

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

CP(IB)No.3861/NCLT/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

**Rushas Engineering Company Private
Limited**

...Operational Creditor/ Petitioner
v/s

Cogent Engineers Private Limited

...Corporate Debtor

Order Dated 30th August 2019

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

For the Petitioner : Aprajita Pundhir;

For the Respondent: None present

Per: Rajesh Sharma, Member (Judicial)

ORDER

1. This is a petition filed on 28.09.2018, being CP 3861(IB)/MB/2018 filed by **Rushas Engineering Company Private Limited**, the Operational Creditor, or Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Cogent Engineers Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Petition is filed claiming a total default of ₹36,32,003/- (Rupees Thirty Six Lakh Thirty Two Thousand and Three only) as on 06.10.2017. The Petition is filed by Mr. Satish Dattatray Salvekar, the Director of the Operational Creditor duly authorised to file this petition vide Board Resolution dated 12.09.2018.
3. The Petitioner submits that it supplied casting materials from the 14.03.2013 to 06.09.2017 as per the purchase orders raised by the Corporate Debtor. The Purchase orders and the invoices for the materials supplied from 14.03.2013 to 06.09.2017 are annexed to the Petition. Further the Petitioner submits that the Corporate debtor maintained a running account with the Petitioner. The Ledger Account of the Petitioner maintained by the Corporate Debtor reflects the same.

4. The Petitioner submits that despite being satisfied with the goods, the Corporate Debtor has failed to pay the due amount under the invoices. The copies of the reminder letter dated 01.09.2016, 26.10.2016, sent by the Petitioner to the Corporate Debtor along with the postal acknowledgment, Notices for Conciliation Meeting dated 23.08.2018, 21.11.2017, 03.08.2017, 12.07.2017, 06.07.2017 under MSME Act are annexed to the Petition.
5. It is submitted by the Petitioner that the Corporate Debtor has admitted to its liability to repay an amount of ₹16,36,744/- as per the Ledger Account maintained by the Corporate Debtor. Copy of the Corporate Debtor's Ledger account in respect of the Petitioner for the period 01.04.2014 to 31.07.2018. Copy of the ledger statement of the Petitioner as maintained by the Corporate Debtor for the period 01.04.2014 to 31.07.2018 is annexed to the Petition.
6. The Petitioner submits that the Petition has been filed within the period of limitation as the date of last payment made by the Corporate Debtor is 01.09.2017. Copy of the Ledger Statement of the Corporate Debtor maintained by the Petitioner reflecting a payment of ₹18,000/- on 01.09.2017 is annexed to the Petition.
7. The Petitioner was directed to serve the Court Notice to the Corporate Debtor vide Order dated 07.12.2018 and also by order dated 12.04.2019. The Petitioner filed its affidavit of service of the Petition dated 04.06.2019 on 12.06.2019. The Corporate Debtor has failed to appear before this Bench although sufficient notice of hearing has been given.
8. The Petition is complete and has been filed under proper form. Copies of the Demand Notice in Form 3, dated 06.08.2018 along with the postal track report dated 28.08.2018 reflecting the due receipt of the Notice by the Corporate Debtor, Affidavit in compliance of section 9(3)(b) dated 24.09.2018 stating that the Petitioner has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.

9. The Petitioner, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is a Operational Creditor as per the provisions of the I & B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Petitioner. To the contrary, the Respondent has acknowledged its liability to repay a sum of ₹16,36,744/- (Rupees Sixteen Lakh Thirty Six Thousand Seven Hundred and Forty Four only) in the Ledger Account of the Petitioner maintained by the Respondent for the period 01.04.2014 to 31.07.2018.
10. The Petitioner has not proposed the name of an insolvency resolution professional to act as Interim Resolution Professional and to carry out the functions as mentioned under I&B Code, 2016
11. The debt amount of more than Rs One Lakh and default by the Corporate Debtor has been established. The application is complete.
12. This bench appoints **Mr. Kairav Anil Tridevi**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-002/IP-N00728/2018-19/12332]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.
13. 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 also 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 **Rushas Engineering Company Private Limited**, Operational Creditor / Petitioner against **Cogent Engineers**

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 **Mr. Kairav Anil Tridevi**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-002/IP-N00728/2018-19/12332]** 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.

14. 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)

30th August 2019