

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB)4708/I&BP/NCLT/MAH/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Mr. Anantrai Manilal Sheth

Shop No. 7, Ground Floor, Sita Vihar CHS,
Damani Estate, Near Shubh Restaurant, LBS
Marg, Thane (West), Maharashtra – 400602.

....Operational Creditor

v/s.

Flowtech Equipments (India) Pvt. Ltd,
W-203, MIDC TTC Industrial Area, Thane
Belapur Road, New Mumbai, Maharashtra -
400705.

..... Corporate Debtor

Order Delivered on: 06.03.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner: Ms. Dipika Biyani, Practising Company Secretary

For the Respondent: Mr. Sahdev Tanaji Ningale, Director of Corporate Debtor

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 (IBC) by Mr. Anantrai Manilal Sheth, a HUF registered under the laws of India and operating under the trade name of Arihant Steels (Operational Creditor) against Flowtech Equipments (India) Private Limited (Corporate Debtor) to initiate Corporate Insolvency Resolution Process (CIRP) against Corporate Debtor on the ground that the Corporate Debtor has started defaulting in making payment against several invoices from November, 2016 amounting to Rs. 76,26,065/- against material supplied to the corporate debtor.
2. The brief facts of the case are that the Operational Creditor is a wholesaler, reseller for iron and steel including MS steel plates, tubes etc. and is engaged in the business of sourcing and supplying the above material to various industries. The Corporate Debtor is engaged in the business of manufacturing process by using iron and steel and other material as sourced and supplied by operational creditor.

3. It is stated by the Petitioner that since last five years the Corporate Debtor has been sourcing part of its material and as per the terms sale contract, the Operational Creditor provides 60 days credit to the Corporate Debtor for material supplied to them.
4. It is stated that the Corporate Debtor has defaulted in making payment on several occasions and as a result, both parties have entered into an understanding to settle and regularise the past dues and accordingly the Corporate Debtor vide its letter dated 5th April, 2016 consented for payment of Rs. 10,00,000/- as interest on delayed payment until 31st March, 2016 and agreed to pay interest @ 24% per annum on the delayed payments in future. On the basis of this understanding, the Operational Creditor resumed supply of material and payments were made as per schedule, however, started defaulting in making payment from November, 2016.
5. It is stated that since the Corporate Debtor ignored to make payment against the invoices, the Operational Creditor discontinued further supply since January, 2018. In the meantime, Corporate Debtor approached Operational Creditor for resumption of supplies on the pretext that the payments will be cleared in instalments whereby issued eight post-dated cheques of Rs. 5 lacs each aggregating Rs. 40 lacs vide their letter dated 3rd April, 2018 with first cheque payable on 10th April and last cheque payable on 22nd May, 2018. Based on this, the supply of material resumed but the cheques were not honoured when presented and accordingly the Operational Creditor suspended the supply of material.
6. It is stated that to recover the outstanding dues, the Operational Creditor issued Demand Notice dated 23rd August, 2018 (along with all invoices) under section 8(1) of the IB Code, 2016 demanding payment of Rs. 76,26,065.82 (including interest until 31st July, 2018).
7. The Petitioner stated that during these intervening periods, the Operational Creditor came to know that symbolic possession of manufacturing facility of the Corporate Debtor has been taken over by State Bank of India under section 13(4) of the SARFAESI Act, 2002 against payment of Rs. 88,48,755.93 which depicts that the Corporate Debtor did not disclose its actual financial position.
8. It is stated that left with no other alternative, the Petitioner preferred this Petition before the Tribunal.
9. The Petitioner prayed the following relief from the Tribunal:-
 - "a. *Interim injection on proceedings being carried out by the State Bank of India, being the lender to the Corporate Debtor under SARFAESI Act, 2002;*

- b. Early admission of the Application given the precarious financial position of the Corporate Debtor for an amount of Rs.76,26,065.80 as on 31st July, 2018 along with future interest at the rate of 24% p.a. as agreed for by the Corporate Debtor and directions for Public Announcement of initiation of corporate insolvency resolution process as provided for under section 15 of the code;*
- c. Appointment of Ms. Rajshree Padia as the Interim Resolution Professional under section 16 of the Code;*
- d. Declaration of Moratorium as provided for under section 14 of the Code; and such other directions as the Hon'ble Bench may please to direct."*
10. From the above sequence of events, it emerges that the Corporate Debtor placed several purchase orders on different dates with the Petitioner for supply of material and accordingly the Petitioner supplied the material and raised various invoices. According to the Petitioner, the Corporate Debtor started default of payment against the invoices raised by the Operational Creditor w.e.f. November, 2016.
 11. A sum of Rs. 76,26,065/- has become due and the same was informed to the Corporate Debtor and requested for release of the payment.
 12. A bare perusal of the records, it is noticed that no any reply was given by the Corporate Debtor in spite of Demand Notice issued to them. There is no any apparent dispute raised in connection with the quality/quantity etc. The Corporate Debtor has not raised any dispute regarding the unpaid operational debt.
 13. The Petitioner has annexed the forwarding letter dated 03.04.2018 issued by the corporate debtor regarding issue of post-dated cheques.
 14. The Petitioner has annexed the copy of letter issued by the Corporate Debtor regarding acceptance for interest on delayed payment and acceptance of 24% interest per annum as interest on the delayed payment.
 15. The Petitioner has also annexed the statement of interest calculation for the outstanding bills in respect of the corporate debtor.
 16. The Petitioner has annexed the ledger account of the Corporate Debtor in the books of operational creditor.
 17. The Petitioner has also annexed the copies of invoices raised by the Operational Creditor to the Corporate Debtor from 15.11.2016 to 16.05.2018.
 18. The Petitioner has also annexed the Bank statement for period 01.08.2018 to 30.11.2018 in respect of operational creditor.

19. The Petitioner has also annexed the proof of service of petition served on the corporate debtor.
20. Heard the parties and perused the material available on record.
21. 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.
22. It is observed that the Operational Creditor has duly supplied the goods ordered by the Debtor and raised valid invoice for the same. There is no any apparent dispute raised in connection with the supply of books before issue of demand notice by the Operational Creditor which is *sine qua non* for the admission of the Petition. The Corporate Debtor has not raised any dispute regarding the unpaid operational debt. The application made by the Petitioner is in a realistic manner and dovetailing all these factors as required by law and it clearly shows that the operational debt has not been paid as also confirmed by the Corporate Debtor.
23. Therefore, there is a clear default on the part of the Corporate Debtor in the payment against certain invoices to the Petitioner and there is no existing dispute regarding the same.
24. On hearing of the matter, we find that the submission made by the Corporate Debtor is not found tenable and the dispute so raised is not a valid one and does not sustain in terms of judgment of the Hon'ble Supreme Court in the case of Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Ltd., Civil Appeal No. 9405 of 2017, hence, the matter deserves admission.
25. 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 06.03.2019 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 Ms. RajshreePadia, Registration No. IBBI/IPA-002/IP-N00119/2017-18/10288, Address: 17 & 18, 10th Floor, Pinnacle Corporate Park, G Block, BKC, Bandra (East), Mumbai- 400 051, E mail rajshree@hotmail.com as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

26. Accordingly, this Petition is admitted.

27. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional within seven days from the date order is made available.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Bhaskara Pantula Mohan
Member (Judicial)

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