IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
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CP (IB) No. 16/CTB/2020

In the matter of:

In the matter of Section 9 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

MEP Engineers & Contractors, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Plot No.- C-14, Sector-30, Navanagar, Bagalkot, Karnataka- 587,103;

... Applicant/Operational Creditor

-Versus-

Technico (India) Private Limited, a company incorporated under Companies Act, 1956, having its registered office at Plot No. 1966, N.H.-5, Patrapara, Bhubaneswar, Odisha- 751 002.

... Respondent/Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing)

For Petitioner(s)	:	Mr. Arup Kumar Panda, Adv.
For Respondent(s)	:	Ms. Sweta Mukherjee, Adv.

Order reserved on: 18.04.2022
Order pronounced on: 25.04.2022

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ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by the petitioner/Operational Creditor herein i.e., **MEP Engineers & Contractors** for initiation of Corporate Insolvency Resolution Process in short (CIRP) against respondent/Corporate Debtor i.e., **Technico (India) Pvt. Ltd.**

2. The petition has been filed on 21.01.2020 therefore, the petitioner claims that it is well within the prescribed threshold limit of Rs. 1.00 lakh as applicable during the relevant time.

3. The applicant states that the Corporate Debtor had issued work order in favor of the Operational Creditor vide order No. TIPL/P-504 & 552/WO-01/KAPP/DODSEL dated 04.04.2015 for Fire Detection and Suppression System. The Operational Creditor in accordance with the specifications and descriptions mentioned in the work order, has supplied materials as well as carried out the erection and other works at the project site.

4. Further, that for the service provided to the Corporate Debtor, the applicant has raised several invoices total amounting to ₹ 24,29,217/- out of which the Corporate Debtor has made a part payment of ₹ 18,28,288/- as a result of which there is an outstanding liability of ₹ 6,00,929/- excluding interest, is due and payable by the Corporate Debtor.

5. Petitioner submits that a letter dated 22.02.2016 requesting the Corporate Debtor to make the payment of service tax on behalf of the Operational Creditor by deducting the same from the bills was issued. However, no reply was given by the Corporate Debtor.

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6. The applicant further states that a meeting was subsequently held between them on 01.12.2016 and 02.12.2016 wherein, debt was admitted by the Corporate Debtor who agreed to pay the said amount of ₹ 6,05,586/-. However, till date no payment has been made.

7. Applicant submits that when the Corporate Debtor did not make the payment of the amount agreed between them, the Operational Creditor has sent another letter to the Corporate Debtor on 02.12.2016. However, the Corporate Debtor despite receiving the letter neither made a reply nor made the payment. Operational Creditor again sent letter dated 13.07.2017 and 22.09.2017 to the Corporate Debtor requesting to make the payment of the outstanding amount. However, the Corporate Debtor neglected to make the payment.

8. The applicant states that constrained by the non-payment of dues, he issued the demand notice in Form-3 under Section 8 of the Code dated 10.05.2019 raising a demand of ₹ 6,00,929/- plus interest of ₹ 2,88,051/-, totaling ₹ 8,88,980/-.

9. The said demand notice was replied to by the Corporate Debtor on 11.06.2019 wherein the Corporate Debtor has not shown any pre-existing dispute after the admission of debt in the MoM dated 01.12.2016 and 02.12.2016. Petitioner submits that apart from vague denials, the Corporate Debtor did not raise any objection to the existence of MoM dated 01.12.2016 and 02.12.2016, and the letters dated 21.09.2017 issued by the Corporate Debtor. The Corporate Debtor also did not dispute the contents of the aforesaid MoM and letters dated 21.09.2017.

10. The Corporate Debtor has filed his reply dated 10.08.2020 and states *inter alia* that he has no existing liability towards the Operational Creditor as alleged or at all. The alleged debt of the Operational Creditor is frivolous and *mala fide* and the same is disputed.

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11. The Corporate Debtor states that the demand notice issued by the Operational Creditor is not proper. However, the Tribunal notes that Demand Notice has been issued in Form 3 with the supporting documents which are enclosed at Annexure 9 of the petition.

12. This Tribunal further notes that Work order dated 04.04.2015 was issued by the Corporate Debtor (CD) to the Operational Creditor (OC) for installation of Fire Detection and Suppression System at KAPP 3 & 4 Dodsal Site at Kakrapar, Near Vyara, Dist – Surat, Gujarat. Further, that the principal herein is Dodsal Enterprises Pvt. Ltd. (DEPL), the CD was the Contractor and the OC was the Sub-Contractor. Therefore, the issue herein relates to the non-payment of dues by the Contractor (CD) to the Sub-Contractor (OC) arising out of the aforesaid work order.

13. It is noted that the CD has acknowledged the fact that the outstanding has not been paid vide its letters dated 21.09.2017 written to the Principal, i.e. DEPL with copy to the OC enclosed at Pg. 46 & 47 of the petition. In the said letter it was certified by the CD that an amount of Rs. 8,81,666/- including service tax & TDS was to be paid to the OC. Aforesaid, admittance and certification of claim on 21.09.2017 by the CD extends the limitation period accordingly this petition filed on 18.01.2020 is not barred by limitation.

14. The respondent CD has submitted that the claim is disputed, however, not produced any supporting documents/details to justify that any pre-existing dispute was there before issuance of Section 8 demand notice by the OC dated 10.05.2019. Further, CD has stated that the debt alleged by the Operational Creditor is frivolous and *mala fide.* However, not produced any relevant detail/document in support of his contention. On the other hand the

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documentary evidence provided by the OC indicate existence of debt exceeding Rs.1.00 lakh and default on the part of the Corporate Debtor.

15. In view of the forgoing, this Tribunal is of the view that CIRP needs to be initiated against the Corporate Debtor. The Operational Creditor has not suggested the name of any Interim Resolution Professional. Therefore, this Tribunal appoints **Mr. Saradindu Jena, Registration No.:** IBBI/IPA-002/IP-N00520/2017-2018/11622 and **E-mail Id.: ip.jena@gmail.com** residence of Ou No-510, 5th Floor, Esplanade One,721, Rasulgarh, Bhubaneswar, Orissa-751010 from the list of Interim Resolution Professional, Liquidator, Resolution Professional and Bankruptcy Trustee for Cuttack Zone, issued by the Insolvency and Bankruptcy Board of India. There is nothing on record to say that any disciplinary proceedings against the proposed Interim Resolution Professional is pending.

16. In view of the above, we are inclined to **ADMIT** the application by following Order.

ORDER

(i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **TECHNICO (INDIA) PVT. LTD.**

(ii) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement

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referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) 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;

b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) 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 (54 of 2002);

d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

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

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(vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(vii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.

(viii) **Mr. Saradindu Jena, Registration No.:** IBBI/IPA-002/IP-N00520/2017-2018/11622 and **E-mail Id.: ip.jena@gmail.com** residence of Ou No-510, 5th Floor, Esplanade One,721, Rasulgarh, Bhubaneswar, Orissa-751010 is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this Order. He shall file Form-2, and that no disciplinary proceedings are pending against ~~her~~ him with the Board.

(ix) We direct the Operational Creditor to deposit a sum of ₹ 1,00,000/- (Rupees One Lakh only) with Interim Resolution Professional to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from

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the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

(x) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petitioner to the IRP, otherwise coercive steps to follow.

(xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

(xii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

17. Interim Resolution Professional to file 1st Progress Report on 31.05.2022. List the matter on 31.05.2022.

18. Let the certified copy of the order be issued upon compliance with requisite formalities.

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, the 25th April, 2022.

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