IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-V

C.P. No. 2767/IBC/MB/2019

Under Section 9 of the Insolvency and BankruptcyCode, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Mitcon Consultancy & Engineering Services Ltd.

Having registered office at: 1st Floor, Kubera Chambers, Shivaji Nagar, Pune – 411 005

……*Operational Creditor*

Vs

M/s. Meru Kapital Pvt. Ltd.

Having registered office at: no. 1307, Dalamal Towers, A Wing, Free Press Journal Marg, Nariman Point, Mumbai – 400 021

…….*Corporate Debtor*

Order Reserved On: 16.12.2022

Order pronounced on:01.02.2023

Coram:

Hon'ble Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Ms. Srusti More, (Advocate)

For the Respondent: Mr. Rajesh Bohra, (Advocate)

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by Mitcon Consultancy & Engineering Services Ltd, hereinafter called as **Operational Creditor**, seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s. Meru Kapital Pvt. Ltd called as **Corporate Debtor** by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 5,75,000/- being principal amount and Rs. 2,19,476/- being the interest at the rate of 18% p.a.

Facts of the Case

2. The Petitioner has filed the present Petition under Section 9 of the IBC code seeking initiation of CIRP again the Corporate Debtor. The Petitioner submits that the Respondent vide contract dated 13.05.2016 had awarded the work of preparation of project report for the proposed Agriculture Development and Food Park at Dindori, Nashik to the Petitioner. According to the said contract, the total cost of work awarded to the Petitioner was Rs. 15,00,000/- along with applicable taxes. The said contact also contained terms of payments. It was also agreed between the parties to the said contract that if no payments were made to the invoices issued by the Petitioner within 30 days, then the Respondent would be liable to pay interest at the rate of 18% p.a.

3. The Petitioner submits that as per the terms of the contract, the Petitioner had received Rs. 5,72,500/- from the Corporate Debtor. Thereafter the Petitioner commenced the work. Accordingly, the officers of the Petitioner made a site visit of the project on 24.05.2016 & 25.05.2016 and thereby sent a check list of some required documents to the Corporate Debtor. However, the Corporate Debtor had delayed for supply of requested documents. The same was also conveyed by the Petitioner vide email dated

25.07.2016. The Petitioner thereafter issued several email reminders to the Respondent for the purpose of supply of the requisite documents. The said documents were necessary for preparation of the draft report. The Petitioner had also brought to the notice of the Respondent vide email dated 02.05.2018 whereby the timeline to submit the proposal was extended by the government.

4. The Petitioner submits that they had prepared the draft report and informed the same to the Corporate Debtor vide email dated 04.04.2017. According to the Petitioner, it had completed the assigned work up to stage 3 as per the terms of payments. Furthermore, the Petitioner states that the Respondent had not made any payment towards the Stage 2 as well. The Petitioner duly reminded the same to the Respondent.

5. The Petitioner submits that after due reminders and follow up the Respondent had made a payment of Rs. 3,15,000/- inclusive of tax towards (Stage -2) as per payment terms of work order.

6. The Petitioner submits that they had completed the work according to the terms of contract and within the stipulated timelines to the satisfaction of the Respondent. Accordingly, the Petitioner also submitted a draft report through an email dated 11.12.2017. Upon completion of work the Petitioner issued an invoice bearing no. SI/AFP/16-17/0036 dated 30.03.2017 for Rs. 5,75,000/- inclusive of tax.

7. The Petitioner upon submits that even after repeated reminders and constant follow up with the Respondent, the latter has failed to make the balance payments according to the contract agreed between the parties. As a result, the Petitioner issued a demand notice dated 13.05.2019 to the Petitioner wherein the Petitioner had demanded the repayment of Operational Debt of Rs. 5,75,000/- along with Rs. 2,19,476/- (being the interest at the rate of 18% p.a.). Furthermore, it is stated that the

Respondent despite delivery of the said Demand Notice has not responded to the same. Hence the present Petition.

<u>Findings</u>

8. In this case, upon notice, Mr. Bohra appeared on behalf of the Corporate Debtor but did not file any reply. We have heard the Counsel for the parties and have gone through the records.

9. It has been contended by the counsel for the Applicant that it is a full proof case for admission in terms of Section 9 of the Code. It has been pointed out that the Corporate Debtor had ordered the work of preparation of detailed project report for the proposed agriculture development and for the park at Nashik vide Contract dated 13.05.2016. The detailed cost of the work awarded was Rs. 15 lakhs out of which the Corporate Debtor has paid an initial advance of Rs. 5,72,500/- and in addition to that further paid an amount of Rs. 3,15,000/-. A sum of Rs. 5,75,000/- was still outstanding as per the terms and conditions of contract. In case of non-payment or delayed payment, the Corporate Debtor was bound to pay an interest of Rs. 2,19,476/-. Counsel for the Petitioner has further referred to the invoice dated 30.03.2017.

10. On the other hand, the corporate Debtor has not raised any defence even the reply under Section 9 has not been filed nor any reply to the demand notice has been filed on behalf of the Corporate Debtor. Further, neither the operational debt has been disputed nor any pre-existing dispute has been raised with regard to the admissibility at the claim has been raised on behalf of the Corporate Debtor. That being so, we find it to be the fit case for **admission** under Section 9 of the Code and ordered accordingly in the following terms:

ORDER

A. The above Company Petition No. (IB) 2767 of 2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Meru Kapital Private Limited.**

B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Lalit Zaverchand Shah**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02007/2020-2021/13102, having Email id LALITSHAHCA@GMAIL.COM and contact number- 9820232899 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

C. The Operational Creditor shall deposit an amount of Rs. (2) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

D. 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.

E. 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.

F. 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.

G. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

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

I. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

K. Accordingly, the **C.P.(IB) 2767 of 2019** is admitted.

L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-	**SD/-**
ANURADHA SANJAY BHATIA	**KULDIP KUMAR KAREER**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**