



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 416/NCLT/AHM/2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Venkatesh Indigenous Pipes Private Limited

**Applicant/
Operational Creditor**

Versus

Engineering Professional Company Pvt. Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 15/09/2022

Coram:

**DR. DEEPTI MUKESH
MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



MEMO OF PARTIES

Venkatesh Indigenous Pipes Private Limited

B-96, Kasturba Nagar, Near Chetak Bridge

Bhopal 462 024, M.P.

...

Applicant/Operational Creditor

Versus

Engineering Professional Company Private Limited

205, 3rd Floor

Blue Ribbon, Opp. VR Mall

Nr. Harmony Residency

B/s Raghuvir Shell

Vesu, Surat 395 006

Gujarat State

...

Respondent/Corporate Debtor

Appearance:

For Applicant : Mr. Ashish Sharma, Advocate

For the Respondent : None

ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Mr. Nitin Kumar Agrawal, Director of **Venkatesh Indigenous Pipes Private Limited** (for brevity 'Applicant') authorised vide Board Resolution



dated 20.05.2020 with a prayer to initiate the Corporate Insolvency Process (CIRP) against **Engineering Professional Company Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956, duly registered with the Registrar of Companies, Gwalior (MP) having identification No. U27107MP2006PTC018497 and registered office at B-96, Kasturba Nagar, Near Chetak Bridge, Bhopal 462 024. The applicant is engaged in the business of manufacture and supply of steel pipes.

3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 09.09.1999 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U29120GJ1999PTC036558, having registered office at 205, 3rd Floor, Blue Ribbon, Opp. VR Mall, Near Harmony Residency, B/s Raghuvir Shell, Vesu, Surat 395 006, Gujarat State. The authorised share capital of the corporate debtor is Rs. 3,00,00,000/- and paid up share capital is Rs. 2,83,96,000/-. The corporate debtor is engaged in the manufacture of general purpose machinery.



4. It is submitted by the applicant that in the course of regular business, the corporate debtor placed several purchase orders for supply of pipes for various commercial applications and supplied pipes as per orders. Out of all the purchase orders issued, the corporate debtor failed to make complete payments against two purchase orders dated 20.05.2016, annexed to the application. In light of the said default, the applicant sent multiple emails to the corporate debtor from September, 2016 to November, 2017 with detailed break-up of the outstanding. On 19.05.2018, the corporate debtor issued a letter to the applicant acknowledging the debt and suggesting a new payment schedule to clear up the outstanding, however, the corporate debtor failed to follow the new payment schedule. On not receiving the outstanding dues, the applicant had issued demand notice under Section 8 of the Code in Form 3 on the registered email address of the corporate debtor which was delivered to the corporate debtor as per Master Data on 25.05.2020. The applicant has submitted copy of demand notice under Section 8 of the Code in Form 3 dated 06.05.2020 served through speed post and also via email dated 25.05.2020. No reply was received from the corporate debtor against the said demand notice.



5. Thereafter, the applicant filed application under Section 9 of the Insolvency & Bankruptcy Code, 2016 on 04.02.2021.

6. On 17.03.2022, learned counsel for the corporate debtor undertook to file reply within two weeks, however, no reply was filed. Subsequently, during the course of hearing on 12.05.2022, learned counsels for both the sides made a joint statement that parties have principally arrived at the settlement and are in the process of executing the MoU/consent terms describing the mode of payment. Despite opportunities given, the corporate debtor had not filed any reply. Therefore, right to file reply was closed on 26.04.2022.

7. As per part IV, Form 5 total amount of debt is Rs. 2,19,71,825/- (Rupees two crore nineteen lakhs seventy-one thousand eight hundred twenty-five only) which include interest of Rs. 93,03,199/- payable by the corporate debtor for the delayed period. As per the computation annexed to the application, the claim raised by the applicant is against the invoices of different dates raised during the period from 21.04.2017 to 12.03.2020.



8. The date of default in each invoice is different according to the date of the invoice. The application is filed on 02.04.2021 and the corporate debtor admitted its debt vide letter dated 19.05.2018. Hence the present application is within limitation and not barred by law.

9. Registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

10. In compliance of Section 9 (3) (b) and Section 9 (3) (c) of the IB Code the applicant has filed affidavits to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of unpaid operational debt by the corporate debtor.



11. Heard submissions and perused the documents on record. The applicant has brought on record all the documents to substantiate its claim. On perusal of the record it is found that during the course of hearing on 12.05.2022, learned counsels for both the sides made a joint statement that parties have principally arrived at the settlement and are in the process of executing the MoU/consent terms describing the mode of payment. Subsequently, during the course of hearing on 05.07.2022, learned counsels for both the sides made a statement that the settlement process has failed. It is also found that vide letter dated 19.05.2018, the corporate debtor had given a proposal to the applicant to clear the outstanding by September, 2018 in a phased manner, however, the record shows that the corporate debtor has not honoured the proposal.

12. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. Moreover, the corporate debtor has admitted its debt and has failed to clear the outstanding debt. The present application is complete and within limitation. The present application is admitted, in terms of section 9 (5) of IBC, 2016.



13. The applicant has not proposed the name of the Interim Resolution Professional (IRP) to be appointed. We, hereby appoint Mr. Ramakant Gupta having address at 609, 21st Century Building, Nr. Udhna Darwaja, Ring Road, Surat 395 002 with registration No. IBBI/IPA-001/IP-P-02673/2022-23/14105 and having email ID bajajgupta@yahoo.com subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed within a period of one week from the date of this order.

14. We direct the Operational Creditor to deposit a sum of Rs.2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Ramakant Gupta to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim



Resolution Professional, and shall be paid back to the Operational Creditor.

15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
16. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. In addition, a copy of the order shall also be forwarded to IBBI for its records and for taking steps for updating the Master Data of the corporate debtor in MCA portal. IBBI shall send a compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**