

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

C.P. (IB) 2979/2019

Under section 9 of the IBC, 2016

In the matter of

Swaroop Engineers

1524 1, Laxmipuri, Kolhapur,

Maharashtra – 413 002

.... Petitioner

v/s.

Hi-Tech Electromech Private Limited

G-16, MIDC, Baramati, Pune –

413133

....Respondent/Corporate Debtor

Order delivered on: 17.10.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner: Ms. Sumi Soma and Ms. Raina Birla, Advocates

For the Respondent: Shrikant Deshmukh, Director appearing in
person.

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by Swaroop Engineers (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Hi-Tech Electromech Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default on 26/06/2017 in making payment to the extent of Rs. 3,44,202/- by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The petitioner, through its authorized person named Mr. Dilip Ramchandra Chitnis has filed this application on the ground that the Corporate Debtor defaulted in making the payments of the

petitioner for the materials sold by the petitioner to the Corporate Debtor and invoices raised valued Rs. 3,44,202/-

3. The Corporate Debtor is a company incorporated on 29/06/2009 bearing CIN U31200PN2009PTC134211 and having Authorised Share Capital of Rs.1,50,00,000/- and Paid Up Share Capital of Rs.1,00,000/-
4. According to the Petition filed by the Petitioner there were materials sold by them to the Corporate Debtor for which according to the invoices, the Corporate Debtor was to pay the amount mentioned within stipulated time. The petitioner mentioned that they have time and again requested the Corporate Debtor to pay the outstanding amount. The invoices starting from date 15/02/2016 till 19/05/2018 have been annexed by the petitioner at Annexure-3.
5. The petitioner mentioned on affidavit that notice/invoice demanding payment in Form III and Form IV, both dated 10.07.2019 were served on the Corporate debtor under the IB Code, 2016 and that the Corporate Debtor has given no notice within 10 days whatsoever relating to the dispute in respect of the unpaid operational debt. Hence, this application was filed by the petitioners before this Tribunal.
6. This demand notice sent by the petitioner contained the demand of outstanding payment along with interest calculated @24% p.a. and is annexed in the copy of petition at Annexures 9 and 10. The petitioner earlier sought the interest but later on 14/10/2019 submitted revised copy of Form V of the petition before this Bench wherein they removed the clause of interest as the interest cannot be levied on the Corporate Debtor on the ground that the Tax Invoices submitted by the petitioner does not contain the clause of interest.
7. The petitioner also contended that the Corporate Debtor regularly promised to pay but failed in paying the said amount. The petitioner also mentioned that he does not hold any security against the supply of the materials. The petitioner contends that the said debt is due as per provisions of Law, Contract and has become due under the Contract Act, 1872/ Sale of Goods Act, 1930.
8. Moreover, there has been an admission of debt and liabilities on the part of the Corporate Debtor in their written submission itself stating that they are not in a position to pay the debts due to financial crisis and therefore prayed that appropriate orders may be passed. Hence,

the matter was reserved for orders and the following order is hereby passed accordingly:

ORDER

9. We have heard both the parties and perused all the documents submitted by them. The documents submitted by the petitioner are enough to establish the debt upon the Corporate Debtor and also the Corporate Debtor have accepted their liability and the fact that they are not in a position to pay the debts due to financial crisis .
10. Moreover, there is no doubt on the fact that there was supply of goods by the petitioner and that the Corporate Debtor had defaulted in making the payment. The petitioner has annexed the invoices and the statements of accounts for the same.
11. The petitioner had sent demand notices to which the Corporate Debtor did not reply and therefore this petition was preferred by the petitioner before this Tribunal.
12. The petitioner claimed a total amount of Rs. 4,96,745/- including interest at the rate of 24% on the principal amount of Rs. 3,44,202/- but later, on 14/10/2019, they have submitted a revised copy of Form V of the petition wherein the interest levied was removed as there was no mention of any interest clause in the tax invoices annexed by them.
13. Hence, all the requisite conditions necessary for admission of a petition under Section 9 have been found to be fulfilled and therefore, this petition deserves to be admitted.
14. Therefore, this Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application 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

judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; 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 17.10.2019 till the completion of the corporate insolvency resolution process 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 corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Laxman Digambar Pawar having his registered office at Flat NO: 15 & 16, First Floor, Bhakti Complex, Behind Dr. Ambedkar Statue, Pimpri, Pune- 411 018 and having Registration No: IBBI/IPA-003/IP-N00015/2017-18/10104 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

15. Accordingly, this Petition is allowed.

16. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)