

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

**CP (IB) No.749/MB/C-IV/2017**

Under section 9 of the Insolvency \* &  
Bankruptcy Code, 2016

*In the matter of*

**M/s Ercon Composites**, a partnership  
firm registered with the Registrar of  
Firms, Jodhpur, having Reg. No.17-  
18/234/2004 and represented by its  
Partner, Mr Mukul Maheshwari

... Operational Creditor

v/s

**R&M International Private Limited**

[CIN: U45202MH2009PTC194919]

... Corporate Debtor

**Order pronounced on: 01.01.2020**

***Coram:***

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

***Appearances:***

For the Operational Creditor : Mr Ranit Basu i/b Mr Vivek  
Sharma, Advocates  
For the Corporate Debtor : Ms Mugdha Modi i/b M/s Juris  
Link, Advocates

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**ORDER**

*Per: Rajasekhar V. K., Member (Judicial)*

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **M/s Ercon Composites (“the Operational Creditor”)**, a partnership firm registered with the Registrar of Firms, Jodhpur, having Reg. No.17-18/234/2004 and represented by its Partner, Mr. Mukul Maheshwari, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **R&M International Private Limited** [CIN: U45202MH2009-PTC194919] (**“the Corporate Debtor”**).
2. The Corporate Debtor is a company incorporated on 13.08.2009 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its CIN is U45202MH2009PTC194919. At the time of filing of the present petition, the petitioner has mentioned the Registered Office of the Corporate Debtor as: “C-2098, Oberoi Garden, Off Saki Vihar Road, Chandivali, Andheri (East), Mumbai 400072.” However, as per the MCA web portal, at present, the registered office of the Corporate Debtor is at A-3027, Oberoi Garden Estate, Off Saki Vihar Road, Chandivali, Andheri (East), Mumbai 400 072, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The Corporate Debtor is into the business of infrastructure development.

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4. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹69,76,937/- (Rupees sixty-nine lakh seventy-six thousand nine hundred and thirty-seven only) as principal with interest at the rate of 18% per annum from the date of filing of the petition [as mentioned at page 3 of the petition in Form 5, bearing Diary No.12736/2017].

5. The case of the Operational Creditor is as follows: -

(a) Pursuant to the orders placed by the Corporate Debtor, the Operational Creditor had supplied carbon fibre laminates to the factory of the Corporate Debtor.

(b) Both parties exchanged correspondences and thereafter arrived at a settlement on 08.07.2014, whereby the Corporate Debtor wrote a letter to the Operational Creditor stating that they would be clearing the outstanding payment of ₹79,76,937/- (Rupees seventy-nine lakh seventy-six thousand nine hundred and thirty-seven only) in five instalments as follows: -

1. On 15.07.2014	:	₹10,00,000/-
2. On 30.07.2014	:	₹15,00,000/-
3. On 16.08.2014	:	₹15,00,000/-
4. On 30.08.2014	:	₹15,00,000/-
5. On 15.09.2014	:	₹24,76,937/-
<b>Totalling -</b>	<b>:</b>	<b>₹79,76,937/-</b>

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A copy of the said letter dated 08.07.2014 has been placed as **Exhibit 'D'** at p.26 to the Petition. This letter is on the letterhead of the Corporate Debtor, and duly signed for and on behalf of the Corporate Debtor by its director, Mr Gopal Rai.

- (c) The respondent Corporate Debtor made payment of the first instalment, *i.e.*, ₹10,00,000/-. After adjusting the same, there remained a total outstanding of ₹69,76,937/- due and payable to the Operational Creditor.
- (d) After follow-up in respect of the remaining instalments, the Corporate Debtor issued a cheque dated 02.03.2015 for the outstanding amount of ₹69,76,937/- due and payable to the Operational Creditor. A copy of the cheque has been placed as **Exhibit 'E'** at p.27 to the Petition However, when presented, this cheque bounced. The cheque return memo and the Rejected Instrument Advice have both been placed on record collectively as **Exhibit 'F'** at pp.28-29 to the Petition.
- (e) On 23.07.2015, the Operational Creditor issued a Statutory Notice under section 433 read with section 434 of the Companies Act, 1956, calling upon the Corporate Debtor to make the outstanding payment of ₹69,76,937/- which has been placed on record as **Exhibit 'G'** at p.29 of the petition. The tracking report placed as **Exhibit 'H'** at p.30 reveals that the Statutory Notice was received by the Corporate Debtor on 27.07.2015.

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- (f) Since no payment was forthcoming from the Corporate Debtor in response to the Statutory Notice, the Operational Creditor filed a petition dated 14.10.2015 before the Hon'ble Bombay High Court for winding-up of the Respondent-Corporate Debtor. The extract of the case details from the Hon'ble Bombay High Court's website indicates that the petition filing date is 20.11.2015 and it was registered as CP No.255/2016 on 03.09.2016. The said extract is placed on record as **Exhibit '9'** at p.56 of the Reply.
- (g) During the pendency of the winding-up petition before the Hon'ble Bombay High Court, Ministry of Corporate Affairs issued Notification No.GSR.1119(E) dated 07.12.2016, notifying the transfer all proceedings under the Companies Act, 1956 relating *inter alia* to winding-up on the ground of inability to pay debts, to this Adjudicating Authority in terms of rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016, which came into effect from 01.04.2017.
- (h) Accordingly, *vide* letter No.COM/58/2916 dated 01.02.2017, the Registry of the Hon'ble High Court transferred the present petition to this Adjudicating Authority, and the same was numbered as CP (IB) No.749/2017 before this Adjudicating Authority on 06.07.2019.
- (i) In compliance with rule 5 of the Rules *ibid*, a Demand Notice dated 25.09.2017 in Form 3 in terms of section 8 of the IBC was issued by the Operational Creditor to the Corporate

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Debtor. This Demand Notice has been placed on record at pp.75-78 of the Rejoinder. The postal receipt has been placed at p.79 of the Rejoinder. The Operational Creditor has stated in para 8 of its Rejoinder that the Demand Notice was returned unserved.

6. The Corporate Debtor has filed a reply to the Petition dated 07.03.2019. It has been stated therein that the goods supplied by the Operational Creditor were defective and not of standard quality. The Corporate Debtor had raised issues of inferior quality of goods, which was also duly communicated to the petitioner *vide* phone calls and email dated 16.01.2014. A copy of the email dated 16.01.2014 has been placed on record as **Exhibit-1** at p.39 of the Reply [para 2(b) at p.34 of the Reply].
7. The Corporate Debtor has further stated that no Demand Notice has been served on the Corporate Debtor, and therefore, the present company petition ought not to be treated as an application under section 9 of the IBC. Further, the Corporate Debtor is not contractually obliged to pay to the Operational Creditor in any manner.
8. The Corporate Debtor has further stated that it had issued security cheques to the tune of ₹79,76,937/- *vide* letter dated 08.07.2014. Thereafter, due to change of signature, it had issued stop payment instructions to the bankers for the balance cheques of ₹69,76,937/- . When the dispute regarding the quality and price of goods was unresolved, the Operational Creditor confronted the Corporate

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Debtor for issuing fresh post-dated cheques as security till the disputes got finally resolved. The Corporate Debtor also issued a cheque for ₹69,76,937/- dated 03.03.2015 on the condition that it should be deposited only if the disputes get resolved. Even up to the date of the post-dated cheque, the dispute could not be resolved, compelling the Corporate Debtor to request the Operational Creditor not to deposit the cheque. However, the cheque was deposited, which bounced. A statutory notice under section 138 of the Negotiable Instruments Act was issued. Subsequently, criminal proceedings were also initiated before the Learned Magistrate, Jodhpur. The Corporate Debtor claims to have a fair chance of getting the criminal complaint dismissed in their favour.

9. The Operational Creditor has filed a rejoinder on 13.12.2018 in the matter. In the Rejoinder, the Operational Creditor has stated that the issue of defective quality of supplies has been raised in only one out of twenty-seven consignments, and that this issue was also resolved. Thereafter, four more consignments were delivered to the Corporate Debtor, who did not raise any issues [Para 3 of the Rejoinder].
10. In so far as the issue of cheques by the Corporate Debtor is concerned, the Operational Creditor has expressly denied that the cheques issued originally were exchanged for the reason of change of signatures.
11. We have heard both the parties and perused the record.

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12. It is noticed from the email dated 16.01.2014 placed as **Exhibit-1** at p.39 of the Reply, that the Corporate Debtor has intimated to the Operational Creditor as follows: -

*“Dear Sir,*

*“In the last batch of carbon fibre reinforced laminates, several imperfections were found. The snap shots of those have been attached herewith.*

*“Kindly make a note of such imperfections and let us know the challenges involved.”*

13. The Operational Creditor had replied to the said email dated 16.01.2014 on 19.01.2014 [**Exhibit-2** at p.42 of the Reply], wherein it has been stated that during the manufacturing process, many times there are problems that are faced while cutting the strip or defective portion, and thus there may be several cut rolls in one roll.
14. Since the email dated 16.01.2014 specifically notes that *“in the last batch of carbon fibre reinforced laminates, several imperfections were found,”* it can only be taken that the other consignments were defect-free. Further, in the Rejoinder, the Operational Creditor has taken a specific stand that the issue of defective quality of supplies has been raised in only one out of twenty-seven consignments, and that this issue was also resolved. Even if the issue is assumed to be unresolved, this would only cover one consignment, and there is no reason why the other consignments

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ought not to be paid for, especially when seen in the context of the specific stand of the Operational Creditor that after the issue raised in the email of 16.01.2014, four more consignments were supplied to the Corporate Debtor.

15. As regards the cheque stated to have been given as security, this cannot be taken to be a valid defence. In terms of section 139 of the Negotiable Instruments Act, 1881, there is a presumption that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. While this is no doubt a rebuttable presumption, the presumption stands unless the contrary is proved. The burden of proof is on the Corporate Debtor.
16. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
17. The Operational Creditor has not proposed the name of any Interim Resolution Professional.
18. It is, accordingly, hereby ordered as follows: -

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- (a) The petition bearing **CP(IB)No.749/MB/C-IV/2017** filed by **Ercon Composites**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **R&M International Private Limited [CIN: U45202MH2009PTC194919]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

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- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
  - (i) 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;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) 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.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by

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Speed Post and email immediately, and in any case, not later than **two days** from the date of this Order.

- (j) 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/-**  
**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

**Sd/-**  
**RAJASEKHAR V.K.**  
**Member (Judicial)**

01.01.2020