IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH

CP(IB) NO.2815(MB)/2019
Under Section 9 of the IBC, 2016

In the matter of

Garg Enterprises

...Petitioner

Vs

Pan India Infra projects (P) Ltd

... Corporate Debtor

Order delivered on: 16.07.2020

Coram:
Hon'ble Member (Judicial) Smt Suchitra Kanuparthi
Hon'ble Member (Technical)Shri V Nallasenapathy

For the Petitioner: Ms. Anuja Bhansali, i/b Raval Shah & Co.
For the Respondent: Mr. Shyam Kapadia, a/w Mitesh Menon, i/b MDP Partners

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by the proprietor of Garg enterprises ("Petitioner") against Pan India Infra projects (P) Ltd ("Corporate Debtor") for initiating Corporate Insolvency Resolution Process ("CIRP") as provided under section 9 of the Insolvency & Bankruptcy Code, 2016 ("Code") read with rule 6 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 ("Rules") alleging that the Corporate debtor defaulted in making payment to the extent of Rs. 5,59,38,928/-.

2. The Petition reveals that the Corporate Debtor who was the allottee of the road construction project for Ludhiana-Talwandi road project approached the Petitioner for supply of construction material such as Stone Dust, Sand, etc. The Corporate Debtor issued purchase orders and accordingly Petitioner supplied materials for Rs. 13, 59,23,574/- and the Corporate Debtor has made payment to the extent of Rs 8,76,73,843/-, thus leaving an outstanding balance of Rs. 4,82,49,731/- being the principal due. The Petitioner submits that he is entitled to charge interest @24% p.a. as provided in the invoices, however, he had charged 12% interest on the invoices outstanding for more than 30 days from the date of invoice and accordingly he is entitled for Rs. 76,89,197/- as interest as on 01.07.2019 and thus claimed a sum of Rs,5,59,38,928/-. Copies of the Purchase Orders and invoices are annexed with this Petition as Annexure B and Annexure C respectively.

3. Since the Corporate Debtor failed to make the payments the Petitioner issued demand notice on 04.06.2019 in Form 3 demanding the unpaid operational debt of Rs. 5,53,29,135/- (Rs.4,82,49,731/- towards principal amount + Rs.70,79,404/- towards the interest @ 12% p.a. upto 23.5.2019) under section 8 of the code.

4. The Corporate Debtor sent a reply to the demand notice on 19.06.2019 stating that: the demand notice is vague and devoid of necessary and essential information as required under rule 5; the Petitioner failed to satisfy the Corporate Debtor as to quality of material supplied; and finally denying the liability.

5. The Corporate Debtor filed reply to the petition raising the following contentions:

   a. Disputes relating to reconciliation of accounts exists between the parties which is evident from emails dated 11.3.18 and 12.3.18 and this issue was discussed in several meetings held between the parties.

   b. The Hon'ble Supreme Court in the case of "*Mobilox Innovations Pvt Ltd vs. Kirusa Software Pvt Ltd*" clearly held that the adjudicating authority has to see whether there is a plausible contention which requires further investigation and the dispute is not a patently feeble legal argument or an assertion of facts unsupported by evidence.

   c. The Hon'ble Supreme Court in the case of "*K. Kishan vs. Vijay Nirman Company Pvt Ltd.*" held that even if be clear that there be record of operational debt, it is important that the said debt is not disputed.

   d. On the basis of the above said judgements the petition deserves to be dismissed.

   e. The Terms of VAT invoices provides that 24% interest will be charged and the credit period provided is 15 days where as the purchase order provides that the credit period is 30 days.

   f. The IRP is not named in the Petition as provided under section 9(4) of the code, hence the petition is incomplete.

g. The true copy of Invoice No. 37 was never given to the Corporate Debtor by the Petitioner and hence the counter signature of Corporate Debtor is denied.

h. Form 5 filed by the petitioner is incomplete.

6. On Hearing the Counsel on both side and on gone through the pleadings of the parties carefully, the followings are the observations of this bench:

a. The corporate debtor by an email dated 06.07.2018 addressed to the petitioner submitted that they will try to release the payment from next week onwards. (page. 337 of the petition)

b. The Corporate Debtor by an email dated 6.9.2018 addressed the Petitioner conveyed that the petitioner will get the payment soon. (Page 382 of the petition)

c. The Petitioner enclosed the email dated 8.1.2019 sent by the Corporate Debtor to the Petitioner wherein the accounts reconciliation statement has been annexed and the Corporate Debtor acknowledged the liability to the extent of Rs 4,22,75,994/-. The reconciliation reveals that the corporate debtor is not willing to consider the interest imposed by the petitioner to the extent of Rs.51,34,212/- and five invoices to the extent of Rs.58,49,817/- were not accounted by the corporate debtor. Since the invoices provides for charging of interest, the petitioner is right in charging interest. The said email is extracted below:

423

Annexure A-5 545

Gmail Divyanshu Garg <gargenterprises180@gmail.com>

Garg Enterprises Account StATEMENT

Manish Agarwal <Manish.Agarwal@infra.esselgroup.com> Tue, Jan 8, 2019 at 12:26 PM
To: "gargenterprises180@gmail.com" <gargenterprises180@gmail.com>
Cc: Monika Manuja <Monika.Manuja@infra.esselgroup.com>, Sanjay Sah <Sanjay.Sah@infra.esselgroup.com>, Deepak Tayal <Deepak.Tayal@utility.esselgroup.com>, Nishikant Upadhyay <Nishikant.Upadhyay@infra.esselgroup.com>, Abhay Kumar Mishra <Abhay.Mishra@infra.esselgroup.com>

Dear Garg Sir,

Please find herewith attached the reconciliation for your reference. Need to discuss with site person for remaining invoice which not booked in our books. Summary of Reco as below:-

Reconciliation of Garg Enterprises as on 07th Jan-19			
Particular			Amount
Balance as per Garg Enterprises			5,36,03,352
Less:-			
Interest imposed by Vendor but not considered by PIIPL			51,34,212
Invoices not booked by PIIPL as below			
Invoice No	Invoice Date	Amount	
BILL NO.14	19-09-2017	17,95,102	
BILL NO.21	25-10-2017	11,69,166	
BILL NO.22	25-10-2017	24,27,589	
BILL NO.37	27-09-2018	4,19,258	
BILL NO.40	27-09-2018	38,702	58,49,817
TDS not considered by Vendor			3,43,329

424

Total	4,22,75,994	546
Balance as per PIIPL-Payable	(4,22,75,996)	
Diff.	(1)	

Above balance may be changed if any recovery or deduction to be proposed by execution team , Liquidity Damage and any Taxation impact.

Thanks

Manish

[Quoted text hidden]
[Quoted text hidden]

Reco.xlsx
38K

Reconciliation of Garg Enterprises as on 07th Jan-19

Particular			Amount
Balance as per Vendor_Garg			53,603,352
Less:-			
Interest imposed by Vendor but not considered by PIIPL			5,134,212
Invoices not booked by PIIPL as below			
Invoice No	**Invoice Date**	**Amount**	
BILL NO.14	9/19/2017	1,795,102	
BILL NO.21	10/25/2017	1,169,166	
BILL NO.22	10/25/2017	2,427,589	
BILL NO.37	9/27/2018	419,258	
BILL NO.40	9/27/2018	38,702	5,849,817
TDS not considered by Vendor			343,329
Total			42,275,994
Balance as per PIIPL-Payable			#REF!
Diff.			#REF!

d. There is no iota of any dispute raised by the Corporate Debtor against the Petitioner relating to the existence of debt or on the quality of materials supplied by the petitioner. The Corporate Debtor has not produced any material to that effect. Hence, the reliance on the Corporate Debtor on the judgements in the cases of *Mobilox Innovations Pvt Ltd* and *K. Kishan*, supra, is of no avail to the Corporate Debtor.

e. As far as the invoices not booked by the Corporate Debtor, it is not the case of Corporate Debtor that they have not received the goods in respect of those invoices but it is a mere case of invoices not booked by the Corporate Debtor in their books which they are obliged to book and make the payment. The so called dispute relating to account reconciliation is merely a dispute raised by the Corporate Debtor to save itself from the clutches of the Code. In fact the account reconciliation statement is a clear proof that there is debt payable more than ₹ 1 lakh as provided under section 4 of the code. This cannot be taken as a dispute as provided under Section 5(6) of the code which provides as below:

"5. (6) "dispute" includes a suit or arbitration proceedings relating to— (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty;"

f. It is not mandatory to name an interim resolution professional in a section 9 petition and hence the objection of the corporate debtor in this regard is rejected.

g. We have gone through the Form 5 filed by the petitioner and the same is in order.

h. The other contentions that difference in the invoice and purchase orders with regard to credit period, etc does not deserve any consideration.

7. The Petitioner established the debt and default and the petition deserves admission.

8. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this petition 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 today 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 appoints Mr. Ajay Vijaykumar Agrawal, a registered insolvency professional having Registration No. IBBI/IPA-001/IP-P00046/2017-2018/10120, email id:ajayamarca@yahoo.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.

9. Accordingly, this Petition is admitted.

10. The Registry is 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)