IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.840/MB-IV/2021
Under Section 9 of the IBC, 2016

In the matter of

JAYESH STEEL PRIVATE LIMITED
[CIN: U27109GJ1998PTC034507]

…Operational Creditor

v/s

INSTEEL ENGINEERS PRIVATE LIMITED
[CIN: U28113MH2009PTC193093]

…Corporate Debtor

Order Delivered on: 12.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: None

For the Respondent: Mr.Nitesh Bangera, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **JAYESH STEEL PRIVATE LIMITED**, ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP)

against **INSTEEL ENGINEERS PRIVATE LIMITED**, ("the Corporate Debtor").

2. An oral agreement was entered into between the Operational Creditor and the Corporate Debtor whereby the Operational Creditor was to sell M.S. HR Material to the Corporate Debtor. The arrangement was such that the Corporate Debtor would supply the said material further to one company i.e. M/s Anwesha Engineering & Projects Ltd ("Anwesha").

2.1. The Corporate Debtor issued one Purchase Order dated on 08.05.2019 pursuant to such arrangement. The material was supplied by the applicant and invoices in respect to the said material were raised in the name of the Corporate Debtor in the period between 15.05.2019 to 18.06.2019 for an aggregate sum of Rs. 2,07,09,859/- (Rupees Two Crore Seven Lakh Nine Thousand Eight Hundred Fifty-Nine Only) and the same were approved by the Corporate Debtor without any objection, no dispute was raised as to the quality and quantity of the said material received by the corporate debtor.

2.2. The Operational Creditor further submits that, Corporate Debtor have only remitted a part payment of Rs. 70,61,000/- (Rupees Seventy Lakhs Sixty-One Thousand Only) and balance of unpaid debt is Rs 1,37,14,859/- (Rupees One Crore Thirty-Seven Lakhs Fourteen Thousand Eight Hundred Fifty-Nine Only) is still due and pending.

2.3. On 09.09.2019 an email was received by the Operational Creditor from Anwesha informing that the payment against Insteel shall be released. Further, the Operational Creditor on 23.07.2019 sent a reminder mail to M/s Anwesha for making the payment, however, the payment was to be made by the Corporate Debtor against supply of material to Anwesha as per purchase order.

2.4. On 09.02.2021, the Corporate Debtor had informed the Operational Creditor "*that Hon'ble NCLT- Ahmedabad Bench C-II has appointed Mr. Sachin Bhatt IRP under the provisions of Insolvency and Bankruptcy Code 2016 against M/s Anwesha Engineering & Projects Ltd as per public notice under IBC Code 2016 on 29th January 2021*" and last day of filing of the claim was on or before 11.02.2021 and an email was sent by the Corporate Debtor on 10.02.2021 to the Operational Creditor informing the same.

2.5. In spite of repeated requests and reminders, the Operational Creditor issued Demand Notice on 22.02.2021 in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3 of the Insolvency and Bankruptcy (Application to Adjudication Rules, 2017). The Corporate Debtor replied to the said demand notice on 09.03.2021. In the said reply to the demand notice the Corporate Debtor has miserably failed to explain how the Corporate Debtor is not liable to make the out-standing payment to the Operational Creditor.

3. The Corporate Debtor in its reply has stated that, there was understanding between the Corporate Debtor and M/s Anwesha Engineering & Projects Ltd in that payment should be paid directly by M/s Anwesha Engineering & Projects Ltd and the same was accepted by the Operational Creditor. The Corporate Debtor has denied each and every statement made by the Operational Creditor.

Findings:

4. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.

4.1. We find that the material was supplied by the Applicant to a party nominated i.e. Anwesha by the Corporate Debtor on behalf of the Corporate Debtor. This fact is neither denied by the Corporate Debtor nor by Anwesha. On perusal of the e-mails relied upon by the Corporate Debtor in its defense, we find that the Corporate Debtor is principal debtor of the applicant and not Anwesha. Anwesha had agreed to pay on behalf of the Corporate Debtor and this arrangement was consented by implication by the applicant, but it cannot lead to proposition that Anwesha had become Principal Debtor of the applicant substituting the Corporate Debtor.

4.2. The letter dated 05.11.2019 from Anwesha to the Corporate Debtor states that *"we will make direct payment to following vendors against supply of material for your job at our workshop for PI Industries as per details provided by you (and also as per statement attached herewith)*

1. Jayesh Steels Pvt. Limited, Ahmedabad – Rs. 2,07,75,857.62 (including GST)

2. Acs Enterprises, Vadodara – 12,74,535.70 (including GST)

…………"

4.3. The minutes of meeting relied upon by the Corporate Debtor record the understanding between the Corporate Debtor and Anwesha and the applicant is not a party to such minutes. Hence, such minutes can not bind the applicant. Nonetheless, these minutes records the understanding that

"*AEPL agreed to make direct payment to the following vendors against supply of materials*"

1. Jayesh Steels Pvt. Limited, Ahmedabad – Rs. 2,07,75,857.62 (including GST)

2. Acs Enterprises, Vadodara – 12,74,535.70 (including GST)

…………"

4.4. Further, e-mail dated 09.09.2019 from Anwesha to the applicant records that "*Time & again, I have informed you that we have received the request letter from*

InnSteel for releasing the payment directly to you, so you need not to follow with InnSteel".

4.5. Further, e-mail dated 16.09.2020 from Anwesha to the applicant also confirms that the payment made by Anwesha directly to the Applicant were on account of the Corporate Debtor. It reads "*Please send the letter to InnSteel about the payment to be released by Anwesha directly to Jayesh Steels, so that InSteel can do necessary set off in their book of accounts*".

4.6. The above communication clearly establishes that the Corporate Debtor remained Principal Debtor and the arrangement for getting direct payment from Anwesha was to secure the timely payment from the Corporate Debtor only. It can not be inferred from these communications that the liability of the Corporate Debtor stood discharged by such arrangement and Anwesha replaced the Corporate Debtor as Debtor of the applicant. Hence, we feel that the principal amount claimed to be due by the applicant is due from the applicant; and it is the Corporate Debtor who was creditor of Anwesha and had locus to file claim with the Resolution Professional appointed in CIRP of Anwesha. Mere communication asking the applicant to file claim with the Resolution Professional of Anwesha cannot absolve the Corporate Debtor from its obligation to pay to the applicant.

4.7. From the above, it is abundantly clear that there is a debt of Rs.1,37,14,859/- which is owed by the Corporate Debtor to Operational Creditor and the same amount is in default. The debt is against supply of goods and falls with the definition of Operational Debt as provided u/s 5(21) of the Code. The present application has been filed within 3 years of the default. No other dispute, except that the amount was payable by Anwesha not by the Corporate Debtor, has been raised, which can not desist us from admitting present application as the denial of liability is not tenable. Hence, we feel that the present application filed u/s 9 of the Code deserves to be allowed.

ORDER

5. The petition bearing CP(IB) 840/MB-IV/2021 filed by **JAYESH STEEL PRIVATE LIMITED** ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **INSTEEL ENGINEERS PRIVATE LIMITED** ("the Corporate Debtor"), is **Admitted.**

   a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

      (i) 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;

      (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

      (iii) 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 (SARFAESI) Act, 2002;

      (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

   (c) Notwithstanding the above, during the period of moratorium, -

(v) 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;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The Operational Creditor has proposed Mr. Piyush Kisanlal Jani, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having Registration Number IBBI/IPA-001/IP-P01439/2018-2019/12164 Email Id capiyushj@gmail.com and Mobile No:9226865090. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC.

The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
12.04.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)