IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH MUMBAI

CP No.3448 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Tractebel Engineering Private Limited

....Operational Creditor

v/s.

Transparent Energy Systems Private Limited

…. Corporate Debtor

Order Delivered on 08.03.2019

Coram: Hon'ble Mr. V.P. Singh, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Shri Dhwani Mehta, Advocate
For the Respondent: Shri Shashwat Rai, Advocate

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s. 9 of Insolvency &Bankruptcy Code, 2016 (**IBC**) by Tractebel Engineering Private Limited., Operational Creditor, having its registered office at A-3, 2nd Floor, NeetiBagh, New Delhi – 110 049 against Transparent Energy Systems Private Limited,Corporate Debtor, having its registered Office at Pushpa Heights, 1st Floor, Bibwewadi Corner, Pune-Satara Road, Pune–411 037 to initiate Corporate Insolvency Resolution Process (**CIRP**) against Corporate Debtor on the ground that the Corporate Debtor has defaulted in making payment of ₹9,00,000/- as on 03.04.2015.
2. The Counsel for the Operational Creditor states that the Operational Creditor is engaged in the business of providing engineering consultancy services in various sectors such as power (thermal, renewable, hydropower, transmission & distribution), gas (LNG, Pipeline and city gas distribution), infrastructure and transportation sectors. Moreover, the

Corporate Debtor is engaged in the business of manufacturing and supplying of boilers, cooling systems, power plants and heat recovery systems in Indian and overseas markets.

3. The Counsel for the Operational Creditor states that the Corporate Debtor had issued two Purchase Orders bearing No. R1131402B and R1131405B to the Operational Creditor, seeking consultancy services for their plants located in Boyareddypalli, Andhra Pradesh and Ganeshpahad, Telangana for a total consideration of ₹11,00,000/- each excluding the taxes.
4. It is stated that the Operational Creditor has provided the services as per the satisfaction of the Corporate Debtor and the final report against the two purchase orders for Penna Cement at Boyareddypalli and Ganeshpahad were sent on e-mail dated 22.09.2015 and 08.08.2015 respectively.
5. However, the Corporate Debtor did not release the payments against the work done even though the credit period of 30 days as per the contract concluded. The Operational Creditor has sent various e-mails to the Corporate Debtor demanding the payment of the outstanding amount. It is stated that despite repeated reminders, the Corporate Debtor failed to release the payment on the reason that since no big orders had been received, there was a shortage of funds.
6. The Counsel for the Operational Creditor states that on 17.10.2017, Operational creditor issued a Demand Notice asking the payment of ₹23,65,421/- under the Code and in response the Corporate Debtor entered into a Settlement Agreement dated 30.10.2017 highlighting the payment schedule for a sum of ₹23,65,421/- in six instalments. However, again default was occurred from fourth instalment onwards and remained a balance of ₹15,31,752/-.
7. The Operational Creditor again issued a fresh Demand Notice dated 22.06.2018 under the Code demanding the outstanding amount of ₹15,31,752/-. In the meantime, the Corporate Debtor issued a post-dated cheque for ₹6,31,752/- as per the

settlement agreement and the same got encashed reducing the outstanding amount to ₹9,00,000/-, after this the Corporate Debtor have not replied nor paid any outstaying amount. Since the Corporate Debtor failed to make payment, the Operational Creditor has filed this Petition before this Tribunal.

8. The Operational Creditor has placed on record the certified copy of the Resolution passed at the meeting of the Board of Directors on 03.10.2017 to proceed Insolvency proceedings against the Corporate Debtor. The Petitioner has also placed on record the copies of Purchase orders confirming the services rendered. The Operational Creditor has also placed on record the copies of Bank Statement for period 01.11.2017 to 30.06.2018.

9. Heard both the parties and perused the material available on record. As per the mandate of the Code, this Adjudication Authority is only required to ascertain whether there is a default of the operational debt of ₹1,00,000/- or more to be paid. It is evident from the fact that the default of the operational debt is more than ₹1,00,000/-.

10. Given the above facts, that the Demand notice demanding payment was served upon the Corporate Debtor, after that, the Corporate Debtor had filed a reply to the Demand Notice wherein it had admitted the fact that it has to pay the Principal amount to the Operational Creditor.

11. When a Section 9 Petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor, or there is no record of dispute in the information utility, if any.

12. We find that the Petitioner has attached a copy of Bank statements dated 01.12.2017 certifying that no payment amounting to ₹9 lacs has been credited to the Petitioner’s account. There is no dispute raised in connection with the

services before the issue of demand notice by the Operational Creditor which is the *sine qua non* for the admission of the Petition. Nothing available on records to show that the services rendered by the Petitioner has miserably failed/not up to the satisfaction of the Corporate Debtor or there is a deficiency of service and have violated the provisions of the Agreement by not providing any services as stipulated and agreed upon by both the parties. We have also noted that several e-mails were exchanged between the parties regarding the payment of outstanding dues which were accepted by the Corporate Debtor and made assurances for payment but failed to make the payment.

13. The Petitioner has annexed an e-mail of the Corporate Debtor dated 19.04.2016 sent in reply to the e-mail of the Operational Creditor demanding payment wherein the Corporate Debtor has stated its financial difficulty and assured that it would make payment once it gets some big order. Further, the Corporate Debtor has referred to the petition filed by it under section 10 before this Bench. The Corporate Debtor has admitted the debt outstanding to the Operational Creditor in the section 10 petition to the tune of ₹9,00,000/-. Thus the existence of debt and default is established.
14. The Petitioner has not proposed the name of any resolution professional to be appointed as Interim Resolution Professional.
15. The application made by the Petitioner is complete in all respects as required by law, and it clearly shows that the operational debt has not been paid by the Corporate Debtor.

ORDER

The petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 is admitted. We further declare moratorium U/S 14 of the I & B Code with consequential directions as mentioned below:

I. That this Bench at this moment 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. It is further made clear that:

a. 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.

b. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

c. That the order of moratorium shall have effect from 08.03.2019 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 IBC or passes an order for the liquidation of the corporate debtor under section 33 of IBC, as the case may be.

d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

e. That this Bench at this moment appoints Mr. Ashish Vyas having registration number IBBI/IPA-001/IP/P-

01520/2018-19/12267 as Interim Resolution Professional to carry the functions as mentioned under IBC. Fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

16. 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 e-mail or WhatsApp. **Compliance report of para 16 of the order is to be submitted by Registrar today.**

Sd/-	**Sd/-**
RAVIKUMAR DURAISAMY	**V.P. SINGH**
Member (Technical)	Member (Judicial)

8th March, 2019