NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V

C.P. 461/IB/MB/2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Mrs. Meena Sakariya, Proprietrix of M/s. M.R. Industrial Services

Megh Synergy, No. 45/21, Halls Road, Kilpauk, Chennai - 600010

..... Operational Creditor/ Petitioner

Vs

H'Reck Engineers Private Limited

H'reck Engineers Private Limited No. 10, Krishna Kunj 145-145 M G Road, Ghatkopar East, Mumbai, Maharashtra – 400099

..... Corporate Debtor

Order Pronounced On: 12.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Mr. D.S. David

For the Respondent: Mr. P. V. Narendran

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Mrs. Meena Sakariya, Proprietrix of M/s. M.R. Industrial Services** hereinafter called as the ("**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **H'Reck Engineers Private Limited** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,60,82,805/-.

2. The Operational Creditor filed the present petition under Section 9 of the Insolvency and Bankruptcy Code 2016, on account of failure to repay the operational debt of Rs.97,43,522/- towards the Principal Amount and Rs.63,39,283/- towards Interest calculated at 24% per annum; therefore the total outstanding amounts to Rs.1,60,82,805/- which remains unpaid by Respondent till 08.01.2021.

3. The Petitioner/Operational Creditor is a proprietor of M/s. Madras Steels and Tubes and having its registered office at No.45, (old No.21), Halls Road, Kilpauk, Chennai- 600 010, engaged in the business of supplying iron and steel materials across various states of India. The Respondent is a company registered under the provisions of Companies Act, 1956 and approached the Petitioner for purchasing steel and metal plates for their business. (Copy of the Company Master Data of Petitioner is annexed as Annexure II (1)).

4. Thereafter upon the request of the Respondent, the Petitioner from time to time supplied Mild Steel Beam, M S Channel Conf., M S Columns, Chequered plates, Mild Steel Plates based on the Purchase order of the Corporate Debtor and raised various Invoices. The said invoices were duly received and

acknowledged by the Respondent without any objection. The outstanding amount payable to the Petitioner is Rs.97,43,522/- towards the Principal Amount and Rs.63,39,283/- towards Interest calculated at 24% per annum and, therefore, the total outstanding amounts to Rs.1,60,82,805/-. (Office copy of Purchase Orders received by the Petitioner from the Respondent is annexed as Annexure II (2) and Office copy of Invoices issued by the Petitioner to the Respondent are annexed as Annexure II (3).

5. It is further stated that despite the supply of the goods by the Petitioner and receipt of the bills by the Respondent, the Respondent failed to pay above mentioned operational debt.

6. The Petitioner further submits that the Corporate Debtor entered in to Memorandum of Understanding with Operational Creditor on 05.09.2019 whereby the Corporate Debtor agreed to pay Rs.1,16,43,522/- in 29 installments. The Petitioner submits that the corporate debtor paid a sum of Rs.8,53,544/- and further made a payment of Rs.3,00,000/-.

7. The Petitioner further submits that thereafter the Petitioner had sent various reminders and made frequent visits to the Respondent for the payment of the outstanding operational debt. The Petitioner submits that the Petitioner had also issued a Form 3 demand notice dated 28.01.2020 which was duly served on the Corporate Debtor on 30.01.2020. It is noteworthy to mention that despite receiving the Statutory Demand Notice dated 30.01.2020, the Respondent issued no reply. (Form 3 along with the Postal Tracking Receipt and Acknowledgement Card Annexure I).

8. The Petitioner had entered into transaction with the Respondent during the year 2018, the default dates are 26.04.2018 to 28.05.2018 as per the Invoices submitted to the Respondent. The Respondent admitted its liability but failed to pay the outstanding. Hence the Petition is filed well within limitation period.

9. Notice of the Petition was given to the Respondent. Initially, Mr. Mohnish Jain Advocate appeared on behalf of the Corporate Debtor and sought time to file

reply. Vide order dated 12.07.2022, this Bench afforded an opportunity to the Respondent to file the reply within a period of 2 weeks subject to payment of cost of Rs. 10,000/-, failing which, the right to file reply would stand forfeited. Neither the reply was filed by the Corporate Debtor nor the cost was paid to the other side with the result that the right to file the reply stood forfeited.

Findings:-

10. We have heard the Counsel for the Petitioner and have gone through the records.

11. From a perusal of the record, it is revealed that the Operational Creditor supplied goods to the Corporate Debtor as per the following invoices:-

No. of Invoices: 08

S.No	Invoice No	Bill Date	Amount (Rs.)
1.	0043/18-19	26/04/2018	20,16,856/-
2.	0044/18-19	26/04/2018	18,00,897/-
3.	0059/18-19	07/05/2018	20,30,588/-
4.	0100/18-19	22/05/2018	17,53,853/-
5.	0103/18-19	23/05/2018	16,95,747/-
6.	0109/18-19	28/05/2018	15,99,125/-
TOTAL			1,08,97,066/-
Received			11,53,544/-
Outstanding towards Principal			97,43,522/-

12. Out of the total amount of the invoices of Rs. 1,08,97,066/-, the Corporate Debtor paid only a sum of Rs. 11,53,544/- leaving an outstanding principal of Rs. 97,43,522/-. A perusal of the above referred invoices further reveals that

there is a stipulation of payment of interest @ 24% in case of the payment not being made within 7 days. Since there is a stipulation with regard to interest, the Petitioner/Operational Creditor has rightly claimed interest amount of Rs. 63,39,283/- calculated at the agreed rate of 24% per annum from the date of default of each invoice.

13. The invoices were issued between 16.04.2018 and 28.05.2018 and the present Petition was filed on 04.03.2021, i.e. within a period of 3 years from the date of the 1st invoice. Therefore, the present Petition is deemed to have been filed within the period of limitation.

14. The Petitioner has further proved that a demand notice dated 27.01.2020 was served upon the Corporate Debtor through speed post but the latter failed to respond to the said notice nor made any payment. The Petitioner has further placed on record Memorandum of Understanding dated 05.09.2019 executed between the parties whereby the Corporate Debtor accepted its liability to pay Rs. 1,16,43,522/- towards full and final settlement by way of instalments of Rs. 4 lac each but subsequently failed to adhere to the terms of the said settlement which necessitated filing the present Petition.

15. As a result of the foregoing discussion, we are of the considered view that the Petitioner has been able to establish that there is existence of "**debt**" and "**default**" committed by the Corporate Debtor in this case.

16. Accordingly, the above Company Petition is '**admitted**' by passing the following:

<u>ORDER</u>

A. The above Company Petition No. (IB) 461 of 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **H'Reck Engineers Private Limited.**

B. Since the Operational Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench hereby appoints **Mr. Rajendra Devidas Puranik**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P 02029/2020-2021/13149, having Email id rdpuranik@gmail.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

C. The Operational Creditor shall deposit an amount of Rs. (2) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

D. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

E. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

F. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

G. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

H. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

I. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

K. Accordingly, the C.P.(IB) 461 of 2021 is **admitted.**

L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)