

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3198/IBC/MB/2019

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

M/s Totale Global Pvt. Ltd.

71-C, New Avadi Road, Kilpauk,
Chennai 600010

.....OPERATIONAL CREDITOR

Vs

Gopinath Engineering Co. Pvt. Ltd.

(15, Sathyam-C, Sathyam Shivam
Sundaram Apartment, MG Road,
Ghatkopar East, Mumbai- 400077

.....Corporate Debtor

Order delivered on: 10.08.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Agam H. Maloo, Advocate

For the Respondent: Mr. Raju Nair, Director of the Corporate Debtor
company

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by M/s Totale Global Pvt. Ltd.
(hereinafter called "Operational Creditor") seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against Gopinath Engineering Co. Pvt. Ltd. (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 41,30,000/- and the Operational Creditor sought resolution in a sum of amount Rs. 41,30,000/-

Submissions of the Financial Creditor

- i. The applicant, M/s Totale Global Pvt. Ltd., was engaged by the Respondent, Gopinath Engineering Co. Pvt. Ltd. for Refractory Jobs at BPCL, Mumbai by way Work Order No. GOPEC/TGPL/BPCL/CCUS/D/001/2018, dated 10.04.2018 the total value of the work order Rs. 35,00,000/- excluding GST.
- ii. The applicant completed the work given to them on 10.05.2018 and submitted a bill for the work they had done on 18.05.2019 and thereafter, they have sent a Copy of Invoice in No. SI-CN-J18-0007 to the Respondent for Rs. 41,30,000/- (Rupees Forty-One Lakhs and Thirty Thousand Only), inclusive of GST on 17.05.2018.
- iii. During 02.06.2018 to 01.02.2019 the applicant sent emails demanding the unpaid amount of Rs. 41,30,000/- and the reply emails from the respondents for requesting time for payment of the debt, which

- proves that the Respondent has accepted the amount to be paid to the applicant and there is no dispute on that.
- iv. Thereafter, on 21.04.2018, the Respondent issued a cheque for Rs. 31,50,000/- towards part payment in cheque nos. 000784, 885483 respectively and the same was deposited with the bank for encashment but the same was returned due to insufficiency of funds. And on 24.09.2018 the Applicant has sent the first Demand Notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the same was delivered to the Respondent on 28.09.2018. The Respondent has neither sent any reply to the demand notice nor paid the outstanding amount.
 - v. The applicant has sent a final reminder letter dated 13.11.2018 requesting the respondent to pay the outstanding amount but the respondent has not paid the same.
 - vi. Therefore, on 14.05.2019 the applicant has sent the Second Demand Notice under Rule 5 of the IBC, 2016 and the same was delivered to the Respondent on 20.05.2019. This time also the respondent has neither sent any reply to the demand notice nor paid the outstanding amount.
 - vii. However, the respondent had not paid the outstanding amount of Rs. 41,30,000 to the applicant. Hence, this application is being filed.

FINDING

- 3. The above matter was first listed on board on 12.09.2019. Thereafter, it was again listed on 17.10.2019. The Corporate Debtor put up appearance through their advocate, Ms. Heena Kapoor. The same advocate continued to appear before this

bench from time to time but did not choose to file any reply. On the other hand, on 14.11.2019 when the matter was listed on board, both sides requested for an adjournment on the ground that there is a possibility of settlement.

4. on 29.07.2021, when the matter was finally listed for arguments, Mr. Raju Nair, Director of the Corporate Debtor was present and did not make any representation either regarding the settlement or opposed for admission of the above Company Petition.
5. The counsel appearing for the Operation Creditor also requested for adjournment on 29.07.2021 on the ground that the senior counsel is engaged in arguing the bail petition before some other court. Therefore, this Tribunal directed the petitioner to file written submissions within two days and reserved the matter for orders. However, the Operational Creditor did not bother to file written submissions as directed. Hence this bench has left with no option except to dispose of the above Company Petition as per material available on record.
6. Upon perusing the record, it is observed that the above Company Petition was filed by the Operational Creditor who was engaged by the Corporate Debtor, Gopinath Engineering Co. Pvt. Ltd. for carrying out certain jobs of the Corporate Debtor by way of work order dated 10.04.2018. subsequently, the Operational Creditor has raised an invoice for the work done by them on 18.05.2019 by sending a copy Invoice no. SI-CN-J18-0007. The Corporate Debtor failed to honour payment due under the invoice.
7. The Operational Creditor issued statutory demand notice under Section 8 of the code calling upon the Corporate Debtor to pay the outstanding liability. The Corporate Debtor having received of the said notice neither sent any reply nor cleared the amount. The Operational Creditor annexed the copy of the demand notice and also track report of the postal department evidencing the

receipt of the demand notice by the corporate Debtor. The Operational Creditor also annexed the relevant invoices raised on the Corporate Debtor which were not honoured by the Corporate Debtor. Even after filing the above company petition, the corporate debtor did not choose to file any reply. On the other hand took adjournments on the pretext of settlement. Admittedly, the work order and invoices relates to 2018-19 and the Company Petition being filed on 21.08.2019 is within limitation. Upon perusing the above documents, this Tribunal is completely satisfied that the debt and default are established in this case and the debt is also within limitation. It is also evident from the conduct of the Corporate Debtor that he is accepting the liability. Thus, the present Company Petition satisfies all the necessary requirements for admission.

8. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -3198(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Gopinath Engineering Co. Pvt. Ltd.
- b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Suresh Chandra Jena** (suresh.jena58@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01540/2019-2020/12473 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 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)