

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

**CP 1349/IBC/NCLT/MAH/2017**

**Under Section 9 of the I&B Code,  
2016**

In the matter of

**Mitcon Consultancy & Engineering  
Services Private Limited**

....Operational Creditor

**V/s.**

**M/s Shetkari Sakhar Karkhana  
(Chandapuri) Limited**

.... Corporate Debtor

**Order dated 14.01.2019**

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

For the Petitioner: Mr. Prasad Sarvankar, Advocate i/b Chaitanya B.  
Nikte

For the Respondent: None Present

*Per V.P. Singh, Member (Judicial)*

**ORDER**

1. It is a Company Petition filed u/s 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mitcon Consultancy & Engineering Services Limited, Operational Creditor/Petitioner, against Shetkari Sakhar Karkhana (Chandrapuri) Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Corporate Debtor has defaulted in making the payment of ₹50,44,000/- towards the Consultancy/Engineering & Project Management Services, Integrated Sugar Expansion/Modernisation (1600 to 4800 TCD),

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Cogen Power (23 MW) & Distillery/Ethanol (45 KLPD) Project which fell due from 30.11.2015 to 31.12.2016.

2. Brief facts of the case as stated by the Petitioner are that the Petitioner is engaged in the business of providing consultancy, project management and engineering services etc. The Corporate Debtor had sought consultancy, project management and engineering services from the Petitioner for its sugar factory at Chandrapuri Tal-Malshiras, Dist. Solapur, Maharashtra and accordingly issued work order dated 20.09.2015 to the Petitioner. It is stated that the Petitioner had provided the requisite services as per the schedule mentioned in the work order and the bills were raised from time to time and there were no complaints regarding the services from the Corporate Debtor. The invoices were raised for each stage beginning from February 2016 to September 2016 and all the invoices/bills were received by the Debtor. It is stated that the Debtor defaulted in making payment of several invoices, while made part payment for certain invoices. The copies of said invoices are annexed along with the Petition. It is stated in the Petition that a plethora of demands and follow ups were made by the Petitioner by way of personal visits, e-mails, letters and telephone with the Debtor but there was no positive action from the Debtor side for making the payment to the Petitioner. The Petitioner has also reminded the Debtor that 18% interest will be charged on the bill amount if the payment is delayed beyond the agreed period as the work order, however, the Debtor has not given any attention and invoice amount has become overdue day by day.
3. The Petitioner sent Demand Notice date 01.04.2017 to the Respondent stating the total amount of debt outstanding as ₹50,44,000/- and also notice in Form-4 attaching all the invoices and detailed calculation of debt amount. The Petitioner claims that

an amount of ₹50,44,000/- is payable by the Debtor against the services rendered to it and interest @18% per annum is chargeable on the aforesaid outstanding amount as per the conditions mentioned in the invoices.

4. It is pertinent to mention that, a Settlement Agreement was filed on 25.06.2018 but the Corporate Debtor has failed to make the payment as per the settlement agreement, therefore, the Petitioner pressed for admission of the Petition.
5. In the settlement agreement a board resolution passed in the meeting of Board of Directors of the Corporate Debtor held on 24.04.2018 is attached stating that it availed the services of the petitioner and owes ₹50,44,000/- for the same which it was not able to pay for various reasons.
6. When a Section 9 Petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4) of section 9, if any.
7. The petition is filed by Mr. Suresh Annajiro Ghorpade who has been duly authorised by the resolution dated 22.08.2017 to file proceedings under IBC. The petitioner on affidavit has stated that it has not received any notice of dispute by the Corporate Debtor with respect to the operational debt. The petitioner has also annexed a ICICI bank certificate dated 08.08.2017 stating that there is no credit of money from Shetkari Sakhar Karkhana (Chandrapuri) Ltd. in the current account of MITCON Consultancy and Engineering Services Ltd. from 30.11.2015.

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8. The petitioner has attached invoices dated 02.02.2016 to 30.09.2016 raised in the name of Corporate Debtor. The said invoices have also been sent along with the demand notice in Form-5 and the notice in Form-4 dated 01.04.2017 to the Corporate Debtor and are attached with the petition.
9. In view of the above there is no dispute regarding the existence of unpaid operational debt. The application made by the Petitioner is complete in all respects as required by law and it clearly shows that the operational debt has not been paid by the Corporate Debtor.
10. Therefore, there is a clear default on the part of the Corporate Debtor in payment of outstanding amount to the petitioner, and there was no existing dispute regarding the same.
11. The Operational Creditor have named the Interim Resolution Professional (IRP) with his consent and there are no disciplinary proceedings pending against the proposed IRP.
12. On perusal of the pleadings and documents submitted and the arguments of the counsel appearing for both the sides, we are of the view that the present case is fit for Admission under the Insolvency and Bankruptcy Code, 2016.

**ORDER**

The petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 is admitted. We further declare moratorium U/S 14 of the I & B Code 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. It is further made clear that:

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- ii. 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.
- iii. That the order of moratorium shall have effect from 14.01.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- iv. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

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- v. That this Bench hereby appoints Mr. Anil Seetaram Vaidya, having Registration Number [IBBI/IPA-002/IP-N00067/2016-2017/10145] as Interim Resolution Professional to carry the functions as mentioned under IBC.
13. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

**SD/-**

**RAVIKUMAR DURAISAMY**  
Member (Technical)

**Sd/-**

**V.P. SINGH**  
Member (Judicial)

**14<sup>th</sup> January, 2019**