

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB)/625/2023

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

In the matter of

HTL Aircon Private Limited, having registered office at Unit No.38, Nand Ghanshyam Industrial Estate, Off Mahakali Caves Road, Andheri (East), Mumbai 400093

..... Applicant/ Operational Creditor

Versus

Leena Power-Tech Engineers Private Limited, having its registered office at :- Shop No.1314, Sai Chambers, Sarovar Vihar Road, Sector 11, CBD Belapur, Mumbai 400614.

.....Corporate Debtor

Order Delivered on :- 12.09.2023

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Operational Creditor: Adv. Pushkal Mishra a/w Adv. Kajol Punjabi

For the Corporate Debtor: None Appeared

ORDER

Per:- Anil Raj Chellan, Member Technical

1. This Company petition is filed by HTL Aircon Private Limited (hereinafter referred to as "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Leena Power-Tech Engineers Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Copy of board resolution authorising filing of the petition/proceedings is annexed to the Company Petition.
2. The Company Petition was filed on 25.05.2023 claiming an amount of Rs.1,61,02,316/- (Rupees One Crore Sixty One Lakh Two Thousand Three Hundred and Sixteen Only) comprising of Rs.1,06,66,953/- principal and Rs.54,35,363/- interest as per the running ledger account as on March 31, 2023.
3. The details of the transactions leading to the filing of this Application as averred by the Operational Creditor in the application are as follows:

- a) The Operational Creditor is engaged in the business of providing complete gamut of premium integrated HVAC (Heating, Ventilation and Air Conditioning) & MEP Contracting Services. The Corporate Debtor is engaged in the business of Manufacturing of Electric Motors, Generators and transformers.
- b) The Operational Creditor was engaged by the Corporate Debtor for supply of certain quantities of product vide Purchase Order No.BPB/POI 2018-19/2230 R1 dated 13.02.2019. The Operational Creditor supplied the goods and installed the products to the Corporate Debtor from time to time as per the terms and conditions of the Purchase Order.
- c) In respect of the goods purchased by the Corporate Debtor, the Operational Creditor raised 14 invoices during the period from 29.03.2019 to 20.01.2021 for the goods supplied. There was a credit period of 45 days (as applicable to the respective Purchase Orders' T&Cs) for making payment of each invoice from the date of each invoice raised. Further, the Corporate Debtor is also liable to pay interest at the rate of 18% per annum from the date of overdue amount of each invoice.
- d) Despite supplying the goods, the Corporate Debtor has failed to make the payments towards the outstanding dues of Rs.1,06,66,953/-. The Corporate Debtor vide its email dated 03.08.2022 admitted the liability.

- e) In view of the failure on the part of the Corporate Debtor to make the payments, the Operational Creditor was constrained to issue Demand Notice in Form 3 dated 28.02.2023 to the Corporate Debtor demanding Rs.1,61,02,316/- (Outstanding amount of Rs.1,06,66,953/- plus interest amount of Rs.54,35,363/-) as per running ledger account as on 16.02.2023. The copy of Demand Notice issued under Section 8 of the Code was attached as Annexure H to the application and the same was served on the Corporate Debtor on 01.03.2023 as per the postal receipt submitted along with the application. Despite receipt of the said Demand Notice dated 28.02.2023, the Corporate Debtor did not make the payment under the invoices to the Operational Creditor, and hence the Operational Creditor has filed the present application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
4. The Operational Creditor, through its advocate clerk, filed its affidavit of service confirming service of soft copy of petition by email dated 04.06.2023 and court notice was also served upon the Corporate Debtor. However, there was no representation on behalf of the Corporate Debtor and hence the Corporate Debtor was proceeded *ex-parte*.

ANALYSIS AND FINDINGS

5. We have heard the Counsel for the Operational Creditor and have gone through the records.

6. A perusal of the record reveals that the Purchase Order dated 13.02.2019 provided, inter alia, that 65% of the Supply amount was to be released after 45 days from the date of GRN against the supplied material at site in good condition, 15% of supply & 80% of installation amount payable was to be released after 45 days after erection and testing of material with submission of reconciliation statement while 10% of SITC amount after 45 days after successful commissioning of equipment and submission of WCR to Cidco Authority as per format & signing, and 10% of STC amount after 45 days from the date of handing over of the project. Thus, it is evident from the purchase order the initial payment of 65% was to be made against each invoice after a period of 65 days.

7. It is not disputed that there is no provision in the Purchase Order for payment of any interest in the event of delay. Pursuant to the above Purchase Order, the Operational Debtor raised 14 invoices during the period from 29.03.2019 to 20.01.2021 for the goods supplied. All the invoices were in the same format and none of the invoices contained a provision requiring payment of interest in the event of delay in payment by the Corporate Debtor. The email communications exchanged between the parties also do not mention anything with regard to payment of interest in respect of the delayed period. The Counsel for the Operational Creditor has also candidly admitted that there is no contract between the parties with regard to payment of interest. Therefore, the amount of interest of Rs. 54,35,363/- claimed in the Petition is liable to be excluded from the claimed amount.

8. As claimed by the Operational Creditor, default was committed by the Corporate Debtor in relation to 14 invoices raised during the period from 29.03.2019 to 20.01.2021, and the initial due date for payment was 45 days from the date of issue of each invoice. The counsel appearing for the Operational Creditor further submitted/confirmed that the principal amount excluding interest due under those invoices was Rs.1,06,66,953/- only. It is noteworthy that the invoices in question were issued between the period from 29.03.2019 to 10.08.2021. Out of these invoices, at least two invoices dated 31.03.2020 for amounts of Rs. 60,04,835/- and Rs. 25,65,385/- fall under the period covered by Section 10A of the Code, 2016 which provides that no application can ever be filed under section 7,9 and 10 of the Code in respect of any default alleged to have taken place between 25.03.2020 and 25.03 2021. If the invoices dated 31.03.2020, which are covered u/s 10A of the Code, are excluded, the claim amount of Rs. 1,06,66,953/- would fall below the threshold limit of Rs. 1 crore prescribed u/s 4 of the Code. Therefore, in our considered view the instant Petition u/s 9 is liable to dismissed on the ground that the amount claimed is less than the prescribed threshold limit of Rs. 1 crore.

9. In the light of the above brief discussion, the instant Company Petition filed u/s 9 of the Code, 2016 is hereby **dismissed**. File be consigned to records.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)