

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH

CP(IB)571(MB)/2019

(Under Section 9 of the IBC, 2016)

STPM Logistics LLP

...Petitioner/Operational Creditor

Vs

Mirage Ceramics Pvt Ltd

... Respondent/Corporate Debtor

Order delivered on 14.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Petitioner: Mr. Amit Kakri, i/b Ajay Law Associates

For the Respondent: None present

Per: Suchitra Kanuparthi, Member(Judicial)

ORDER

It is a Company Petition filed u/s 9 of Insolvency and Bankruptcy Code, 2016 by the Operational Creditor, viz. STPM Logistics LLP stating that the Corporate Debtor approached the Operational Creditor for transportation of their consignments to various places in India. In this regard, two bills, i.e. Bill No. 199113, dated 2.1.2018 for Rs.4,50,082/- and Bill No.199131, dated 9.2.2018, for Rs.5,16,720/-, aggregating to Rs.9,66,802/- were raised by the Operational Creditor. Copies of the said Bills are annexed with the Petition as Annexure A and Annexure B respectively. Copies of the Proof of Delivery of consignments are also annexed with the Petition.

2. It is submitted that since the said amount was not paid by the Corporate Debtor, the Operational Creditor vide its letter dated 28.7.2018, requested the Corporate Debtor to release the said outstanding dues immediately. Thereafter, since there was no reply to the

said letter, the Operational Creditor through its Advocate sent a legal Demand notice to the Corporate Debtor on 3.12.2018, calling upon them to pay the due amount of Rs.9,66,802 within 15 days after the receipt of the legal/demand notice.

3. The Corporate Debtor, vide its reply letter dated 5.12.2018 forwarded a copy of the court order dated 4.10.2018, passed by the Hon'ble High Court of Bombay in Commercial Arbitration Petition (L) No.1047 of 2018 in the matter on Kamlesh Mehta vs. Mirage Ceramics Pvt Ltd & Anr., wherein all the parties were directed to maintain the status quo in respect of the suit property and the plant and machinery, until the sale takes place.

4. It is submitted by the Operational Creditor that the aforesaid order of the Hon'ble High Court does not concern this Operational Creditor. Thereafter, the Operational Creditor sent a Demand Notice dated 15.1.2019 under Section 8(1) of IBC, 2016 to the Corporate Debtor annexing the copies of the invoices raised on them and demanding the payment. Copy of the said Demand Notice is annexed with the Petition as Annexure F.

5. It is further submitted by the Operational Creditor that the Corporate Debtor, vide its reply letter dated 5.12.2018 once again forwarded a copy of the court order dated 4.10.2018, passed by the Hon'ble High Court of Bombay in Commercial Arbitration Petition (L) No.1047 of 2018 in the matter on Kamlesh Mehta vs. Mirage Ceramics Pvt Ltd & Anr., wherein all the parties were directed to maintain the status quo in respect of the suit property and the plant and machinery, until the sale takes place.

6. Since the Corporate Debtor having failed to make payment of the outstanding amount of Rs.9,66,802, the Operational Creditor filed this Company Petition under Section 9 of Code.

7. The Operational Creditor has filed the ledger Account of the Corporate Debtor maintained by it, which shows the balance of Rs.9,66,802/-. The Operational Creditor has also filed the Bankers' Certificate dated 30.1.2019 as per the Bankers Book Evidence Act, 1891, which confirms that no credits from the Corporate Debtor were obtained in the account since 1.1.2018.

8. This Company petition was listed for hearing on 6.12.2019 when the Counsel for the Corporate Debtor appeared but did not appear subsequently on 20.1.2020 and 5.2.2020.

9. The Corporate Debtor has not filed reply to the above said Petition but at the time of hearing held on 6.12.2019, Counsel for the Corporate Debtor submitted that “the Court Receiver has already been appointed by Hon’ble High Court under SARFAESI proceedings and there is no defense available to him at this moment and pleaded that the Court may take its own decision.”

10. On perusal of the material documents placed before this Bench, it is clear that the Bills raised on the Corporate Debtor and Delivery Challan are in respect of the transportation of the consignment. It is clear from the Bank Certificate that the Operational creditor has not received a single paisa from this Operational Creditor after the said transportation. The Corporate Debtor failed to make the payment despite receipt of the demand notice, which proves that the Corporate Debtor defaulted in making the payment.

11. The Operational Creditor has also proposed the name of a registered insolvency resolution professional to act as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.

12. The Petition under Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and 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.

13. Accordingly, this Petition is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

1. 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 activity 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.
2. 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.
 3. 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.
 4. 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.
 5. That the public announcement under section 13 of the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
 6. That this Bench appoints Mr. Bhaskar Gopal Shetty, a registered insolvency professional having Registration Number [IBBI/IPA-001/IP-P01285/2018-19/12003] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.

14. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor, and the Interim Resolution Professional. Compliance report of the order by Designated Registrar is to be submitted immediately.

Sd/-

V NALLASENAPATHY
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)