

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

CP 1802/I&BP/NCLT/MAH/2018

Under Section 9 of the IBC, 2016

In the matter of

Friends Agencies

...Operational Creditor

v/s.

BIW Fabricators Private Limited

... Corporate Debtor

Order delivered on: 14.1.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Adv. Kunal Kanungo i/b Adv. Nipun Singhvi

For the Respondent: Adv. Divya Dimple B i/b AKR Advisors

Per Ravikumar Duraisamy, Member

ORDER

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 (IBC) by Friends Agencies, Operational Creditor against BIW Fabricators Private Limited, having its registered Office at 6/J, Heavy Industrial Area, Hathkhoj, Bhilai, Chattisgarh – 490 024 to initiate Corporate Insolvency Resolution Process (CIRP) against Corporate Debtor on the ground that the Corporate Debtor has defaulted in making payment of Rs. 16,14,742/- against invoices raised for the supply of electrodes, paints, grinding wheels and other consumable items.
2. The brief facts of the case are that the Operational Creditor has supplied electrodes, paints, grinding wheels and other consumable items to the Corporate Debtor. According to the Petitioner, the Corporate Debtor started default of payment against the invoices raised by the Operational Creditor w.e.f. 07.12.2017.

3. The Operational Creditor sent a letter dated 9.1.2018 to the Corporate Debtor, *inter-alia*, calling upon it to pay the overdue payment. The Corporate Debtor replied *vide* letter dated 11th January, 2018 that the payment will be released at the earliest.
4. The Operational Creditor sent the Section 8 demand Notice dated 24.04.2018 in Form No. 3 & 4 of the IBBI (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor stating the total amount of debt as Rs. 16,14,742/- due till the date of Demand Notice. The Corporate Debtor replied *vide* letter dated 1.5.2018 that the payment will be released at the earliest and requested to provide some more time to settle the issue.
5. Since the Corporate Debtor failed to make payment, the Operational Creditor has filed this Petition before this Tribunal.
6. The Corporate Debtor *vide* its Affidavit dated 8th November, 2018 stated that they are undergoing financial difficulties for more than a year due to heavy losses incurred on account of financial crises in infrastructure in which the Corporate Debtor operates and due to which the Corporate Debtor is not in a position to release the payments. It is further stated in the Affidavit that their intention is fair to discharge the liabilities of creditors but due to the reasons stated above, currently they are facing difficulties in releasing the payment to the creditors.
7. Heard the parties and perused the material available on record.
8. It is observed that the Operational Creditor has duly supplied the goods ordered by the Corporate Debtor and raised invoices for the same. Since the invoices remained unpaid, the Operational Creditor called upon the Corporate Debtor to make the payments. Thereafter, the Operational Creditor sent demand Notice dated 24.04.2018 to the Corporate Debtor. The Corporate Debtor did not dispute the amounts claimed in the demand notice and requested for some time to make the payment. Since the Operational Creditor did not receive its due, the Operational Creditor filed this petition. The Petitioner has attached with the Petition a copy of the Bank statement for the period 01.04.2017 to 07.05.2018 to show that no payment has been received by the Operational Creditor from the Corporate Debtor. We find that the Petitioner has attached copy of invoices along with Ledger Accounts for the financial year 2016-17

& 2017-18 to show that amounts are due. The Operational Creditor in compliance of this Bench's order dated 17.12.2018 has filed the affidavit of no dispute as required under Section 9(3)(b), IBC.

9. There is no pre-existing dispute raised in connection with the quality/quantity or regarding the unpaid operational debt. The application made by the Operational Creditor is complete in all respects as required by law and it clearly shows that the operational debt has not been paid and this has also been confirmed by the Corporate Debtor. The Operational Creditor has proposed the name of Interim Resolution Professional with his consent and no disciplinary proceedings are pending against the Interim Resolution Professional.

ORDER

10. This Bench hereby admits this petition filed under Section 9 of IBC declaring moratorium with consequential directions as mentioned below:

- I. That this Bench hereby prohibits
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- II. 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.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until

this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Shri Pankaj Khetan, Registration No. IBBI/IPA-002/IP-N00010/2016-17/10014, as Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee to be paid to Interim Resolution Professional/ Resolution Professional should be strictly in accordance with the Regulations of the IBBI, circulars, directives issued in this regard.

11. Accordingly, this Petition is admitted.

12. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by speed post/ email/ whatsapp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

DT. 14.1.2019