

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 2284 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Raychem RPG Private Limited

...Operational Creditor/ Applicant

v/s

Herodex Power Systems Private Limited

...Corporate Debtor/Respondent

Order Dated 9th September 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh

Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Bhushan Shah, Adv. Ashwin Mathew, Adv.
Disha Rampat

For the Respondent: None Present

Per V.P Singh, Member (Judicial)

ORDER

1. This is an application being CP 2284/2018 filed by **Raychem RPG Private Limited**, Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Herodex Power Systems Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming a default of ₹38,63,085.36/- (Rupees Thirty-Eight Lakh Sixty-Three Thousand and Eighty-Five and Paise Thirty Six Only) for the goods supplied by the Operational Creditor to the Corporate Debtor.
2. Ms Sneha Ranade files this application, Constituted Attorney of the Operational Creditor, authorised by Board Resolution dated 24.09.2015. Copy of the Board Resolution is annexed to the Application.
3. The Applicant supplied goods to the Corporate Debtor based on the purchase order bearing No. HPS/PO/TNGD/M19/007 dated 17.12.2015 issued by the Corporate Debtor. The Applicant raised

four invoices dated 02.06.2016, for a total invoice amount of ₹38,70,330.36/- (Rupees Thirty-Eight Lakh Seventy Thousand Three Hundred and Thirty and Paise Thirty Six Only). The goods were delivered to the Corporate Debtor on 03.06.2016. Copies of the Purchase Order, Invoices and the Delivery challans are annexed to the Application.

4. The Corporate Debtor failed to make payments towards the invoices within the stipulated period of 90 days from the date of invoice. The date of default is 31.08.2016.
5. It is submitted by the Applicant that the Corporate Debtor did not raise any dispute regarding the goods supplied by the Applicant. The Applicant has annexed affidavit dated 25.05.2018 in compliance of section 9(3)(b) of the I & B Code, 2016.
6. The Applicant has annexed its Bank Statements from the period 01.08.2016 to 04.06.2018 along with the Bankers Certificate as required under section 9(3)(c) of the I & B Code, 2016 in support of its claim that the Applicant has not received any amounts from the Corporate Debtor.
7. The Corporate Debtor in its Affidavit in Reply states that the Demand Notice was not served on the Corporate Debtor. Further, it states that there were disputes about the quality of the goods and that the goods were supplied in a delayed manner.
8. The Corporate Debtor states payments of the entire amount were already made to the Applicant vide Cheque No.580302 dated 30.05.2016 for a sum of ₹38,49,631/- (Rupees Thirty-Eight Lakh Forty-Nine Thousand Six Hundred and Thirty-One Only), stating further that the Applicant did not present the said cheque for encashment and has filed this Application.
9. The Applicant in its rejoinder submits that the Cheque bearing No.580302, issued by the Corporate Debtor was issued with a covering letter stating as follows

“The PDC should be kept as security, and we will open the letter of credit within 10-15 days at a later stage after the receipt of materials at site in good condition. The PDC has been issued as security only, and the instrument should not be presented at any

stage or claimed, and the same should be returned once the Letter of Credit is established”.

10. The Applicant submits that the Corporate Debtor has repeatedly requested the Applicant not to encash the cheque. Copy of the covering letter dated 30.05.2016 is annexed to the Rejoinder.
11. The Applicant, in support of its claim that the Demand Notice was duly served on the Corporate Debtor, has annexed a copy of the postal receipt and acknowledgement to the Rejoinder.
12. We have heard the parties and perused the record.
13. On perusal of the purchase order dated 17.12.2015, the invoices dated 02.06.2016 and the Delivery Challan dated 03.06.2016; it is established that goods worth ₹38,70,330.36/-are supplied,
14. The Applicant's Bank statement for the period 01.08.2016 to 04.06.2018 and the Bankers Certificate, filed in compliance of section 9(3)(c) of I & B Code, 2016, and the covering letter annexed to the security cheque issued by the Corporate Debtor in favour of the Applicant establishes that the Applicant has not received any payment from the Corporate Debtor.
15. The disputes mentioned in the Affidavit in Reply is not supported by any evidence. The averment that the Corporate Debtor did not receive Demand Notice and was unable to respond is incorrect as the postal receipt and acknowledgement are annexed to the Application.
16. It is pertinent to mention that the Hon'ble Supreme Court in the case of *"Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 Supreme Court Cases 353, held:*

"All that the adjudicating authority is to see at the stage of admitting/rejecting the application is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However in doing so, the authority does not need to be satisfied that the

defence is likely to succeed so long as the dispute is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application, Moreover the existence of the dispute and /or the suit or arbitration proceeding must be pre-existing i.e It must exist before the receipt of the demand notice or invoice”

17. The Corporate Debtor, despite service of demand notice U/S 8 of IBC, has failed to pay or raise a dispute with respect the goods supplied/services provided by the operational creditor. The date of default being 31.08.2016. This application has been filed well within limitation. The application is complete and deserves to be admitted.
18. The Applicant has not proposed the name of a registered insolvency resolution professional to act as **Interim Resolution Professional**.
19. The Application under section Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, filed by **Raychem RPG Private Limited** against **Herodex Power Systems Private Limited** for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
 - III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
 - V. That the public announcement under section 13 of the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
 - VI. That this Bench at this moment appoints **Mr Hazari Lal Saini**, a registered insolvency professional having Registration Number **[IBBI/IPA-001/IP-P01553/2019-20/12494]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

20. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor, and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted immediately.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

9th September 2019