Petition/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 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.



16. 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.
17. 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. A liberty is granted to intimate even at an early date, if need be.
18. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Dated : 12.09.2018

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

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Copy Issued "free of cost"
On 05.10.2018

Assistant Registrar
National Company Law Tribunal Mumbai Bench