

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH,**

**KOLKATA**

**IA(I.B.C)/109/KB/2019**

**IN**

**C.P (IB) No.1378/KB/2018**

**In the matter of**

*An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

And

**In the matter of:**

**M+R Logistics (India) Private Limited**, a Company incorporated under the Companies Act, 1956, CIN: U61100TN2001PTC046793, and having its registered office at 56/57, 3<sup>rd</sup> Floor, Rajaji Salai, Chennai-600001.

*... Operational Creditor*

Versus

**In the matter of:**

**M/s Metal Engineering & Treatment Private Limited**, a company incorporated under the provisions of the Companies Act, 1956, CIN: U28113WB1982PTC034546 and having its registered office at Ganganagar, Jessore Road, 24 Parganas (North)-723256, West Bengal.

*...Corporate Debtor*

Date of hearing :04/01/2022

Order Pronounced on : 11/02/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

---

**Counsels appeared through Video Conference**

1. Mr. Aritra Basu, Adv. ] For Operational Creditor
2. Mr.Sanjiv Kumar Trivedi,Adv.
  
1. Mr. Arindam Ganguly, Adv. ] For Corporate Debtor

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This C.P.(IB)/1378/KB/2018 under section 9 of the Insolvency and Bankruptcy has been filed by **M+R Logistics ( India) Pvt. Ltd.** (CIN: U61100TN2001PTC046793), a corporate entity through Mr. G. Chandrasekhar, Chief Financial Officer, authorised vide letter of authorization, and resolution passed at the meeting of the Board of Directors of the Company held on 27<sup>th</sup> March,2018 (hereinafter referred as the Operational Creditor), seeks initiation of corporate insolvency resolution process in respect of **M/s Metal Engineering & Treatment Private Limited.** (CIN: U28113WB1982PTC034546), another corporate entity, having its registered office at Ganganagar, Jessore Road, 24 Parganas (North)-723256, West Bengal (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Corporate Debtor owes a sum of Rs.48,11,763/- (Rupees Forty Eight Lakhs Eleven Thousand Seven Hundred Sixty Three only) as outstanding operational debt to the Operational Creditor which fell due from 15<sup>th</sup> September, 2018. It is submitted that a sum of Rs.34,78,004/- (Rupees Thirty Eight Lakhs Seventy Eight Thousand and four only) is due outstanding on account of the services provided by the Operational Creditor to the Corporate Debtor in terms of four (4) invoices which are annexed with the petition as “Annexure-II Ext. B”, and Rs.13,33,759/- as interest @ 18% p.a. from 29<sup>th</sup> July, 2018, 28<sup>th</sup> August, 2016 to 15<sup>th</sup> September,2018 till payment is received.

4. It is further submitted that the dates of default along with the working for computation of amount in tabular form is annexed as Annexure-II, Ext.C to the petition.
5. It is submitted that the Operational Creditor issued a Demand Notice dated 30<sup>th</sup> April, 2018 to the Corporate Debtor mentioning therein that by virtue of Shipment of goods from Nava Sheva Port to Kuwait dated 7<sup>th</sup> April, 2016 wherein the Operational Creditor had acted as a 'Facilitating Agents', and pursuant to that, the Corporate Debtor had availed all necessary services and in consideration of such services, agreed to make payment of fees of the Operational Creditor within a stipulated time. It is further submitted that believing the statement and representation of the corporate debtor, the Operational Creditor rendered services as per their requirement and their satisfaction thereafter raised the following invoices:-

SL.No	INVOICE NO.	INVOICE DATE	AMOUNT (FIG.IN RS.)
1.	M+R-KOL/FE/358	14.06.2016	22,55,483/-
2.	M+R-KOL/FE/359	14.06.2016	14,81,043/-
3.	M+R-KOL/AI/360	14.06.2016	14,76,400/-
4.	M+R-KOL/CH/551	14.07.2016	44,024/-
	TOTAL		52,56,950/-

6. It is submitted that since the Corporate Debtor did not make any payment, within the stipulated timeline, several requests and correspondence was made on various dates but despite admission and acceptance of the outstanding dues, and assurance to make payment, no payment was made. It is submitted that in the aforesaid demand notice, the Operational Creditor had mentioned in details all the outstanding debt and requested the Corporate Debtor to a pay sum of Rs.34,78,004/- along with interest of Rs.15,27,251/-, calculated @ 18%

---

p.a. totaling Rs.50,05,255/-.

7. It was specifically mentioned in the notice that in case the amount is not paid within 10 days from the date of receipt of the notice, the Operational Creditor would be constrained to file an application before the Adjudicating Authority for initiating corporate insolvency resolution process under section 9 of the Code. The Operational Creditor has annexed (Annexure C with the petition), which is a statement showing amount of debt, details of transaction on account of which debt fell due, the date from which such debt fell due, the amount claimed to be in default and date of default.
8. The Operational Creditor has also annexed with the petition, statement of Bank Account held with the City Bank, NA for the period 20<sup>th</sup> June, 2017 to 31<sup>st</sup> March, 2018 indicating part payment in respect of the invoice number M+R-Kol/FE/358 dated 14/06/2016 (Annexure-II, Ext.D).
9. It is further submitted the Operational Creditor has filed an affidavit to the effect that no notice of any dispute has been given by the Corporate Debtor relating to any dispute as regards operational debt being claimed by the Operational Creditor. Similarly, a copy of the certificate received from the Bank maintaining the accounts of the Operational Creditor confirming that there is no payment of unpaid operational debt in respect of the outstanding invoices mentioned above except a sum aggregating to Rs.17,78,946/-.
10. It is submitted that the Corporate Debtor has admitted the debt by its emails dated 12/12/2016 and 23<sup>rd</sup> May, 2018 and other correspondence exchanged, and has made part payment of Rs.17,78,946/-. The operational Creditor has also annexed a copy of the account ledger of the Corporate Debtor for the period 14/06/2016 to 15/09/2018 in the books of the Operational Creditor, annexed as Annexure II-,Ext.1.

- 
11. The Corporate Debtor has filed a demurer application being CA(IB) No. 109/2019 seeking dismissal of CP(IB) No.1378/KB/2018. It is stated in the application by the Corporate Debtor that the said application has been filed through gross suppression of material facts and is an endeavour to intentionally mislead this Adjudicating Authority. It is submitted that on or about December, 2016, parties had come to a settlement that a sum of Rs.81,00,000/- would be paid by the Corporate Debtor, taking certain discounts and monies sent by the Corporate Debtor in favour of and due instructions of the Operational Creditor. It was further decided that the amount would be paid through 18 cheques of Rs.4,50,000/- each, and a schedule of such repayment was also agreed upon. It is further stated by the Corporate Debtor that by way of letter dated 13<sup>th</sup> December, 2016, “the concluded agreement between Operational Creditor and the Corporate Debtor with regard to schedule of payments. It is submitted that the said terms were accepted by the Operational Creditor through its conduct and further through acquiescence in continuation to accept payment within the frame-work provided in the letter dated 13<sup>th</sup> December,2016. It is stated that the Operational Creditor has in fact received Rs.67,50,000/- out of agreed Rs.81,00,000/- and that the Corporate Debtor was ready and willing to make payment of the remaining Rs.13,50,000/-being three unpaid tranches as mentioned in the letter dated 13<sup>th</sup> December, 2016. It is stated that the Operational Creditor has for the first time in its letter dated 27<sup>th</sup> June, 2018 refused to take such payment and has asked for the amount claimed in the instant petition.
12. It is further mentioned in the demurer application that the parties had arrived at a consensus that only Rs.81,00,000/- was payable by the Corporate Debtor, and further language of the correspondence till April, 2018, though there was a knowledge of delay in payments, neither party had ever indicated any intention to terminate such agreements. It is stated that the Operational Creditor continued to accept payments beyond March 2017 without any demur, impliedly agreeing to the
-

---

extension of time framework to evade payment by the Corporate Debtor. The Corporate Debtor has prayed that this application under section 9 of IBC filed by the Operational Creditor might be dismissed.

13. The Corporate Debtor has filed supplementary affidavit of Mr. Rabindra Nath Mukhopadhyay, on 22<sup>nd</sup> October, 2019, who deposed that he is principal officer of the Corporate Debtor and submitted that at the time of preparation of the affidavit in opposition to the application under section 9 of the Code, certain paragraphs were inadvertently not included in the opposition which are reproduced as under:-

- a. ***The claim of the operational creditor of Rs.34,78,004/- as principal along with interest @ 18% per annum from 29.07.2016 is a summation of all separate business transactions between the operational creditor and the corporate debtor and as such cannot be claimed in a single petition under the Insolvency and Bankruptcy Code.***
- b. ***The work arrangement between the parties were regulated either by purchase orders issued by the corporate debtor to the operational creditor or upon agreement of the corporate debtor to the terms communicated by the operational creditor or otherwise on separate oral terms (Oral contract). All of these were separate agreements relating to separate transactions which consist of diverse considerations and has been entered into for execution of different projects. Copies of such purchase orders, and several communications between the parties are annexed here to and collectively marked as Annexure-A.***
- c. ***These separate agreements have been entered into from time to time and therefore disputes relating to such agreements give rise to separate causes of action and as such all the agreements cannot be enforced in a single petition.***
- d. ***The Operational Creditor itself has agreed that the amounts claimed reflected bills with regard to separate transactions.***

14. The Operational Creditor in its rejoinder/ the additional reply affidavit

---

filed on behalf of the Corporate Debtor dated 7<sup>th</sup> February, 2019 submitted that it is not in dispute that the Operational Creditor provided the services as requested by the Corporate Debtor and raised the invoices for services rendered. All the invoices raised by the Operational Creditor are duly accepted by the Corporate Debtor. It is also not in dispute that the Corporate Debtor defaulted in payment for merely two years in as much as the credit period for payment of invoices were 45 days from the date of respective invoices. The Operational Creditor further submitted that the purported schedule of payment was never accepted by the Operational Creditor. The Corporate Debtor maliciously introduced the story of schedule of payment just to delay payment of the legitimate dues of the Operational Creditor. It is stated that even the cheque dated 27<sup>th</sup> May 2017 bearing no. 073924 for a sum of Rs. 4,50,000/- drawn on United Bank of India issued by the Corporate Debtor in favour of the Operational Creditor towards payment was dishonored for insufficient funds.

15. The Operational Creditor denied that the application under section 9 of the IBC has been filed through gross suppression of material facts, or the Operational Creditor had misled the Adjudicating Authority as alleged. It is further denied that the parties came to any settlement or any discount was given or any money was spent by the corporate debtor. It is further denied by the Operational Creditor that there was any settlement that only a some of Rs.81,00,000/- would be paid to the Operational Creditor or any decision was made to pay Rs.4,50,000/- Lakhs through 18 cheques or any schedule of repayment was agreed as alleged. It is submitted that the allegations are contrary to the records. It is further denied that there was any concluded agreement or the letter dated 13<sup>th</sup> December, 2016 can be said to be an agreement as alleged or at all. It is submitted that it is apparent from the correspondence exchanged between the parties that the corporate debtor has deliberately and with dishonest intention withheld the legitimate dues of the Operational Creditor. The amount indicated in the petition under section

---

9 of the Code is due and payable by the Corporate Debtor to the Operational Creditor. It is denied that the Operational Creditor obtained an advance of Rs.1,40,000/- or any other sum from the Corporate Debtor on 1<sup>st</sup> April, 2016 as alleged. It is submitted that the Operational Creditor never accepted any payment in cash and no payment has been received in cash from the Corporate Debtor; such allegations are false and incorrect. It is further denied that the Corporate Debtor has paid a sum of Rs. 5,00,617/- or any other sum to the vender or any other person on the instructions of the Operational Creditor. Finally, the Operational Creditor has denied that the petition is not maintainable in law or it should be dismissed or rejected as alleged. The Operational Creditor has submitted that the demurer application dated 17/01/2019 be dismissed.

16. During Course of arguments, the Ld. Counsel appearing for the Operational Creditor took us through the ledger account of Metal Engineering and Treatment Company Private Limited (Corporate Debtor) in the books of accounts of M+R Logistic India Private Limited (Operational Creditor). It is submitted that at the end of March, 2016 the closing balance was Rs.1,17,74,091/- in respect of the invoices that had been made over to the Corporate Debtor (on page 9 of affidavit filed by the Operational Creditor on 3<sup>rd</sup> January, 2022). This amount was carried forward on the next page i.e. page 10 and as on 31<sup>st</sup> March, 2017 this amount came to be Rs.61,77,806/- after making adjustment of all the payments received. Similarly, this amount was carried forward to the next page i.e page 11 and as on 31<sup>st</sup> March, 2018, the amount comes to Rs.34,78,004/- after adjusting all the payments received from the Corporate Debtor. On the same page at the table given at the bottom, the Operational Creditor has also given a table which is reproduced as under:-

**M+R LOGISTICS INDIA PVT. LTD.-KOLKATA**

**BILL WISE OUTSTANDING STATEMENT WITH INEREST  
CALCULATION -METAL ENGINEERING & TREATMENT CO PVT LTD.**

**AS ON 31/12/2021**

Vou #	Date	Outstanding Amount	No of Days	Interest @ 18% PA	Total Due with Interest
IN1617KOLOE35	14-Jun-16	476,537.00	2,027	4,76,354	952,891
IN1617KOLOE35	14-Jun-16	14,81,043.00	2,027	14,80,475	2,961,518
IN1617KOLA1360	14-Jun-16	14,76,400.00	2,027	14,75,834	2,952,234
IN1617KOLCH55	14-Jun-16	44,024.00	1,997	43,356	87,380
	14-Jun-16	<b>34,78,004.00</b>		<b>34,76,019</b>	<b>69,54,023</b>

17. As per this table all the four bills were dated 14/06/2016 and the total amount due and outstanding is Rs.34,78,004/- and the interest @ 18% pa is Rs.34,76,019/- which totals up along with interest to Rs. 69,54,023/-.

18. The Ld. Counsel for the Operational Creditor has submitted that whatever amounts were given by the Corporate Debtor, they were given due credit in the Ledger. The Ld. Counsel further submits that in reply to the Demand Notice on page 63 A dated 23<sup>rd</sup> May, 2018, the Corporate Debtor stated as under:-

***“ We are just in receipt of your Notice in Form 4 dated 30/4/2018 in claim of certain outstanding with you and are feeling much perturbed in view of our long standing cordial business relationship with you.”***

19. The Operational Creditor submits that even though there was no settlement between the parties that a sum of Rs.81,00,000/- will be given in instalments by the Corporate Debtor but it is not understood from where the Corporate Debtor has taken this amount. There was no consensus or settlement agreement between the parties as regards this amount being Rs.81,00,000/-.It is submitted that on page 64, the Corporate Debtor has however, specifically written *“you will definitely appreciate that due to the present slump in the Indian Economy our business is running at a low ebb and hence, only the last three*

---

*instalments totaling to Rs. 13,50,028/- which constitutes of only 16.67% of the total claim remains outstanding as of date.”*

20. It is submitted that the Corporate Debtor has admitted that the reason for its default in clearing the outstanding debt was slump in its business, but it does not mean that they will return the outstanding debt at their own imaginations without there being any settlement between the parties.
21. Ld. Counsel appearing for the Corporate Debtor Mr. Ganguly again submitted that in his oral submissions that a sum of Rs.81,00,000/- was due and that was to be repaid in 18 instalments starting from 2<sup>nd</sup> December, 2016 @ Rs. 4.50,000/-. He further submitted that only three instalments of Rs.13,50,028/- are due and payable. When the Ld. Counsel was asked as to on what basis this full and final settlement as stated by the Corporate Debtor was arrived at. He referred to page 7 of Annexure-A to CA No. 109/KB/2019 filed by the Corporate Debtor seeking dismissal of the petition under section 9 filed by the Operational Creditor. He referred to email dated December 13,2016 written on behalf of the Corporate Debtor to the Operational Creditor, themselves suggesting that total amount to be paid is Rs.81,00,000/- in 18 numbers of cheques amounting to Rs.4,50,000/- each starting from 2<sup>nd</sup> December, 2016.
22. Ld. Counsel submitted that the Operational Creditor had accepted the payment continuously and by accepting the payment in instalments would constitute a settlement.
23. In our view, it is not a settlement and the Ld. Counsel for the Corporate Debtor could not show us any piece of evidence that has been signed by or on behalf of the Operational Creditor accepting the settlement of their outstanding dues being Rs.81,00,000/-, or the payment also in 18 instalment by post dated cheques. In spite of the query from the Bench,

---

Ld. Counsel for the Corporate Debtor could not show any statement except a bald statement in the pleadings. Only because the Operational Creditor was accepting the payment would not constitute the same as a settlement. The Ld. Counsel could not show anything better than this, except the statement at the end that the Corporate Debtor is ready to make the payment of Rs.13,50,000/-at this stage.

24. The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, we appoint **Mr. Soumitra Lahiri., as IRP** having Reg. No. **IBBI/IPA-001/IP-P00734/2017-2018/11232** to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
25. After hearing both the parties at length and after going through all the pleadings and documents filed by both the parties, we are satisfied that the Operational Creditor has been able to prove its case on the basis of evidence on record that a sum of Rs.**69,54,023/-** is due and payable to the Operational Creditor from the Corporate Debtor, which the Corporate Debtor has defaulted to repay.
26. To meet the requirements of section 9(3)(b), the Operational Creditor has filed an affidavit dated 17/09/2018 and also to meet the requirements of section 9(3)(c), the Operational Creditor has filed statement of accounts maintained by the Citibank (Annexure-III).
27. The application is complete in all respects.
28. Having gone through and considered the petition, reply affidavit and all other documents placed on record by both the parties, we consider it to be a fit case for admission and initiation of CIRP in respect of the Corporate Debtor. We, therefore, pass the following orders:

**ORDERS**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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 Securitisation and

---

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Soumitra Lahiri., IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No having Reg. No. **IBBI/IPA-001/IP-P00734/2017-2018/11232** and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan

---

subject to production of written consent within one week from the date of receipt of this order.

- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 1,00,000/- (Rupees One Lakh only )** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

29. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

30. In view of the above orders, this **IA (IB) No. 109/KB/2019** is dismissed.

31. List the matter on **18/04/2022** for filing of **Progress Report**.

32. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on the 11<sup>th</sup> day of February, 2022

PJ.