

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

C.P. No. 3646/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

IDBI Capital Markets & Securities Ltd.
3rd Floor, Mafatlal Centre, Nariman Point,
Mumbai - 400020.

....Petitioner

v/s.

Earth Mineral Industries Pvt. Ltd.
1401/1402, Shivshankar Plaza-1, Sector – 8,
Near HDFC Bank, Airoli - 400708

....Respondent

Order delivered on: 19.02.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Smit H. Shah, Advocate i/b Cogito Legal.

For the Respondent: None Present.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Petition is filed by IDBI Capital Markets & Securities Ltd. (wholly owned subsidiary of IDBI Bank Ltd.) (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process ("CIRP") against Earth Mineral Industries Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in payment of Rs. 5,70,000/-, by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.
2. The Petitioner submits that, they are wholly owned subsidiary of IDBI Bank Ltd. and they provide a full suite of products and services to Corporate, Institutional and Individual clients. In May, 2015 the Corporate Debtor approached the Petitioner to avail their financial and syndication services in order to generate working capital/fund of Rs. 25 crores by way of private placement of ordinary shares, convertible shares and convertible bonds,

and/or structure equity in the company or its associate or subsidiaries for setting up the manufacturing plant of special grade Alumina.

3. The Petitioner further submits that, on 02.06.2015 both parties entered into an agreement (engagement letter) and the Corporate Debtor subscribed to the services of the Petitioner as an Advisor in raising funds with the scope of work mention below:
 - a. Assist in preparing the financial presentation;
 - b. Structuring the transaction;
 - c. Conducting site visits and meeting various officials;
 - d. Facilitation of signing the various definite agreements I consultation with lawyers appointed by the company;
 - e. Closure of the Transaction.
4. On 02.06.2015 the Petitioner on the basis of terms and conditions of the aforesaid agreement and subscription of the services by the Corporate Debtor raised an invoice of Rs. 5,70,000/- bearing reference no. IB/15-16/17 upon the Corporate Debtor.
5. On account of non-payment of said invoice, the Petitioner issued a Demand Notice under the Code on 23.11.2017 demanding a sum of Rs. 5,70,000/-. The Petitioner has also enclosed the Bank Certificate u/s 9(3)(c) of the Code to show that no payment was received from the Corporate Debtor.
6. The Corporate Debtor has neither replied to the Demand Notice nor raised any dispute nor made the payment. The Petitioner has filed affidavit u/s 9(3)(b) stating that no dispute was raised by the Corporate Debtor.
7. The Petitioner tried to serve the Petition to the Corporate Debtor and the Petition was returned back with a remark "not delivered unclaimed". This Bench has permitted the Petitioner to effect substituted service by newspaper publication in one English & one Marathi newspaper having vide circulation in Mumbai and accordingly the Petitioner effected substituted service and filed affidavit of service. Even after publication in the newspapers, the Corporate Debtor failed to appear before this Bench.
8. The pleadings in the Petition and the submissions of the counsel for the Petitioner clearly reveals that there is debt and default as envisaged under the Code.

9. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring moratorium with the directions as mentioned below:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 19.02.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Raj Kumar Dad, having office at 302 L Wing, Shree Sankeshwar Nagar Society, SV Road, Ashok Van, Dahisar East, Mumbai – 400068; having Registration No. IBBI/IPA-001/IP-P00537/2017-2018/10962 as an Interim Resolution Professional (IRP) to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to both the parties and also to the IRP immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

sd/-
Bhaskara Pantula Mohan
Member (Judicial)