

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

C.P. No. 1807/I&BP/2019

Under section 8 &9 of the IBC, 2016

In the matter of

Godrej & Boyce Mfg. Co. Ltd.

Pirojshanagar, Vikhroli, Mumbai - 400  
079

Petitioner

v/s.

Urban Transit Private Limited

207, Gera Imperium II, Platto Plaza,  
Panjim, Goa - 403 001

.... Corporate

Debtor

Order delivered on: 25.10.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner : Ms. Chandni Tamma, Advocate i/b India Law Alliance.

For the Corporate Debtor : None Present.

*Per: V. Nallasenapathy, Member (Technical)*

ORDER

1. This company Petition is filed by Godrej & Boyce Mfg. Co. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Urban Transit Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default on 30.03.2016 in making payment to the extent of Rs. 15,64,352/- including interest @ 15% p.a. and octroi charges, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with

Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that on 17.11.2015 the Corporate Debtor issued a purchase order for Rs. 37,24,654/- to the Petitioner for the supply of lifeline make batteries for the Corporate Debtor's Mumbai Monorail Project. The Petitioner accepted and confirmed the purchase order through their letter dated 21.11.2015.

3. The Petitioner was required to supply lifeline make batteries within a period of five months from the date of receipt of the said purchase order. The Petitioner procured the batteries from lifeline batteries INC, California, USA and on 27.01.2016 the said batteries were shipped from USA and received in India on 02.03.2016. Subsequently, the petitioner supplied the same to the Corporate debtor and raised invoice.

4. As per the General Terms and Conditions (GTC) annexed to the purchase order, the Petitioner requires to open the Letter of Credit (LC) in compliance with the payment terms.

5. Thereafter several e-mails requests made by the Petitioner to the Corporate Debtor to release the LC as per the payment terms in the GTC. However, the Corporate Debtor failed to respond to the said e-mails.

6. On 21.06.2016, through an e-mail the Corporate Debtor committed to release all the pending payments of the Petitioner by 22.07.2016. The Corporate Debtor further issued two cheques of Rs. 20,00,000/- and Rs. 5,00,000/- on 03.08.2016 and 22.09.2016 respectively towards the part-payment of outstanding amount.

7. Thereafter on several occasions, the Petitioner addressed series of e-mails to the Corporate Debtor to release the balance amount of Rs. 12,00,000/- due and payable to the Petitioner.

8. After repeated requests and reminders were issued to the Corporate Debtor, on account of non-payment of the dues, the Petitioner on 22.08.2018 issued a demand notice to the Corporate Debtor for the payment of outstanding dues.

9. The Corporate Debtor replied to the demand notice dated 29.09.2018 stating that the balance payments were delayed due to the termination of monorail services. It was further informed that as the monorail operations resumed from 01.09.2018, the Corporate Debtor was expecting cash inflow from end of November 2018 and proposed to pay an amount of Rs. 10,30,478/- as per the payment terms laid down in the said reply in order to finally settle the matter and requested the Petitioner to provide their approval for the same. On 04.10.2018 the Petitioner through their letter accepted the said settlement proposal of the Corporate Debtor.

10. On 03.12.2018, the Corporate Debtor informed the Petitioner that the installment payment plan provided by the Corporate Debtor could not be materialized and requested the Petitioner to accept an amount of Rs. 1,00,000/- for the time being. The Corporate Debtor further informed that the balance payment shall be released in the month of December, 2018.

11. The counsel for the Petitioner submitted that they are not entitled to charge interest and accordingly given up the claim towards interest. Further, the octroi charges claimed by the Petitioner is without any supportive documents, hence the octroi claim of Rs. 1,96,983/- has to be excluded. Accordingly, now the claim will be Rs. 11,27,461/-

12. The counsel for the Petitioner present and submits that the petition sent to the Corporate Debtor was returned with an endorsement as "refused" and she has filed affidavit of service to that effect.

13. One Ms. Pooja Piyush Kabra, office at 601, Sidhi Harmony, NDR - 28, Tilak Nagar, Chembur (w), Mumbai - 400 089; having Registration No.

IBBI/IPA-001/IP-P00826/2017-18/11411 has given her consent in Form No. 2 to act as an Interim Resolution Professional.

14. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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.
- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 25.10.2019 till the completion of the CIRP 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.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Ms. Pooja Piyush Kabra, office at 601, Sidhi Harmony, NDR – 28, Tilak Nagar, Chembur (w), Mumbai – 400 089; having Registration No. IBBI/IPA-001/IP-P00826/2017-18/11411 as Interim Resolution Professional to carry the functions as mentioned under the Code.

15. Accordingly, this Petition is admitted.

16. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-  
V. Nallasenapathy  
Member (Technical)

SD/-  
Suchitra Kanuparthi  
Member (Judicial)