

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

CP 1367/I&BP/NCLT/MAH/2017

Under Section 9 of the I&B Code, 2016

In the matter of

DALMIA CEMENT (BHARAT) LTD.

....Operational Creditor
v/s.

**HIRANANDANI PALACE GARDENS PVT.
LTD.**

.... Corporate Debtor

Order Delivered on 01.01.2019

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

For the Petitioner: Mr. Praveen Tiwari, Practicing Company Secretary
i/b S. Srinivasan & Co.

For the Respondent: None Present

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 (**IBC**) by Dalmia Cement (Bharat) Ltd. (**DCBL**), Operational Creditor against Hiranandani Palace Gardens Pvt. Ltd., Corporate Debtor, to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the grounds that as on 10.11.2012 the Corporate Debtor has defaulted in making payment of ₹11,20,124/-which is due for payment for supply of cement to Hiranandi Palace Gardens (**HIRCO**) project in Oragadam, Kanchipuram Dist. Tamil Nadu between 05.5.2012 and 17.9.2012.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 1367/IB/2017

2. It is the case of the Operational Creditor that it has supplied cement to HIRCO project in Oragadam, Kanchipuram Dist. Tamil Nadu between 05.5.2012 and 17.9.2012. The total value of Invoices raised during the period between 5.5.2012 and 17.9.2012 by DCBL amounted to ₹1,02,80,000/-, on payment terms with credit of 30 days from the date of invoice. The Corporate Debtor has made part payments aggregating to ₹91,59,876/- leaving a balance of ₹11,20,124/-.
3. The petitioner sent a notice under section 433 and 434 of the Companies Act 1956 dated 21.10.2016 addressed to the Corporate Debtor regarding the supply of material from 15.05.2012 to 17.09.2012. The petitioner has mentioned in the said notice the details of purchase orders on which the materials were supplied to the Corporate Debtor and that in e-mail dated 02.12.2013 the Corporate Debtor has sent the account confirmation showing outstanding amount payable by it to the petitioner. The petitioner has attached various e-mails to show the correspondence exchanged between both the parties regarding the outstanding amount. The Corporate Debtor vide its e-mail dated 15.03.2013 has informed that it is sending a cheque for ₹15,00,000/- to the petitioner. The petitioner has sought from the Corporate Debtor confirmation of account vide its e-mail dated 26.11.2013, 27.11.2013. The Petitioner vide e-mail dated 11.01.2017 referred to the ongoing discussions with

the Corporate Debtor and offered to withdraw the winding up notice on payment of ₹10,50,000/- as full and final settlement of the account. The petitioner in its e-mail dated 23.06.2017 has mentioned the assurances from the Corporate Debtor regarding early settlement of the due amount and has sought the payment of ₹11,20,124/-. Further, in the e-mail dated 13.07.2017 the petitioner has sought a final settlement figure from the corporate debtor against ₹11,20,124/-. To this e-mail of the petitioner the corporate debtor replied through its e-mail dated 11.09.2017 wherein it referred to discussions with the petitioner and sent copy of a cheque amounting to ₹7,27,965/-, original of which was to be handed over after discussion. A copy of the said cheque of ₹7,27,965/- is attached with the petition. Again on 27.09.2017 the petitioner sent e-mail to the Corporate Debtor referring to the discussions regarding the outstanding amount of ₹11,20,124/- and conveyed that it is ready to full and final settlement of the account for ₹10,50,000/- and gave seven-days' time for payment, to withdraw the IBC proceedings.

4. The Petitioner sent a demand notice in Form-5 and invoices attached to Form-4 notice dated 19.06.2017 as per section 8 of IBC detailing the debt of ₹11,20,124/- due and payable from the Corporate Debtor and informing about the IBC proceedings.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 1367/IB/2017

5. The Petitioner has further submitted on affidavit, attached to the Petition, that the Application filed under Section 9(2) is complete. There is no payment of the unpaid operational debt. The Demand Notice for payment to the Operational Creditor has been delivered to the Corporate Debtor by Speed Post which was delivered on 24.10.2016, and no notice of dispute has been received by the Operational Creditor.
6. The Petitioner further states that no notice of dispute has been issued by the Respondent either before or after issuance of statutory demand notice. No proceedings have been initiated by the Respondent against the Applicant/Petitioner to date. It further states that the Corporation Bank maintaining its account has provided their certificate dated 31.07.2017 stating that there is no payment made towards the unpaid amount by the Corporate Debtor. The bank certificate is attached to the Petition.
7. The Petitioner has submitted the authority letter passed by the Board of Directors of the Dalmia Cement (Bharat) Ltd to initiate Corporate Insolvency Resolution Process against the Corporate Debtor and to appoint Mr S. Srinivasan, who is a Practicing Company Secretary, as their authorised signatory.
8. 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.

9. The Petitioner has annexed the demand notice sent to Corporate Debtor as per section 8 of Insolvency and Bankruptcy Code, 2016 and the same was received by the Corporate Debtor, the invoices against which it claims the outstanding amount from the Corporate Debtor as well as the Bank Certificate and Bank Statements to show that no payment is received from the Corporate Debtor in its bank account. The Corporate Debtor has not raised any dispute regarding the unpaid operational debt which is stated by the Petitioner on affidavit and the same is also admitted by the Corporate Debtor in its various correspondence with the Petitioner. 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 as also confirmed by the Corporate Debtor.
10. The Corporate Debtor has not replied to the notice under section 433 and 434 of the Companies Act 1956 or the Demand notice served under section 8 of IBC. The Corporate Debtor has not even represented before this Tribunal from the initiation of this case in September 2017. Neither is any Vakalatnama filed nor has any one appeared to represent before this Tribunal, on various dates when the petition was listed for hearing before

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 1367/IB/2017

this Tribunal, for the Corporate Debtor from the initiation of this case in September 2017.

11. It is also pertinent to note that a xerox copy of the cheque for amount of ₹7,27,965/- was sent/issued but till date original cheque was not handed to the operational creditor for realization.
12. 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.
13. The operational creditor had recommended name of Interim Resolution Professional (**IRP**) with his consent however the consent was withdrawn subsequently and no new name is recommended by the Operational Creditor.
14. On perusal of the pleadings and documents submitted and the argument of the counsel appearing for the operational creditor, we are of the considered opinion 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 at this moment 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:

- a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- b. 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.
- c. That the order of moratorium shall have effect from 01.01.2019 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.
- d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 1367/IB/2017

e. That this Bench hereby appoints Mrs. Chetna Paresh Sutaria having registration number IBBI/IPA-001/IP-P00395/2017-18/10713 as Interim Resolution Professional to carry the functions as mentioned under IBC.

15. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional (after appointment) even by way of email or whatsapp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

1st January, 2019