

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

**C.P. (IB)No.3419/NCLT/MB/2019**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Esszee Manufacturing Private Limited**

...Operational Creditor/ Applicant

V/s

**SPG Multi Trade Private Limited**

...Corporate Debtor / Respondent

**Order Dated: 03.03.2020**

**Coram:** Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan

Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Applicant:** Mrs. Hasmita Kapadia i/b Adv. K.G. Parmar

**For the Respondent:** None Present

*Per: Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an application being C.P. (IB) No. 3419/NCLT/MB/2019 filed by **Esszee Manufacturing Private Limited**, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **SPG Multi Trade Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed by RKC Legal, Law Firm, authorised signatory of Operational Creditor, claiming a total default of Rs.77,32,67,231/- (Rupees Seventy-Seven Crore Thirty-Two Lakh Sixty-Seven Thousand Two Hundred and Thirty-One Only) out of which principal amount of Rs.71,14,56,387/- (Rupees Seventy-One Crore Fourteen

Lakh Fifty-Six Thousand Three Hundred and Eighty-Seven Only) and interest of Rs.6,18,10,844/- (Rupees Six Crore Eighteen Lakh Ten Thousand Eight Hundred and Forty-Four Only) at 21% p.a.

3. The Applicant submitted that it supplied variety of fabrics, raw cotton bales, plates and iron steel products to the Corporate Debtor and raised invoices for the same from 26.03.2018 to 07.12.2018. Further the Applicant submitted the Copy of invoice showing interest @21% p.a. Copies of the said invoices are annexed to the Application.
4. The Applicant submitted that it raised last invoice of Rs.75,16,600/- on 07.12.2018 and therefore the payment was due on 10.12.2018, which is the date of default. Further Applicant submitted that the Corporate Debtor was irregular in making payment and last payment was made of Rs.5,00,000/- as on 31.01.2019.
5. The Applicant submitted that the Applicant sent reminder letters from 02.02.2019 to 25.06.2019 to the Corporate Debtor. Copies of the said letters demanding the payment are annexed to the Application. Further the Applicant submitted that despite several reminders and follow up through letters the Corporate Debtor failed to settle the Corporate Debt though the Corporate Debtor returned part of the goods sold by the Applicant.
6. The Applicant submitted that the Corporate Debtor acknowledged and confirmed its liability of Rs. 71,14,56,390/- towards the invoices, vide the Ledger Account maintained in the Books of Account of the Applicant for the period 01.04.2017 to 15.07.2019. Copy of balance confirmation of accounts is annexed to the Application.
7. The Applicant submitted that even after assurance and admission of liability, the Corporate Debtor defaulted in making payment of the outstanding invoices. Therefore, the Applicant issued Demand Notice dated 12.03.2019 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of Rs.71,14,56,390/- and interest thereon at 21% p.a. The Corporate Debtor did not reply to the Demand Notice.

8. The Applicant filed present Application on 20.09.2019. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 24.09.2019. The Applicant filed its Affidavit of Service of Notice on 10.12.2019. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor chose not to file any objections in its defence and has already confirmed and acknowledged its liability vide the Ledger Accounts for the period 01.04.2017 to 15.07.2019.
9. There was no representation on behalf of the Corporate Debtor during hearing. We have heard the Applicant and perused the records.
10. On perusal of the documents submitted by the Applicant, it is clear that Applicant has supplied material more than ₹1,00,000/- (Rupees One Lakh Only) of which the Corporate Debtor has failed to make payment. Therefore, operational debt of more than Rupees One Lakh is due and payable by the Corporate Debtor which is also confirmed and acknowledged by the Corporate Debtor vide the Ledger Account for the period 01.04.2017 to 15.07.2019.
11. The Applicant, having supplied material to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant. The Corporate Debtor chose not to file any reply to the petition. Thus, the debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.
12. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 12.03.2019 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 10.09.2019 stating

that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.

13. The Applicant has not proposed the name of **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code.
14. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

### **ORDER**

This Application filed under Section 9 of I&B Code, 2016, presented by **Esszee Manufacturing Private Limited** Operational Creditor / Applicant against **SPG Multi Trade Private 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 Financial 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 financial 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 appoints **Mr. Modilal Dhanraj Pamecha**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P01231/2018-2019/12127]** 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.

15. 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/-**

**RAJESH SHARMA**  
Member (Technical)  
03.03.2020

**Sd/-**

**BHASKARA PANTULA MOHAN**  
Member (Judicial)