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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT NO. IV

Company Petition No. IB-1340/ND/2018

(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:

M/s. C&S ELECTRIC LTD.

...Applicant/Operational Creditor

VERSUS

M/s. UNILEC ENGINEERS LTD.

...Respondent/Corporate Debtor

Order Pronounced on: 08.09.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. K. Datta, Mr. Rahul Malhotra, Mr. Manas Tripathi,
Advocates

For the Respondent : Mr. P. Nagesh, Mr. Nakul Jain, Mr. Shivam Wadhwa
Advocates

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Rahul
09/9/2020

MEMO OF PARTIES

M/s. C&S ELECTRIC LTD.

Having its registered office at:
222, Okhla Industrial Estate,
Phase-III, New Delhi-110020

...Applicant/Operational Creditor

VERSUS

M/s. UNILEC ENGINEERS LTD.

Having its registered office at:
II/114, Sadar Bazar, Delhi Cantt.,
New Delhi-110010

Also At

Begumpur Khatola Road,
Behrampur Industrial Area,
Gurgaon-122002

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules'), by M/s. C&S Electric Ltd. (for brevity 'Applicant'), through its authorized signatory Mr. L. K. Khanna, authorizing him to file present application vide Board resolution dated 28.06.2013,

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with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Unilec Engineers Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a company incorporated on 11.12.2009, under the provisions of Companies Act, 1956, having CIN No. U31909DL1971PLC005672, having its office at 222, Okhla Industrial Estate, Phase-III, New Delhi-110020.
3. The Respondent, the Corporate Debtor, is a company incorporated on 27.12.1993, under the provisions of Companies Act, 1956 with CIN No. U74899DL1993PLC056633, having its registered office at II/114 Sadar Bazar, Delhi Cantt., New Delhi-110010. The Authorised Share Capital of the respondent company is Rs.1,50,00,000/- and Paid Up Share Capital of the company is Rs.1,36,94,060/- as per Master Data of the company.
4. It is the case of the Operational Creditor that the Corporate Debtor placed various purchase orders ("PO"), between 25 November, 2014 and 12 October, 2016, for supply of a variety



of electrical equipment like ACBs, MCCBs, MCBs, etc. The Corporate Debtor was obligated to make payments within a period of 120 days from receipt of the respective last material lot. The copies of said PO have been annexed along with the application.

5. It is further stated that, the Operational Creditor supplied equipment vide various Invoices between 19 August, 2016 and September, 2017. However, the Corporate Debtor failed to comply with the payment obligations as per the agreed terms. The copies of said invoices have been annexed along with the application.
6. It has also been stated by the Operational Creditor that, against the goods supplied, the Corporate Debtor issued certain Post Dated Cheque (PDC) details whereof are enumerated hereunder-

- a. Cheque bearing No. 000458, dated 29.12.2017, drawn on M/s. Kotak Mahindra Bank, Gurgaon, to the tune of Rs. 38,00,000/-,



- b. Cheque bearing No. 000459, dated 29.01.2018, drawn on M/s. Kotak Mahindra Bank, Gurgaon, to the tune of Rs. 40,00,000/-,
- c. Cheque bearing No. 000460, dated 28.02.2018, drawn on M/s. Kotak Mahindra Bank, Gurgaon, to the tune of Rs. 45,00,000/-,
- d. Cheque bearing No. 000461, dated 20.03.2018, drawn on M/s. Kotak Mahindra Bank, Gurgaon, to the tune of Rs. 54,00,000/-,

However, the PDC's as issued by the Corporate Debtor started dishonouring on account of the reason 'Funds Insufficient'. The copies of the aforementioned cheques along with the bank return memos of the cheques are annexed along with the application.

- 7. As per the submissions of the Operational Creditor, the Corporate Debtor even issued C-Forms in respect of some of the invoices in terms of which goods were supplied between August, 2015 and January, 2016, which is an admission on part of the Corporate Debtor as to the receipt of the material as



well as the liability outstanding from the Corporate Debtor, payable to the Operational Creditor. The Operational Creditor, further states that, the date of default in respect of the each above mentioned invoice is 120 days pursuant to the issuance of the said invoice.

8. In spite of various requests made and reminders sent by the Operational Creditor, the Corporate Debtor did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 22.06.2018, under Section 8 of the Insolvency and Bankruptcy Code, 2016, to the respondent, asking them to make the entire payment of Rs.2,01,63,267.13/- (Rupees Two Crore One Lakh Sixty Three Thousand Two Hundred Sixty Seven and Thirteen Paise), within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution Process ("CIRP") against the Respondent.
9. The applicant has annexed postal receipt, for the delivery of the said demand notice at the registered office of the Corporate



Debtor, however, the same could not be delivered by post. Hence, the Operational Creditor sent the demand notice through email, on 6.07.2018 on the registered email id, as per the MCA master data of the Corporate Debtor.

10. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has given its reply. In its reply to the said notice, the Corporate Debtor states that *"I assure you, that Unilec shall make an upfront payment towards your dues within this month. I shall personally visit you with the cheque/ demand draft for the above said amount along with a concrete repayment schedule towards the balance amount Amit Airy (Director)"*.
11. The applicant has stated that total debt due and payable is Rs.2,01,63,267.13/- (Rupees Two Crore One Lakh Sixty Three Thousand Two Hundred Sixty Seven and Thirteen paisa), which includes Rs.1,79,01,968.13/- (Rupees One Crore Seventy Nine Lakhs One Thousand Nine Hundred Sixty Eight and Thirteen Paisa), towards principal outstanding and Rs.22,61,299/- towards interest on the principal amount, at the rate of 13% per annum, w.e.f. from the due date of each of the invoice upto



31.03.2018. As per the invoices the default occurred on 02.09.2017.

12. The application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that in compliance of the order dated 05.10.2018, the respondent has been served through speed post on 25.10.2018. The postal receipt along with the tracking report, have been annexed along with the affidavit.
13. After the service of said notice, the Corporate Debtor has caused an appearance in the matter and has filed its reply. In its reply to the present section 9 application, the Corporate Debtor states that, the default at the part of the Operational Creditor occurred from the very first order which was placed by the Corporate Debtor for BHEL-OP Jindal Project, wherein, Operational Creditor started delaying deliveries of their components even when there was no payment due from the Corporate Debtor in March, 2013 as is evinced from email dated 26.05.2013, addressed to Operational Creditor.



14. The Corporate Debtor further states that, all the POs are based on the principle of 'time is of the essence of the agreement'. The Operational Creditor knows very well that the Corporate Debtor is also on a time bound deadline and is wholly dependent upon the Operational Creditor supplying products on time, failing which the Corporate Debtor would be subject to harsh penalties from its clients. It further states that, on account of delay in deliveries by the Operational Creditor, the switchboard deliveries of the Corporate Debtor to its client BHEL started getting delayed resulting in imposition of Liquidated Damages on the Corporate Debtor. Consequently, Liquidated Damages to the tune of approx. Rs.55,00,000/-, were imposed on Corporate Debtor by BHEL for this order/contract alone. The same was communicated to the Operational Creditor vide various emails dt. 12.03.2013, 06.09.2013 and letter dated 25.09.2013 for settlement in sharing this loss. The copy of said emails have been annexed with the reply.

15. The Corporate Debtor in its reply also states that, the switchgear components supplied by the Operational Creditor

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for the 'BHEL-OP Jindal Project' were found defective and started malfunctioning immediately after the Corporate Debtor started delivering the switchboards supplied/ delivered by the Operational Creditor, towards the said project. This issue became so critical that the Corporate Debtor's client BHEL themselves started communicating with the Operational Creditor via emails and telecoms to resolve issues at site. The copy of emails dated 08.07.2013, 06.07.2013, 29.04.2013 and 30.04.2013 in this regard have been annexed along with the reply.

16. The Corporate Debtor further states that, matter got out of its hands when BHEL failed to impress upon the Operational Creditor, the gravity of the problem was such that the, BHEL's client OP Jindal too started complaining about Operational Creditor's switchgear component and protection relays directly vide various calls and emails dated 18.12.2013, 08.12.2015, 12.12.2015 etc., but to no avail. The copies of said email have also been annexed along with the reply.



17. After the reply of the Corporate Debtor in the present case, the Operational Creditor has filed its rejoinder. In its rejoinder the Operational Creditor states that, the majority of emails placed on record in order to demonstrate the alleged disputes are for the period prior to August, 2016, whereas, the Operational Debt which is outstanding is against the invoices raised between August, 2016 and September, 2017. Therefore, all such emails prior to August, 2016 are liable to be disregarded at the outset. Further, the Corporate Debtor has categorically accepted and admitted the claims of the Operational Creditor in the following words *“I assure you, that Unilec shall make an upfront payment towards your dues within this month. I shall personally visit you with the cheque/ demand draft for the above said amount along with a concrete repayment schedule towards the balance amount Amit Airy (Director)”*. The Corporate Debtor has no right to file a reply to the present proceedings initiated under the I & B Code, 2016, as this Hon’ble Authority has to adjudicate the issue upon considering the facts enumerated in the petition. The Corporate Debtor has



categorically admitted the receipt and approval of goods as supplied and the invoices as raised by the Operational Creditor.

18. The Operational Creditor further states that, there are unequivocal and unambiguous admissions on behalf of the Corporate Debtor in respect of the operational debt due. The Corporate Debtor vide its email dated 18.07.2018 while replying to the demand notice dated 06.07.2018 of the Operational Creditor undisputedly agreed for paying the operational debt and requested for a meeting. However, nothing as such has happened till date despite repeated assurances.
19. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices and copies of ledger account. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant. There has been much cloud in the submission of the Respondent. Therefore, without any specific details of material



particulars or evidence the fact of existence of a dispute cannot be sustained.

20. In **“Innoventive Industries Ltd. (Supra)”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices were received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

21. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster.



However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there was a pre-existing dispute, but the said pre-existing dispute was for the years 2013-14, i.e., prior to the present transaction. The transaction under consideration at present is free from any form of pre-existing dispute. Also, there is an admission to outstanding amount on the part of the Corporate Debtor through its email dated 18.07.2018 in the following words, *“I assure you, that Unilec shall make an upfront payment towards your dues within this month. I shall personally visit you with the cheque/ demand draft for the above said amount along with a concrete*

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repayment schedule towards the balance amount Amit Airy (Director)".

22. The applicant has attached an affidavit in compliance of section 9(3)(b), also, it has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
23. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
24. The present application is within the prescribed limitation period.
25. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.



26. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Mansij Arya, having registration no. IBBI/IPA-002/IP-N00907/2019-2020/12939, email address is pcsmansij@gmail.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
27. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.



28. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
29. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.



(HEMANT KUMAR SARANGI)
MEMBER (Technical)



(DR. DEEPTI MUKESH)
MEMBER (Judicial)

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05/9/2020
Deputy Registrar
National Company Law Tribunal
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