IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1584/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

ECO DRILLING FLUIDS PRIVATE LIMITED

…Applicant/Operational Creditor

VERSUS

DSTR INFRASTRUCTURES & PROJECTS LLP

…Respondent/ Corporate Debtor

Judgment Pronounced on:06.01.2020

<u>CORAM:</u>

DR. DEEPTI MUKESH
HON’BLE MEMBER (Judicial)
SH. HEMANT KUMAR SARANGI
HON’BLE MEMBER (Technical)

MEMO OF PARTIES

ECO DRILLING FLUIDS PRIVATE LIMITED

Registered office at Unit No. 4, Ground Floor,

Building No. 01, C-2 Type Sector-02

Opposite Abbott Hotel, Vashi,

Navi Mumbai Thane-400703

…Applicant/Operational Creditor

VERSUS

DSTR INFRASTRUCTURES & PROJECTS LLP
Registered office at L-II-143-B LG Flat Kalkaji

New Delhi-110019

…Respondent/ Corporate Debtor

For the Applicant: Ms. Shardha Agarwal, Advocate

For the Respondent: Mr. Mukesh Rana, Ms. Mamta, Ms Tanusha Pali, Advocate

ORDER

Per-Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Eco Drilling Fluids Private Limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against DSTR Infrastructures & Projects LLP (for brevity 'Corporate Debtor').

2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 2013 on 30.04.2016, having CIN U74999MH2016PTC280410, inter-alia, involved in the business of supplying polymer. The applicant is having its registered office at Unit No. 4, Ground Floor, Building No. 01, C-2 Type Sector-02 Opposite Abbott Hotel, Vashi, Navi Mumbai Thane-400703.

3. The Corporate Debtor is LLP incorporated on 31.08.2016 under the provisions of Limited Liability Partnership Act, 2008 and having its

Identification Number AAH-2730, having its registered office at L-II-143-B LG Flat Kalkaji, New Delhi-110019.

4. The Applicant has stated that the corporate debtor engaged the applicant by placing various purchase orders for supply of polymers, which was to be delivered at Ahmadabad metro site. It is stated that both the parties had agreed to allow a credit of thirty days from the date of invoice generated on the corporate debtor. The applicant issued number of invoices out of which invoices from 19.01.2018 - 28.05.2018 are outstanding and are unpaid by the corporate debtor for a total amount of Rs 19,29,513/-.

5. The Applicant submits that the invoices were raised for a total amount of Rs 58,92,123/- out of which payment of Rs 39,62,610/- was made. It is submitted that the last payment was made on 16.04.2018 and thereafter there was no payment by the corporate debtor for the balance amount. As per Form V, the total debt outstanding as on 20.05.2019 is Rs 19,29,513/- along with interest Rs 5,13,776/- @ 24% per annum as per invoice terms amounting to total aggregate claim of Rs 24,44,289/-.

6. The Applicant submits that emails were sent to the corporate debtor from 09.02.2018 to 29.10.2018 requesting the corporate debtor to clear the payment for the outstanding amount. However, the corporate debtor chose not to reply.

7. It is submitted by the applicant that no complaints/objections are raised by the corporate debtor against the applicant's services in the past.

8. The Applicant issued a demand notice dated 21.05.2019 in Form 3 under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 24,44,289/-. The corporate debtor had replied to the notice vide email dated 25.05.2019 and had asserted as follows:

   "As we are committed earlier, in the meeting held in Delhi we would do the payment upon receiving the payment from TATA projects, Ahmedabad Metro".

9. It is submitted by the applicant that even after assuring the payment in their reply no payment was made by the corporate debtor.

10. Hence, the Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.

11. The Corporate Debtor has replied to the application and has contended that the material supplied to the corporate debtor by the applicant was sub-standard and because of which the consumption of the material was abnormally more than required and the price at which the polymer, material was supplied to the corporate debtor was exorbitantly higher than the market price of the product.

12. The Corporate Debtor also contended that the applicant had not disclosed about the settlement letter dated 15.12.2018, wherein the parties had mutually agreed and decided to settle the dispute whereby the corporate debtor was liable to pay Rs 9,65,000/- and the balance amount will be waived off.

13. The Applicant has filed a rejoinder controverting the averments made in the reply and has asserted that the issue with respect to the substandard supply of the polymer and supply at higher rate has been denied as the applicant had supplied the polymer to the corporate debtor

from 09.07.2017 to 03.04.2018 and during this period no communication/dispute regarding quality of polymer or the rates were raised by corporate debtor. It is submitted by the applicant that the rates of supply of polymer was mutually agreed by the parties and the same cannot be raised at a later stage when the supply had been made and the goods are consumed and the invoices had been raised. It is pertinent to note that there are no correspondences between the parties with respect to any dispute raised by the corporate debtor.

14. The Applicant further states that there was a settlement entered between the parties vide letter dated 15.12.2018 which had to be completed by the corporate debtor within 15 days i.e. by 30.12.2018, but the corporate debtor had failed to comply with it and therefore the settlement between the parties had lapsed. It is submitted that the applicant had sent a reminder email for recovery of the complete dues on 27.03.2019 i.e. after the expiry period of the settlement letter, but no response from corporate debtor to the said reminder is received till date.

15. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and raise a pre-existing dispute by asserting the sub-standard services were rendered

by the applicant and was raised only after application filed under section 9.

16. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. On the contrary there is an admission by the corporate debtor to do the payment upon receiving the payment from TATA projects, Ahmedabad Metro vide reply to section 8 notice through its email dated 25.05.2019. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant.

17. Further the date of default occurred from 16.04.2018 and hence the debt is not time barred and the application is filed within the period of limitation.

18. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

19. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its

dues, which is admitted by the Corporate Debtor vide its letter dated 25.05.2019, establishing the default in payment of the operational debt. The application is complete as per the requirements of section 9 of the code and in the light of above facts and records the present application is admitted.

20. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal from the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Dharm Vir Gupta, With registration number IBBI/IPA-001/IP-P01492/2018-19/12342 (email – dvgupt@hotmail.com) (Mobile No. 9871777133) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

21. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Dharm Vir Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

22. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

23. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named, by

the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/- **sd/-**

HEMANT KUMAR SARANGI **DR. DEEPTI MUKESH**

MEMBER (T) **MEMBER (J)**