

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

CP (IB) No.4013/MB/C-IV/2018

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

**Girish Sangani,
Proprietor of G Chimanlal & Co**

...Operational Creditor

Versus

**Shreejicharan Engineering Private Limited
[CIN: U45201MH2007PTC168326]**

... Corporate Debtor

Order pronounced on : 28.04.2020

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Ms Madhubala M Dave,
Advocate
For the Corporate Debtor : No representation

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 ("IBC") by Mr **Girish Sangani, Proprietor of G Chimanlal & Co ("the Operational Creditor")**, a proprietorship concern represented by its proprietor, Mr Girish Sangani seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Shreejicharan Engineering Private Limited ("the Corporate Debtor")**.
2. The Corporate Debtor is a private company limited by shares and incorporated on 05.03.2007 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U45201MH2007PTC168326. Its registered office is at G-7, Gautam Dhan Apartment, Dadabhai Road, Vile Parle (West), Mumbai 400 056, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹10,28,093.00 (Rupees ten lakh twenty-eight thousand and ninety-three only) as principal as on 31.03.2015, which is the date of default.
4. The case of the Operational Creditor is that it had supplied TMT bars to the Corporate Debtor between 02.01.2013 and 19.03.2014

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under twenty-one invoices for which payments have not been received (para 1 at page 5 of the Petition).

5. Invoices have been placed on record as **Exhibit 'B-2'** at pp.20-41. The invoices do not provide for interest in case of delayed payments. Ledger Accounts are attached as **Exhibit 'B-3'** at pp.42-44. The total debt claimed to be due and payable to the Operational Creditor is ₹10,28,093.00 (Rupees ten lakh twenty-eight thousand and ninety-three only), as mentioned at page 19 of the Petition.
6. The Operational Creditor had served a Demand Notice dated 18.07.2018 in Form 3 upon the Corporate Debtor (**Exhibit 'B-11'**, pp.68-72) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.
7. The Corporate Debtor has unequivocally acknowledged the debt to the extent of ₹3.60 lakh as on 31.10.2014, *vide* its email dated 27.08.2015, as seen from the Petition at pp.45-47.
8. The Corporate Debtor has not submitted any reply to the petition, nor was it represented in the present proceedings.
9. We have heard the arguments of the Learned Counsel for the Operational Creditor and perused the records.
10. It is noted that the Corporate Debtor has admitted the liability by the letter dated 27.08.2015, at p.45-47. However, we are duty

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bound to look into the aspect of limitation even if the defence is not raised.

11. We notice that the transactions in question pertain to the period from 02.01.2013 and 19.03.2014. The date of default as stated by the Operational Creditor is 31.03.2015.
12. The period of limitation under Article 137 is three years. Therefore, the period of limitation in terms of Article 137 of the Limitation Act, 1963, commenced on 01.04.2015 and ran upto 31.03.2018. There is acknowledgment of liability, albeit to the extent of ₹3.60 lakh as against the claim of ₹10,28,693/-, *vide* email dated 27.08.2015, showing the balance as at 31.10.2014. Therefore, in terms of section 18 of the Limitation Act, 1963, a fresh period of limitation began to run on 27.08.2015, which came to an end on 26.08.2018. The present petition has been filed on 22.10.2018, *i.e.*, after the expiry of the period of limitation.
13. That apart, the petition is incomplete inasmuch as the necessary affidavit under section 9(3)(b) has not been attached. Neither is there any bank statement or bankers' certificate or any other proof confirming that there is no payment of the unpaid operational debt by the corporate debtor.
14. For the reasons stated above, the present petition fails and therefore, the same is rejected.
15. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the

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petitioner before any other judicial forum shall not be prejudiced on grounds of dismissal of the present petition by this Adjudicating Authority.

16. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajasekhar V.K.
Member (Judicial)

28.04.2020