

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

CP (IB) No.1403/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

RAJMARG INFRA PRIVATE
LIMITED.

[CIN: U45309DL2018PTC328196]

...Operational Creditor

v/s.

CATSKILL INFRA PROJECTS
PRIVATE LIMITED.

[CIN: U45203PN2008PTC131355]

...Corporate Debtor

Order Delivered on: 08.09.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

Mr. Avinash R. Khanolkar a/w Ms.
Surekha Yadav, Ld. Counsel.

For the Corporate Debtor:

Mr. Anup Lahoti, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Rajmarg Infra Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Catskill Infra Projects Private Limited., the Corporate Debtor.

1.1. The Company Petition is filed on 02/12/2020 claiming that an amount of 1,27,41,740/- is due to the Corporate Debtor including the principal amount of Rs. 1,06,77,479/- and interest of Rs. 20,64,261/- @ 12% p.a. The date of default as specified in Part IV of the petition is 16.04.2019 (i.e. 45 days from the date of raising the invoice on 01.03.2019).

2. The Operational Creditor and the Corporate Debtor have a trade relationship and the Corporate Debtor has employed the services of the Operational Creditor for surveying, planning, engineering, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, testing, of all items/material required to complete the electrification works of Habitations and Feeder Separation at Shivpuri District, Gwalior Region.

2.1. That in pursuance to the above-mentioned engagement of Operational Creditor by the Corporate Debtor for said electrification works of Habitations and Feeder Separation at Shivpuri District, Gwalior Region, a letter of award dated 14.12.2018 and an MOU dated 14.12.2018 were executed on the same day between the Parties wherein it was specifically

agreed by the Corporate Debtor that all payments against invoices will be made to the Operational Creditor within 45 days.

2.2. That as per the understanding reached between the Parties and the agreement/MOU dated 14.12.2018, the Operational Creditor raised the invoices on 01.03.2019 to the tune of Rs.1,52,99,476/- for the services rendered and the liability to pay the same was also acknowledged by the Corporate Debtor by its account confirmation dated 01.04.2019. The Corporate Debtor has paid an amount of Rs. 46,22,000/- till 17.06.2019 while defaulting on the remaining amount.

2.3. In view of the failure on part of Corporate Debtor to make payments of the outstanding dues, the Operational Creditor was constrained to issue demand notice in Form No. 3 dated 27.10.2020 to the Corporate Debtor at the registered office of the Corporate Debtor, the demand notice sent through courier has been received by the Corporate Debtor on 31.10.2020. Thus, the Demand Notice under the Code was served to the Corporate Debtor. The same was never replied to by the Corporate Debtor. As the Corporate Debtor has not made the payment of the outstanding due and has also not respond to the Demand Notice issued by the Operational Creditor. The Operational Creditor is before us seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

3. The Corporate Debtor vide its affidavit in reply dated 14.02.2023 stated that this petition is filed only as a means for recovery of alleged debt and that the amount due and payable by the Corporate Debtor to the Operational Creditor was disputed.

3.1. In the year 2012-2013 one-person Mr. Avinash Singh approached the Corporate Debtor and had given proposal that he has good contact in

Bhopal and Indore for the Electrification work and there were arrangements between them for sharing of profits arising out of such contracts.

3.2. The Corporate Debtor in 2012 appointed Mr. Avinash Singh as company employee to handle the MP government electrical project. Further, the Corporate Debtor company authorised Mr. Avinash Singh to fill and sign the tender related documents, raising the sales invoices. There was no power to do any commercial transactions other than Catskill Head office at Pune with authorised signatory.

3.3. The Corporate Debtor also alleged that Mr. Avinash Singh has forged documents of the Corporate Debtor in the projects and also the entire transactions took place without knowledge and behind the back of Company and its directors. The Corporate Debtor further alleged that, Mr. Avinash Singh was hand in glove with the Punjab National Bank.

3.4. The Corporate Debtor had never replied/bid any project at Shivpuri as the Award/tender was in favour of the said Joint Venture and therefore no question arises for the Corporate Debtor to issue any work order/purchase order in the favour of the Operational Creditor. The Corporate Debtor has also denied the contents of the MOU dated 14.12.2018.

Findings

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1. As per the material on record this Bench finds that, Operational Creditor has relied upon letter dated 21.07.2019 sent by Operational Creditor to the Corporate Debtor wherein the Corporate Debtor has acknowledged delay in payment of Operational Creditor and has submitted a schedule of

payment in three instalments from 28.07.2019 to 31.08.2019 and final payment by 15.10.2019. This evidence clearly establishes the debt.

4.2. Since, the Corporate Debtor failed to honour its commitment to pay the satisfactory dues, demand notice u/s 8 of the Code was sent on 27.10.2020. The Corporate Debtor failed to respond within 10 days of the said notice. It is pertinent to note that, the Demand Notice was served on the Corporate Debtor at its registered office at Pune and at Bhopal office. Despite service of the notice, in October 2020 the Corporate Debtor did not raise any objections, to the demand raised by the Operational Creditor in the Demand Notice nor did they raise the issue of forgery by Mr. Avinash Singh.

4.3. In its affidavit in reply, the Corporate Debtor has taken a plea for the first time that no debt is payable and that their employee Mr. Avinash Singh forged documents of Corporate Debtor. The Bench notes that, Mr. Avinash Singh was appointed by the Corporate Debtor in 2012-2013 to handle MP electrical works. After the lapse of two years, the Corporate Debtor has lodged a complaint dated on 08.11.2022 against Mr. Avinash Singh. This bench is of the considered view that, this is a clear afterthought by the Corporate Debtor to prevent the Corporate Insolvency Resolution Process. The Demand Notice was issued on 27.10.2020 and this petition was filed on 02/12/2020. The Corporate Debtor could not explain what prevented them from taking coercive action against Mr. Avinash Singh for 2 years. The Corporate Debtors action only goes to negate its stand that they were not aware of the transactions done by Mr. Avinash Singh.

4.4. The Learned Counsel for the Corporate Debtor has also raised a dispute that the Demand notice dated 27.10.2020 was not served on its registered office which is situated in pune but was served on its Bhopal office. However, the Operational Creditor has denied the said plea raised by the Corporate

Debtor contending that the said demand notice was duly served on the Corporate Debtor on its Regd. Office addressed situated at Pune, to defend the said fact, the Petitioner placed on record an affidavit of service which is annexed to the present petition. On perusal of said affidavit, the submissions of the Operational Creditor are found substantiated as the demand notice was duly served upon the Corporate Debtor both on Pune and Bhopal office. In that view of the matter, this bench is of the considered view that plea raised by the Corporate Debtor has no substance; hence, the said submission cannot be taken into consideration.

5. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.
6. The Operational Creditor has proposed the name of Interim Resolution Professional (IRP) of Mr. Rajesh Shah in the matter.
7. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016 by passing the following order.

ORDER

8. The petition bearing CP (IB) No.1403/MB-IV/2020 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Rajmarg Infra Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Castkill Infra Projects Private Limited., the Corporate Debtor is **Admitted.**

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- 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 action under the Securitization and Reconstruction of Operational 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
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.

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- 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 of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Rajesh Shah, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00592/2018-2019/11881 Email: rsshah27@hotmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back

to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
08.09.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)