

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

**CP(IB)No.319/NCLT/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of

**Indus Iron & Steel Private Limited**

...Operational Creditor/ Petitioner  
v/s

**Ventisys Equipment Private Limited**

...Corporate Debtor

**Order Dated 18<sup>th</sup> September 2019**

**Coram:** Hon'ble Member (Judicial) :Mr V.P. Singh  
Hon'ble Member (Technical):Mr Rajesh Sharma

**For the Petitioner:** Adv. Hemant Salvi, Adv. Dharmapal Dave.

**For the Respondent:** Adv. Sameer Kakar.

*Per: V.P. Singh, Member (Judicial)*

**ORDER**

1. This is a petition filed on 07.02.2019, being CP 319(IB)/MB/2018 filed by **Indus Iron & Steel Private Limited**, the Operational Creditor / Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Ventisys Equipment Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Petition is filed by Mr Vishal P Mehta, the Director of the Operational Creditor claiming a total default of ₹19,24,633/- (Rupees Nineteen Lakh Twenty Four Thousand Six Hundred and Thirty Three only) as on 05.05.2016.
3. The Petitioner submits that it supplied H.R Sheet & Angle and other goods as per the purchase orders raised by the Respondent. The Petitioner raised several invoices upon the Corporate Debtor for the goods supplied. Copies of the purchase order and the invoices are annexed to the petition.
4. The Petitioner submits that the Respondent has defaulted under the contract in making a payment from 05.05.2016 onwards. The Petitioner submits that no payments have been made after that and the same can be ascertained from the Bank Statements of the Petitioner Company for the period 01.04.2016 to 31.01.2018, annexed to the Petition.

5. The Petitioner submits that the Statutory Demand Notice dated 03.11.2017 under section 8 was issued on the Respondent. The Petitioner has annexed a copy of the Demand Notice and postal receipt for the Demand Notice issued to the Respondent. The Petitioner has filed an additional affidavit dated 04.07.2019 stating that the Respondent company has not raised any notice of the dispute before the Affidavit in Reply to the petition.
6. The Respondent in its Affidavit in Reply dated 11.12.2018 stated that the Respondent has not received the Demand Notice and hence had no opportunity to raise any objections to the Demand Notice. The Respondent further submits that all the purchase orders annexed to the Petition are raised in the year 2017, but the invoices annexed to the Petitioner is raised in the year 2016. It is further submitted that the purchase orders annexed to the Petition are completely irrelevant to the invoices annexed to the Petition.
7. The Respondent in its reply also points out that the mandatory certificate from the Petitioner's Bankers has not been annexed to the petition as required by section 9(3)(c) of the I & B Code, 2016.
8. The Petitioner in its rejoinder filed on 07.02.2019 submits that the PO No.1 dated 15.04.2017, was raised by the Respondent vide email dated 15.04.2016 and the invoice as well as the consignment receipt submitted by the Petitioner is dated 16.04.2016. Further, the P.O No.2 dated the Respondent raised 19.04.2017 vide email dated 19.04.2016 and the invoice raised by the Petitioner is dated 21.04.2016. Copies of the emails, purchase orders, invoices and the consignment receipt evidencing the delivery of the goods are annexed to the Rejoinder.
9. The Petitioner submits that similarly the P.O No.4 dated 26.04.2017 was raised vide email dated 26.04.2016. The invoice for the said purchase order was raised on 29.04.2016. Copy of the email dated 26.04.2017, invoice dated 29.04.2016 and the

consignment receipt dated 29.04.2016 is annexed to the Petition.

10. The Petitioner further submits that the Respondent had issued six cheques in favour of the Petitioner securing the amounts under the invoices out of which four cheques dated 28.05.2017 were dishonoured, and the Petitioner has initiated proceedings under section 138 of the Negotiable Instruments Act, 1881. Copies of said four cheques so dishonoured are annexed to the Petition.
11. We have heard the parties and perused the records.
12. Mr Vishal P Mehta, the Director of the Petitioner, authorised vide Board Resolution, has filed the Petition. Copy of the Board Resolution is annexed to the Petition.
13. The Petitioner claims a due of ₹19,24,633/- (Rupees Nineteen Lakh Twenty Four Thousand Six Hundred and Thirty-Three only) including interest as on the date of filing of this petition.
14. The Petitioner has annexed copies of the emails dated 15.04.2016, 19.04.2016 and 21.04.2016 that raised the purchase orders bearing no.1, 2 and 4 of 2016-17 by way of attachments to the above mentioned emails. It is noted that the purchase orders attached to the emails mentioned above wrongly bore the dates 15.04.2017, 19.04.2017 and 26.04.2017, the copies of the said attachments are also annexed to the Rejoinder. It is further seen that the invoices under the purchase orders were raised on 16.04.2016, 21.04.2016 and 29.04.2016, copies of which are annexed to the Petition. The Petitioner has also provided the consignment receipts dated 16.04.2016 and 29.04.2016 to establish the delivery of the goods so supplied.
15. The Petitioner having supplied goods to the Respondent based on the purchase orders and have not received the amount due from the Respondent, is an operational creditor as per section 5(20) of the I & B Code, 2016.
16. It is also observed that the Respondent in its Reply has never disputed that the Respondent did not raise purchase orders, or

that the quality of the goods was unsatisfactory etc. The Respondent has not raised valid grounds showing a dispute between the Petitioner and the Respondent regarding the quality of the goods so supplied. Further, it is also not the contention of the Respondent that amounts are already being paid to the Petitioner.

17. The Petitioner further pointed out that six cheques were issued by the Respondent in favour of the Petitioner against payment of the invoice amount, however out of 6 cheques ,4 of the cheques dated 28.05.2017 for an amount of ₹2,50,000/- each, were dishonoured. This establishes that an amount of more than ₹1,00,000/- is due and payable from the Respondent.
18. The Petitioner has established that there was the supply of goods to the Respondent against the purchase orders raised by the Respondent, the fact of non-payment of the amounts due has been established by the Bank Statement of the Petitioner Company annexed to the Petition. Further, the Respondent has failed to establish that it has raised any dispute before the Demand Notice about the quality of the goods supplied.
19. The Petitioner has not proposed the name of an insolvency resolution professional to carry out the functions as mentioned under I&B Code, 2016.
20. The debt amount of more than Rs One Lakh and default by the Corporate Debtor has been established. The application is complete.
21. This bench at this moment appoints **Ms. Veena Sharma**, a registered insolvency resolution professional, having Registration Number **[IBBI/IPA-001/IP-P01164/2018-19/11835]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code, given his declaration that no disciplinary proceedings are pending against her.
22. 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 proved. Accordingly, the petition 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 petition filed under Section 9 of I&B Code, 2016, presented by **Indus Iron & Steel Private Limited**, Operational Creditor / Petitioner against **Ventisys Equipment Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **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 such transactions as may be notified

by the Central Government in consultation with any financial sector regulator.

- 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 at this moment appoints **Ms Veena Sharma**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P01164/2018-19/11835]** 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.
23. The Registry is at this moment 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)

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

18<sup>th</sup> September 2019