

NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KERALA

IBA/12/KOB/2020
(Under Section 9 of IBC 2016)

Order delivered on
18.03.2020

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Veera Brahma Rao Arekapudi (Technical)

In the matter of:

Madras Steels & Tubes,
Megh Synergy No.45 (Old No.21) Halls Road,
Kilpauk, Chennai
Tamil Nadu 600 010

.... **Applicant/Operational Creditor**

Vs.

Escorts Engineers Private Ltd.,
Regd Office: 1st Floor,
Thanks-Sight Foundation Eye Hospital
Edathottil Estate, Veekshanam Road,
Kochi 682 018, Kerala

.... **Corporate Debtor**

Appearance:

For applicant/Operational Creditor

... Shri Nidhi Sam John, Advocate

For Corporate Debtor

... Shri Varghese J. Punnachalil, Advocate

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1. This application has been filed by **Madras Steels & Tubes** through its proprietor-Mr. Narendra Sakariya (hereinafter referred as 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the 'I & B Code') for initiating Insolvency Resolution Process against **M/s Escorts Engineers Private Limited** (hereinafter referred as 'Corporate Debtor'). The

Operational Creditor is in the business of supply and trading of GI Pipes, MS Pipes, ERW Pipes etc., who was one of the suppliers to the Corporate Debtor who is a service provider of architectural services, engineering services, professional firefighting etc. The Corporate Debtor is a Private Limited Company, which was incorporated on 04.07.2001 and continues now its existence with CIN No. U74210KL2001PTC014829 and has its registered office at 1st Floor, Thanks- Sight Foundation Eye Hospital, Edathottil Estate, Veekshanam Road, Kochi- 682 018, which is in the State of Kerala and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

2. The Operational Creditor filed this application to realize the trade dues arising out of its usual course of business vide Bill no. 171 dated 24.03.2018, Bill No. 172 dated 26.03.2018, Bill no. 0027/18-19 dated 09.04.2018 and Bill No. 0045/18-19 dated 14.04.2018. As per Part IV of the application, the Corporate Debtor is liable to pay a sum of ₹ 7,09,797/- (Rupees Seven Lakhs Nine Thousand Seven Hundred Ninety-Seven Only) including an interest of ₹ 1,54,975/- at 18% per annum from the due date of invoices till the date of the actual realization.
3. The Demand Notice was issued on 26.06.2019. Post issue of Demand Notice, the Corporate Debtor has not raised any dispute and paid ₹ 1,00,000/- on 28.06.2019 and another ₹ 1,00,000/- on 25.09.2019.
4. On 16.03.2020, the matter was mentioned before this Bench by both the parties by filing Memorandum of Understanding (filed on 06.03.2020) and memo of withdrawal (filed on 13.03.2020) with the following terms:

“

- i. *Party of the Second part admits the outstanding amount claimed by the party of the first part in IBA/12/KOB/2020 filed before the Hon'ble NCLT, Kochi Bench;*

- ii. Party of the Second Part hereby agrees to settle the outstanding due to the Party of the first part by paying an amount of ₹ 7,09,797 (Rupees Seven Lakhs Nine Thousand And Seven Hundred And ninety Seven Only), by way of bank transfer of initial ₹ 2,00,000/- on or before 05.03.2020 directly into the account maintained by the party of the first part with Union Bank of India, Anna Nagar Branch, Chennai, simultaneous with the signing of this Memorandum of Understanding;
- iii. The balance amount of ₹ 5,09,797/- to be paid by the party of the second part in five instalments commencing from April, 2020 and the instalments are to be paid on or before the 15th of each month, as detailed below. The party of the second part has to maintain sufficient balance with its bank, The Federal Bank Limited, Ernakulam South Branch in its Current Account No. 11530200018003, in order to honour the five post dated cheques delivered to party of the first part.

PARTY OF THE SECOND PART AGREES TO PAY THE BALANCE AMOUNT OF ₹ 5,09,797/- (Five Lakhs Nine Thousand Seven Hundred and Ninety Seven Only) in instalments by issue of post-dated cheques.

- a. Rs. 2,00,000/- by way of bank transfer to the bank account of party of the first part maintained with Union Bank of India, Anna Nagar Branch, Chennai on or before 5th March, 2020 simultaneous with the signing of this MOU.
 - b. Cheque No.434504 dated 15th April, 2020 drawn on Federal Bank in favour of M/s Madras Steel And Tubes amounting to ₹ 1,00,000/- (One Lakh Only).
 - c. Cheque No. 434505 dated 15th May, 2020 drawn on Federal Bank in favour of M/s Madras Steel And Tubes amounting to ₹ 1,00,000/- (One Lakh Only).
 - d. Cheque No. 434506 dated 15th June, 2020 drawn on Federal Bank in favour of M/s Madras Steel And Tubes amounting to ₹ 1,00,000/- (One Lakh Only).
 - e. Cheque No. 434507 dated 15th July, 2020 drawn on Federal Bank in favour of M/s Madras Steel And Tubes amounting to ₹ 1,00,000/- (One Lakh Only).
 - f. Cheque No. 434508 dated 15th August, 2020 drawn on Federal Bank in favour of M/s Madras Steel And Tubes amounting to ₹ 1,09,797/- (One Lakh Nine Thousand Seven Hundred and Ninety Seven Only).
- iv. On receiving the entire settlement amount, the Party of the First Part agrees to discharge the Party of the Second Part from its liability

towards the Party of the First Part, which forms part of the debt in IBA/12/KOB/2020. The party of the first part shall issue No-Dues Certificate on receipt of the final encashment of cheques. However, in the case of default or delay in the payment in contravention to this memorandum of understanding by Party No.2, Party No.1 shall at liberty to pursue legal action and reinstate the proceedings under the Insolvency and Bankruptcy Code, 2016 or any other Act or law of its choice.”

4. The Operational Creditor and Corporate Debtor jointly prayed for withdrawal of this IBA No.12 of 2020.

ORDER

In view of the Memorandum of Understanding dated 05.03.2020, between the Operational Creditor and Corporate Debtor, IBA/12/KOB/2020 stands withdrawn, with liberty to the Operational Creditor, to revive the case on default of agreed term & conditions as set out in the Memorandum of Understanding.

Accordingly, IBA/12/KOB/2020 is disposed of as withdrawn.

Dated this the 18th day of March, 2020.

Sd/-

Veera Brahma Rao Arekapudi
Member (Technical)

Sd/-

Ashok Kumar Borah
Member (Judicial)