IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH

C.P. No. 4016/IBC/MB/2018

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

In the matter of

Godrej & Boyce Mfg. Co. Ltd.
(CIN:U28993MH1932PLC001828)
Through Mr. Vijayan Warrier
Senior General Manager – Finance,
Having its address at:
Pirojshanagar, Vikroli,
Mumbai, Maharashtra - 400079
……Operational Creditor

Vs

Technic Projects Constructions Pvt. Ltd.
(CIN:U45500MH2016PTC284452)
Having registered office at: 503,
The Affaires, Plot No. 9, Sector 17
Palm Beach Road,
Near Moraj Residency, Sanpada,
Navi Mumbai, Thane
Maharashtra - 400705
...….Corporate Debtor

Order delivered on : 06.12.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Sagar Divekar, Advocate
a/w Advocate Abhimanyu Mhapankar and
Advocate Pranati Dabholkar.

For the Respondent: Advocate Atul Singh.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company petition is filed by Godrej & Boyce Mfg. Co. Ltd. (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Technic Projects Constructions Pvt. Ltd. (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an Operational Debt of Rs. 43,05,872.35/-

2. The Submissions of the Operational Creditor are as follows:
   a. The Operational Creditor has filed the present Application under Rule 6 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 owing to the defaults made by the Corporate Debtor in making payments of the amount due to the Applicant.
   b. The Operational Creditor submitted Quotation No. I, II, III, IV & V along with the terms of contract to the Respondent for the supply of various grades of Ready

Mix Concrete (**"RMC"**) for Corporate Debtor`s projects for Xrbia Developers Limited, located at its Madap Site and Vangani Site and the Respondent issued the corresponding Purchase Orders I, II, III, IV & V to the Operational Creditor.

c. The Operational Creditor mentions that it had delivered the required material from time to time to the Respondent as per the conditions stipulated under the Purchase Orders and raised the Invoices on the Corporate Debtor for the supply of the said material under the Purchase Orders, which were duly certified by the Corporate Debtor.

d. The total value of the said Invoices raised by the Corporate Debtor for the supply of RMC under all the Purchase Orders amounted to Rs. 52,31,004,91/- (Rupees Fifty Two Lakh Thirty One Thousand and Four and Paisa Ninety One Only). Till date, the Operational Creditor has received an amount of Rs. 18,45,497.46/- (Rupees Eighteen Lakh Forty Five Thousand Hundred and Ninety Seven and Paisa Forty Six Only). The balance outstanding that remains to be paid by the Respondent to the Applicant from the aforesaid amount of Rs. 52,31,004.91/- (Rupees Fifty Two Lakh Thirty One Thousand and Four and Paisa Ninety One Only) as on date is Rs. 33,85,507.45/- (Rupees Thirty Three Lakh Eighty Five Thousand and Seven and Paisa Forty Five Only).

e. The Operational Creditor has time and again requested TPCPL to clear the outstanding dues payable, vide emails or by conducting joint meetings of the Operational Creditor and Corporate Debtor, however, the Corporate Debtor has failed to clear the outstanding dues on one pretext or the other. However, the Corporate Debtor, by its two letters, both dated 12th April, 2018, confirmed its liability to the Operational Creditor of an outstanding amount of Rs. 28,53,525/- (Rupees Twenty Eight Lakh Fifty Three Thousand Five Hundred and Twenty Five Only) for the supply of RMC at Vangani Site and Rs. 5,00,449/- (Rupees Five Lakh Four Hundred and Forty Nine Only) for the Madap Site.

f. The Petitioner mentions that based on the documents placed on record the Corporate Debtor has failed in making the payment of outstanding amount as per the invoices against the rendered services. Therefore, as per the Operational Creditor is entitled to recover the amount due and payable by the Corporate Debtor.

3. The submissions of the Corporate Debtor are as follows:

a. The Corporate Debtor submits in its reply that the present Company Petition whereby the Operational Creditor in this Application alleged claim of Rs. 33,85,507/- (Rupees Thirteen Lakhs Eighty Five Thousand Five Hundred and Seven Only) being the alleged principle operational debt along with alleged interest @ 24% p.a. amounting to Rs. 9,20,365/- (Rupees Nine Lakhs Twenty Thousand Three

Hundred and Sixty Five Only) aggregating to Rs. 43,05,872.35/- (Rupees Forty Three Lakhs Five Thousand Eight Hundred and Seventy Two and Thirty Five Paisa Only). In connection to the same Corporate Debtor submits that the alleged claim amount sought by the Operational Creditor is simply a malafide opportunistic attempt to exert pressure on the alleged Corporate Debtor to concede to the illegal and *mala fide* claims of the Operational Creditor through preferring such false and frivolous Application.

b. The Corporate Debtor further submits that the Application which has been instituted by the Operational Creditor here in respect of the alleged defaults made by the Corporate Debtor in making payments for the invoices raised by the Operational Creditor for the supply of various grades of Ready Mix Concrete (“RMC”) under the respective Purchase Orders. In connection with the same Operational Creditor denies the contents of the filed Application and state that the refusal of the alleged Corporate Debtor in making the payments under the aforementioned Purchase Orders arises on account of the failure of the Operational Creditor in the installation and commissioning of the batching plant at the two sites of the Corporate Debtor namely at Vangani and Madap sites. Secondly, in spite of the Corporate Debtor sending numerous notices to improve the quality of the supply of cement, the Operational Creditor continued to supply unacceptable grade of cement resulting in further delay in completion of the project of the Corporate Debtor, the delay in turn resulted into financial losses incurred upon by the Corporate Debtor.

c. The Corporate Debtor submits that, the Operational Creditor had promised to set up the batching cement plant at the construction sites for the continuous supply of cement. The Corporate Debtor further says that the Operational Creditor deliberately failed to set up the batching plant at the Vangani and Madap construction sites of the Corporate Debtor. Operational creditor was reminded several times highlighting the delay in setting up the set the batching plant at the earliest. Further the Operational Creditor admits that due to the failure on the part of the Operational Creditor to install the batching plant within the assured timeline the Corporate Debtor was left with no option and was compelled to purchase the RMC from the Operational Creditor at exorbitant rates. The losses incurred was on account of the increase rate in the procurement of the cement is being made to be borne solely by the Corporate Debtor.

d. The Corporate Debtor further submits that the said acknowledged liability was issues by the Corporate Debtor when the hope for amicable resolution existed between the Corporate Debtor and its Principal and the Operational Creditor. The Operational Creditor had approached the Corporate Debtor around March/ April 2018 with a proposition that it would itself take on the burden to resolve the quality issue with Xrbia Developers Pvt. Ltd. and recover its amounts directly from the principal i.e. Xrbia Developers. On the request of Operational Creditor and to provide the Operational Creditor with a basis to approach the principal i.e. Xrbia Developers, the Operational Creditor mislead the Corporate Debtor into signing such acknowledgement of liability.

e. The Corporate Debtor stated that in these circumstances, the present company petition be dismissed at the outset, with costs payable to the Corporate Debtor.

FINDINGS

4. The CP (IB)-4016/MB/2018 u/s 9 of the Insolvency & Bankruptcy Code, 2016 has been filed on 22.10.2018 by Godrej & Boyce Mfg. Co. Ltd in the capacity of Operational Creditor against M/s Technic Projects Constructions Pvt Ltd, Thane, Maharashtra, the Corporate Debtor.

5. The Petitioner has filed the captioned Petition for non-payment of unpaid bills by the Corporate Debtor towards supply of Ready Mix Concrete (RMC) at the site of the Corporate Debtor projects located at Madap and Vangani. The petitioner has raised Invoices upon the Corporate Debtor for supply of RMC

subsequent to issue of quotations along with terms of contract followed by Purchase Orders by the Corporate Debtor. The total value of invoices raised by the Petitioner as per the Petition is about Rs.52,31,004/- out of which, the Petitioner mentions that the Corporate Debtor has paid about Rs.18,45,497/-. The balance principal amount as per the Petitioner towards unpaid invoices is Rs.33,85,507/- with interest over and above the principal @ 24% per annum as per quotation for supply of RMC at Vangani site as well as Madap site.

6. The Bench notes that the last payment made by the Respondent was to the tune of about Rs.5 lakh on 11.01.2018.

7. The Bench notes that all the quotation, requisite Purchase Order and Invoices have been enclosed with the Petition by the Petitioner. The Bench further notes that the payment details as on 11.01.2018 has also been provided in the Petition. This Bench notes that the Corporate Debtor has confirmed and admitted this liability to the Petitioner vide its letter dated 12.04.2018 for an amount of Rs.5,00,449/- for the supply of RMC for the Madap Project and vide another letter of the same date, confirming the dues of Rs.27,53,525/- for the RMC supplied for the Vangani project. These letters have been sent by M/s Technic Projects Constructions Pvt Ltd, the Corporate Debtor to the Petitioner. The Bench also notes that the Petitioner has issued the demand notice on 20.08.2018 to the Respondent in Form 3 claiming an amount of Rs.33,95,507/- under IBC, 2016.

8. The Petitioner further submits that the Respondent did not reply to the said demand notice. The Respondent in its reply has raised primarily two disputes viz. **(i)** Non-commissioning of batching plant at the construction site at Vangani and Madap and **(ii)** Issues relating to quality of RMC supplied by the Petitioner.

9. The Bench in this regard notes that there is no written agreement between the parties regarding the setting up of a batching plant at the sites. The Petitioner mentions that as per the discussions of the parties, the batching plant was to be set up at Vangani site only and not at Madap site. However, as per the discussion between the parties, as recorded in their emails, the Petitioner had asked the Respondent for Bank Guarantee for setting up the batching plant. It is the contention of the Petitioner that since they did not receive any such Bank Guarantee, the batching plant was not set up at Vangani site. Regarding the setting up of batching plant at Vangani project, the Bench would like to refer to an email letter dated 26.12.2017 sent by the Corporate Debtor to the Petitioner regarding setting up of RMC plant at Vangani where the Corporate Debtor mentions that as per the commitment in the mail dated 28.10.2017 the plant was to start within 7 (seven) days from the receipt of Bank Guarantees from Titan and Prabhav. A snap shot of the email is as under:-

9 109

Srijesh Kumar

From: Aniket Patel <aniket.patel@tpc.net.in>
Sent: 26 December 2017 16:19
To: 'Joshi Kshitij'; 'Gawde Abhijeet'; 'P M N'
Cc: Tanmay Godambe (tanmay.godambe@tpc.net.in); 'Amit Gade' (amit.gade@tpc.net.in)
Subject: Setup of dedicated project based RMC plant and supply of RMC at Xrbia Vangani Project.

To,

Godrej & Boyce Mfg. Co. Ltd,

Regd. Office : Pirojshanagar,

Vikroli, Mumbai 400 079, India.

Kind Attn : Mr. Kshitij Joshi / Mehernosh N Pooniwala.

Sub : Setup of dedicated project based RMC plant and supply of RMC at Xrbia Vangani Project.

Dear Sir,

This is in reply to your letter dated 18th December received on 19th December 2017, with reference to various reminders via mail from o side production of RMC setup at Xrbia Vangani site was not started on time. It was committed from your side to start the operations of th said plant in the month of July 2017. The plant reached site late and hence the installation process too started late. We had kept the site ready by spending money hiring machinery to level the site as required by your kind self.

Failing to the commitment from your side of starting the operations of the plant in time, we were restrained to buy concrete from you at a very higher rate compared to concrete produced on site RMC setup. This has caused us to spend us more money than what was considere in our budgets and unnecessary delay in the work which has disturbed our cash flows to a great extent.

Later as per your mail dated October 28th 2017 the Plant was to start within 7 days after receipt of Bank Guarantees from Titan and Prabhav.

In consideration of the above scenarios we request you to immediately start operations with the site dedicated RMC plant and do not acc any claim. We will make the pending payment in parts as we are facing problem of cash flow.

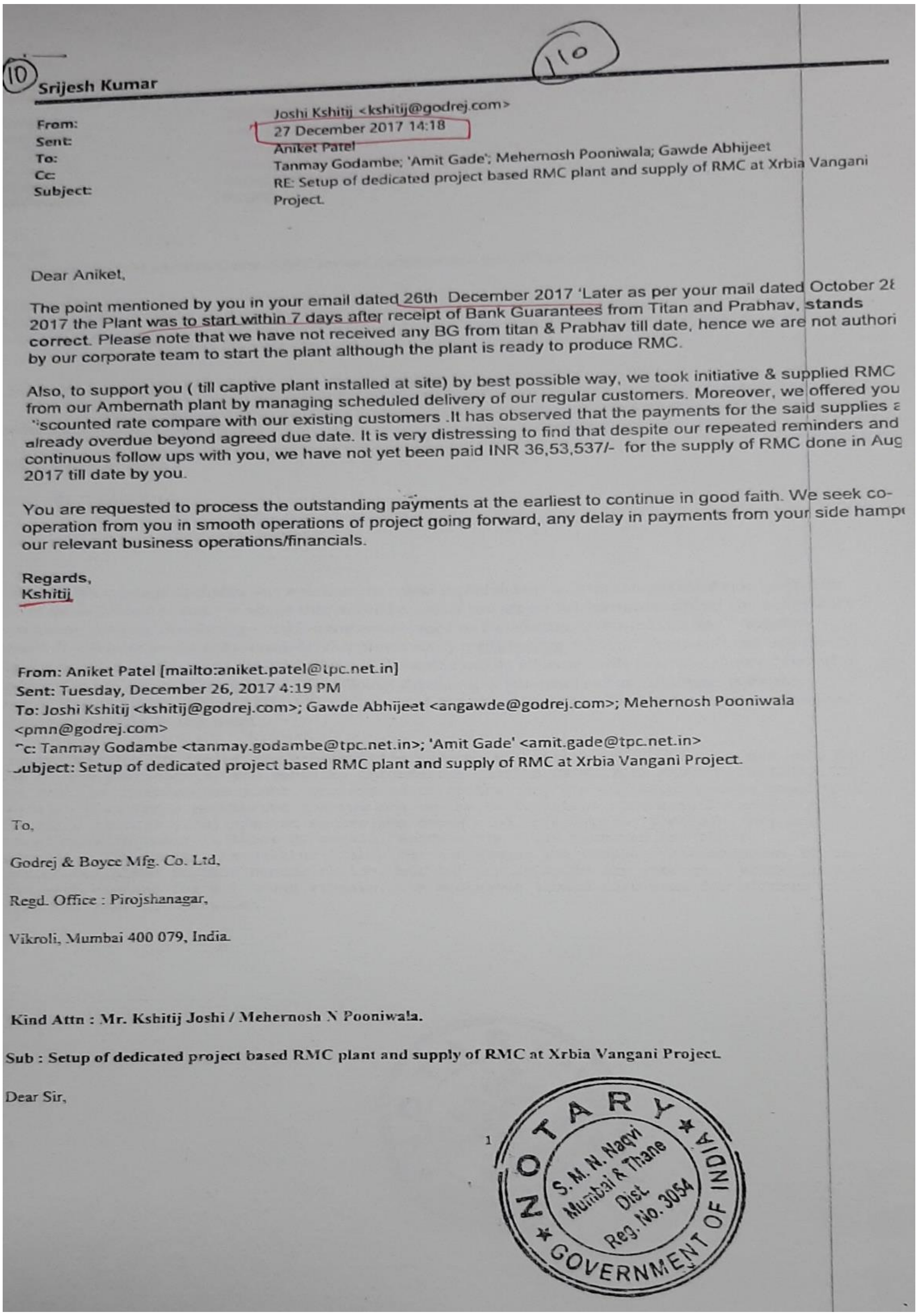
Regards,
Aniket Patel.
Manager - Project Co-Ordination.

TPC
TECHNIC PROJECTS CONSTRUCTIONS PVT. LTD.
aniket.patel@tpc.net.in
The Affaires, Office premises No. 503,
Plot No. 9, Sector 17, Palm Beach Road,
Sanpada, Navi Mumbai – 400 705.

1

NOTARY S. M. N. Naqvi Mumbai & Thane Dist. Reg. No. 3054 GOVERNMENT OF INDIA

10. In response to this email, Petitioner side vide email dated 27.12.2017 mentioned that they are unable to start the plant because of non-receipt of Bank Guarantee from Titan and Prabhav. A snap shot of the said email is as under:-


10 110

Srijesh Kumar

From: Joshi Kshitij <kshitij@godrej.com>
Sent: 27 December 2017 14:18
To: Aniket Patel
Cc: Tanmay Godambe; 'Amit Gade'; Mehernosh Pooniwala; Gawde Abhijeet
Subject: RE: Setup of dedicated project based RMC plant and supply of RMC at Xrbia Vangani Project.

Dear Aniket,

The point mentioned by you in your email dated 26th December 2017 'Later as per your mail dated October 2[illegible] 2017 the Plant was to start within 7 days after receipt of Bank Guarantees from Titan and Prabhav, **stands correct**. Please note that we have not received any BG from titan & Prabhav till date, hence we are not authori[illegible] by our corporate team to start the plant although the plant is ready to produce RMC.

Also, to support you (till captive plant installed at site) by best possible way, we took initiative & supplied RMC from our Ambernath plant by managing scheduled delivery of our regular customers. Moreover, we offered you [illegible]scounted rate compare with our existing customers .It has observed that the payments for the said supplies [illegible] already overdue beyond agreed due date. It is very distressing to find that despite our repeated reminders and continuous follow ups with you, we have not yet been paid INR 36,53,537/- for the supply of RMC done in Aug 2017 till date by you.

You are requested to process the outstanding payments at the earliest to continue in good faith. We seek co-operation from you in smooth operations of project going forward, any delay in payments from your side hamp[illegible] our relevant business operations/financials.

Regards,
Kshitij

From: Aniket Patel [mailto:aniket.patel@tpc.net.in]
Sent: Tuesday, December 26, 2017 4:19 PM
To: Joshi Kshitij <kshitij@godrej.com>; Gawde Abhijeet <angawde@godrej.com>; Mehernosh Pooniwala <pmn@godrej.com>
Cc: Tanmay Godambe <tanmay.godambe@tpc.net.in>; 'Amit Gade' <amit.gade@tpc.net.in>
Subject: Setup of dedicated project based RMC plant and supply of RMC at Xrbia Vangani Project.

To,

Godrej & Boyce Mfg. Co. Ltd,

Regd. Office : Pirojshanagar,

Vikroli, Mumbai 400 079, India.

Kind Attn : Mr. Kshitij Joshi / Mehernosh N Pooniwala.

Sub : Setup of dedicated project based RMC plant and supply of RMC at Xrbia Vangani Project.

Dear Sir,

1

NOTARY
S. M. N. Naqvi
Mumbai & Thane Dist.
Reg. No. 3054
GOVERNMENT OF INDIA

11. It is very clear from the above that the batching plant with RMC could not be set up because of non-receipt of Bank Guarantee which was a condition precedent between the parties.

12. The Respondents in their reply have mentioned that the Petitioner was supplying defective material to them. It is the contention of the Petitioner side that there were some defects and the same were rectified immediately. In this regard this Bench notes that the quality issues raised by the Respondent relates to the period from June 2017 to July 2017 and even after that the Respondent raised 3 (three) Purchase Orders for substantial amount, which shows that the issues raised by the Respondent in regard to quality of materials were resolved.

13. Be that it may, the Bench notes that the two letters dated 04.12.2018 which is much after the quality issue was pointed out by the Respondent in June-July 2017, the Respondent has clearly admitted the amount due of Rs.28,53,525/- for Vangani project and Rs.5,00,449/- for Madap project. The clear-cut admission and confirmation of the debt by the Corporate Debtor leaves no doubt that the amount of Rs.33,53,974/- is due and payable to the Petitioner. Therefore, there is a clear ‘Debt’ in terms of Section 3(11) and there is a ‘default’ in terms of Section 3(12) of IBC, 2016. The Bench is, therefore, inclined to “Admit” the Petition u/s 9 of the IBC, 2016.

14. As a consequence, keeping the admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the

Petitioner/ Operational Creditor, it is our conscientious view that this Petition deserves "Admission".

15. The Operational Creditor has proposed the name of the Interim Resolution Professional, Mr. Dhanshyam Kantilal Patel. Accordingly, this Bench appoints Mr. Dhanshyam Kantilal Patel, Registration No. IBBI/IPA-001/IP-IP-01373/2018-2019/12155, Address: 322, Zest Business Spaces, M G Road, Ghatkopar East, Mumbai-400077, email: dpatel@ckpatel.com, Mobile: 9819718099. 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 process and 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.

16. 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 Corporate 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.

Accordingly, CP(IB)-4016/MB/2018 stands **"Admitted". ** The Corporate Insolvency Resolution Process shall commence from the date of this Order.

17. Registry is directed to communicate this order to both the parties and the IRP immediately.

Sd/-	Sd/-
Chandra Bhan Singh	H V Subba Rao
Member (Technical)	Member (Judicial)