

In the National Company Law Tribunal  
Mumbai Bench.

C.P.(IB)-2318/(MB)/2018

Under Section 9 Insolvency & Bankruptcy Code, 2016

In the matter of

RQS Engineering Private Limited : Petitioner/ Operational Creditor  
V/s

Thermo Products Private Limited : Respondent/ Corporate Debtor

Order delivered on: 21.02.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mrs. Punita Arora, a/w.  
2. Mr. Puneet Arora, i/b. Arora & Co.

For the Respondent(s) : 1. Mr. Rajendra Joshi, Company Secretary.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. A Petition has been filed in Form No.5 on 15.06.2018 by M/s. RQS Engineering Pvt. Ltd. in the capacity of **Operational Creditor** by invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor M/s. Thermo Products Private Limited, Pune, to claim an outstanding Operational Debt of ₹97,35,000/- (Principal) with Interest @ 24% per annum ₹9,53,763/- from the date of default reproduced below :-

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S. No.	Invoice No. & Date	Amount Due (INR)	Debt due date	Calculation date	Overdue (in days)	Amount of Interest @ 24% (INR)	Amount due with Interest
1.	570 dated 20.09.2017	19,47,000	20.11.2017	08.05.2018	169	2,16,357.04	21,63,357.04
2.	574 dated 21.09.2017	19,47,000	21.11.2017	08.05.2018	168	2,15,076.82	21,62,076.82
3.	654 dated 23.10.2017	19,47,000	23.12.2017	08.05.2018	136	1,74,109.81	21,21,109.81
4.	656 dated 23.10.2017	19,47,000	23.12.2017	08.05.2018	136	1,74,109.81	21,21,019.81
5.	657 dated 23.10.2017	19,47,000	23.12.2017	08.05.2018	136	1,74,109.81	21,21,109.81
<b>TOTAL OUTSTANDING AMOUNT WITH INTEREST @ 24% (INR)</b>						<b>9,53,763.29</b>	<b>1,06,88,763.29</b>

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2. **Brief history of the case:-** The Petitioner/ Operational Creditor is a supplier of various goods and raw materials. On demand and request by the Thermo Products (Corporate Debtor), RQS Engineering Pvt. Ltd. i.e. the Operational Creditor/ Applicant had supplied various goods and raw material as per the requirement and demand of the Corporate Debtor through its various purchase orders time to time commencing from 2017 and raised the Invoices accordingly.

3. No payments were made by the Corporate Debtor against the said Invoices. As a consequence, it is alleged that the running account of the Petitioner/ Creditor reflected debit balance of ₹97,35,000/- as on 22.02.2018.

4. As the Corporate Debtor failed to make payment of the outstanding Debt, the Operational Creditor issued Demand Notice dated 08.05.2018 in Form No.3 of The Code which is delivered to the Corporate Debtor on 14.05.2018.

5. It is submitted by the Petitioner/ Creditor that the Corporate Debtor had given a cheque of ₹19,47,000/- dated 26.04.2018 to the Operational Creditor, however, **the same was returned with remarks "unpaid by the Corporate Debtor Bank"** on 08.05.2018.

6. The Petitioner/ Operational Creditor submitted that there has been no dispute from the side of the Respondent/ Debtor till the date of issue of Demand Notice.

7. Even after receipt of the Demand Notice, the Corporate Debtor had not paid the impugned outstanding Debt amount nor sent any reply. As a consequence, this Petition u/s.9 of The Code is filed before this Tribunal.

**Submissions from the side of the Respondent:-**

8. The Respondent/ Corporate Debtor has submitted that on receipt of the Demand Notice dated 08.05.2018 from the Operational Creditor, the Corporate Debtor had informed M/s. Credence Law, New Delhi vide Letter dated 18.06.2018 with copy endorsed to the Operational Creditor herein stating that :-

- " 1. *We had purchased the material as mentioned by you, details of the invoices given below.*  
(.....)
2. *The said material was rejected as it was not suitable for us and Mr. Virendra Singh had visited our factory on 28<sup>th</sup> Nov 2017 to verify the same who also accepted that the material is faulty and minutes of meeting dated 28<sup>th</sup> Nov 2017 were made accordingly. "*

8.1. It is further submitted in this Letter of 08.05.2018 that "*till date we have not received the replacement material and hence the payment is not due*".

8.2. The 5 cheques bearing Nos.001803 dated 26.04.2018 for ₹19,47,000/-; No. 001804 dated 26.05.2018 for ₹19,47,000/-; No.001805 dated 26.06.2018 for ₹19,47,000/-; No.001806 dated 26.07.2018 for ₹19,47,000/-; and No.001807 dated 26.08.2018 for ₹19,47,000/- were stated to be given as '**Advance cheques**' as per special request made by one Mr. Yashpal Jatwani.

### **FINDINGS :-**

9. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established. Demand Notice has been issued to the Respondent Debtor, however, the Respondent Debtor had not replied to the said Demand Notice within the prescribed time period of 10 days u/s.8(2) of The Code. The Corporate Debtor received the Demand Notice on 14.05.2018 whereas reply thereto was issued by the Corporate Debtor only on 18.06.2018 which is clearly beyond the prescribed 10 days' time mentioned *supra*. Be that as it was, this technical objection is subject to controversy that whether mandatory or not, therefore, it is appropriate to decide this Petition on its merits.

10. As a consequence, keeping the admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Operational Creditor and that the issuance of cheques, although bounced, proved the admission of Debt, it is my conscientious view that this Petition deserves "Admission".

11. The Petitioner/ Creditor has not furnished the name of the Interim Resolution Professional in Part-III of Form No.5. However, Learned Representative of

the Petitioner has placed on record a Letter dated 08.01.2019 stating that the *"Operational Creditor undertakes to accept the Interim Resolution Professional (IRP) appointed by the Hon'ble Bench and further undertakes that it will not challenge his fees."* As a consequence, this Bench appoints **Mr. Anil S. Vaidya**, Plot No.107, Survey No.62/65, Mahatma Society, Bhusari Colony, Kothrud, Pune-411308, Registration No. IBBI/IPA-002/IP-N00067/2016-17/10145, as Resolution Professional.

12. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

13. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium** Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

14. Accordingly, this **CP (IB)-2318/(MB)/2018 stood** Admitted.

15. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-  
**(M.K. SHRAWAT)**  
Member (Judicial)

Date : 21.02.2019.

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