



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

CP (IB) No. 363/MB-IV/2023

Under Section 9 of the I&B Code, 2016

In the matter of:

Millenium Enterprise

...Operational Creditor/Applicant

V/s

Bombay Infrastructure India Limited

[CIN: U45200MH2006PLC159155]

...Corporate Debtor/Corporate Debtor

Order Dated: 02.08.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)

:

Mr. Prakhar Tandon i/b Niranjan

S. Karmarkar, Advocates.

For the Corporate Debtor(s)

:

Mr. Yash Bodkar i/b SRK

Partners, Advocate.

ORDER

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 363/MB/C-IV/2023 filed on 25.04.2023 by Millenium Enterprise, the Operational



Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Bombay Infrastructure India Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor has filed Authority Letter dated 06.03.2023 in support of authorization in favour of Mr. Pradip M. Shah, Partner of the Operational Creditor firm authorising him to file the present company application on behalf of the Operational Creditor.

2.1 The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 4,25,87,736/- pursuant to 5 invoices, issued by it to the Corporate Debtor consisting of Principal Amount of Rs. 3,07,15,314/- alongwith interest @24% amounting to Rs.1,18,72,422/-. The date of default is not clearly mentioned in the Part IV of the Application, however, on examination of the petition, it is claimed to be 05.08.2021 i.e. the expiry of one month from the date of issuance of first invoice.

2.2 The Operational Creditor is engaged in the business of wholesale, manufacturing, import & export of Steel and Iron products since 2012. The Corporate Debtor, in June 2021, was looking to buy steel and iron product for its running project of redevelopment and accordingly, enquired to the Operational Creditor and asked to provide a quote in respect of the required products. After negotiations regarding rates of products and approval of its samples the Corporate Debtor requested to the Operational Creditor to send Proforma Invoice and accordingly, the Operational Creditor issued proforma invoice quotation dated 03.06.2021 through Proforma Invoice/



Quotation no. 0095/2021-22 for an amount of Rs.3,07,15,314/- (Rupees Three Crore Seven Lac Fifteen Thousand Three Hundred Fourteen only).

- 2.3 The Corporate Debtor approved the proforma invoice and terms of payment and issued Purchase Order No. BIIL/0012/21-22 dated 11.06.2021 in the name of the Operational Creditor and gave its consent to deliver the material on time. The Operation Creditor delivered materials successfully as per purchase order BIIL/0012/21-22 against 5 invoices in the months of July and August, 2021 aggregating to a Total Bill Amount of Rs.3,07,15,314/-.
- 2.4 The Operational Creditor states that the Corporate Debtor did not raise any dispute in respect of the quality of products and had acknowledged the receipt of invoices. Even after delivery of all the materials, the Corporate Debtor did not clear any payment against above mentioned invoices. Resultantly, the Operational Creditor sent reminder letter dated 10.09.2021 and the Corporate Debtor replied to the same vide letter dated 14.09.2021 stating that due to financial crunch, the Corporate Debtor is unable to clear the payment of bills but has accounted the bills in its books of account and assured that the payment shall be cleared in coming days. Even after a considerable time of 3-4 months, the Corporate Debtor did not make any payment against the supply of materials and, the Operational Creditor again sent second reminder letter dated 14.12.2021 to the Corporate Debtor and asked to clear the bills immediately but in response, vide letter dated 20.12.2021, the Corporate Debtor just asked for more time and did not make any payment.



- 2.5 The Operational Creditor then issued third reminder letter on 01.04.2022 asking for payment along with interest @24% p.a. and the Corporate Debtor replied, vide letter dated 06.04.2022, informing about their weak financial status and requested further 6 months' time to arrange and clear the payment of overdue bills. The Operational Creditor, having long business relationship and considering the weak financial position of the Corporate Debtor, granted some more time, but even after 6 months thereof, no payment was received.
- 2.6 The Operational Creditor issued final reminder letter dated 17.12.2022 for clearing the outstanding immediately but there was no reply from the Corporate Debtor and no payment is received till date against the said invoices.
- 2.7 Aggrieved by non-repayment and no response from the Corporate Debtor, the Operational Creditor issued a Demand Notice in Form 4 on 10.03.2023 under Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor calling upon to clear the outstanding dues for Rs. 4,25,87,736/-. The Corporate Debtor has neither replied to the demand notice nor repaid the outstanding amount.
3. The Corporate Debtor has not filed any reply against the said petition. However, the Corporate Debtor was represented by a Counsel, who submitted that no invoice(s), claimed to be in default, were attached with the Notice of Demand in Form 4, hence the notice u/s 8 is defective, and the petition u/s 9 of IBC is not maintainable.
4. We have perused the documents and pleadings available on record and considered the arguments of both the sides.




- 4.1 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no dispute as regards the existence of the debt and the Operational Creditor has annexed the ledger statement of the Corporate Debtor for the period of 01.04.2021 to 28.02.2023 to the present petition in which the outstanding amount is reflected.
- 4.2 There are communications between the parties that the Corporate Debtor had sought time on many occasions, thereby evidencing existence of debt and default in payment thereof. The Corporate Debtor has admitted its liability and asked for time to repay the outstanding amount in its reply to all the three reminder letters dated 14.09.2021, 20.12.2021 and 06.04.2022. Accordingly, this Bench finds that there exists a debt and default of the said debt on the part of the Corporate Debtor as admitted by the Corporate Debtor, at latest, vide its letter dated 06.03.2023, confirming the outstanding of Rs. 4,25,87,736/- in the signed Statement/ Confirmation of Accounts as against the sale of materials under 5 invoices.
- 4.3 We find that the debt against the goods supplied with respect to the invoices raised by the Operational Creditor falls within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*”.
- 4.4 The Corporate Debtor during arguments referred to the decision of the Hon’ble National Company Law Appellate Tribunal, New



Delhi in the matter of *Neeraj Jain v/s Versus Cloudwalker Streaming and Ors. Company Appeal (AT) (Insolvency) No. 1354 of 2019*. This Bench finds that in this decision, it was held that “*the use of the word —OR in Section 8 cannot be interpreted as such, that the Insolvency and Bankruptcy Code has provided a choice or a discretion to an Operational Creditor, to provide an escape route from submission of the invoice, which can be treated as the most relevant document to prove the debt and amount in default*”. The Hon’ble NCLAT further held that “*the choice of issuance of demand notice u/s 8(1) of the Insolvency and Bankruptcy Code 2016, either in Form 3 or Form 4, under the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt*”. It further held that *the applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not, but if notice is issued in Form 3, the submission of copy of invoice is not a mandatory requirement*.

- 4.5 This Bench finds that, in the present case, the notice u/s 8(1) of the Code was issued in Form 4, and the said notice states that in the last line of first para thereof that the copy of invoices and ledger account are attached to the notice. It is not the case of the Corporate debtor that it had responded to the demand notice bringing to the notice of the Operational Creditor that the copy of invoice(s), stated to be attached in the notice, are not found attached thereto. No evidence to this effect was placed on record by the Counsel of the Corporate Debtor at the time of hearing. Accordingly, this Bench is of the considered view that it can not doubt the statement in Form 4 that the invoices are attached to the said notice. Accordingly, the notice of demand is a valid notice, hence, the present Application is maintainable.

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- 4.6 On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.
5. The Applicant has proposed the name of Mr. Vishnu Kant Kabra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02178/2021-2022/13747] and Email Id.- vishnukabra@rediffmail.com; and has submitted his consent letter dated 17.04.2023 u/s. 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

6. This Application being C.P. (IB) No. 363/NCLT/MB/C-IV/2023 filed under Section 9 of I&B Code, 2016, filed by Millenium Enterprise, Operational Creditor/ Applicant against Bombay Infrastructure India Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:
- I. That this Bench as a result of this 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 Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Mr. Vishnu Kant Kabra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02178/2021-2022/13747] and Email Id.- vishnukabra@rediffmail.com; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.



IX. The Registry is 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. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Prabhat Kumar
Member (Technical)
//LRA-Akshata Shah//

Sd/-
Kishore Vemulapalli
Member (Judicial)