

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB) 2357/MB/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Bigbloc Construction Limited

6th Floor, A-601/B, International Trade
Centre, Majura Gate, Ring Road, Surat,
Gujarat- 395002

... Petitioner

v/s.

Kruti Infracons Private Limited

Bhoomi Heights, Plot No. 5, 6 Sector 8,
Kharghar, Navi Mumbai- 410210

... Corporate Debtor

Order delivered on: 04.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. V. P. Verma, CS Dhiren R. Dave

For the Corporate Debtor: None Present

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Bigbloc Construction Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Kruti Infracons Private Ltd. (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 4,99,916.65/- which includes interest at the rate of 24% p.a. calculated up to 29.03.2019, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Petitioner sold AAC Blocks of various sizes to the Corporate Debtor and raised invoices on the Corporate Debtor from July 2016 to February 2018. The Statement of Account produced by the Petitioner reveals that there is a balance of Rs. 4,99,917/- which is inclusive of interest charged to the extent of Rs. 2,70,806/-. The Professional representing the Petitioner submitted that the Petitioner is entitled to charge interest for the delayed payments as provided in the invoices.

3. On account of non-payment of outstanding dues, the Petitioner issued Demand Notice dated 21.01.2019 in Form 3 & Form 4 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding repayment of the total amount of debt of Rs. 4,99,916.65/-, but it was returned undelivered with remark 'insufficient address'. Hence, demand notice was also issued to both the directors of the Corporate Debtor at their residential addresses. It was delivered to Mr. Ramesh Sukhdev Andhare on 09.02.2019. The one issued to Mr. Sourabh Manglekar was returned with remark 'validity period exceeded' on 20.02.2019.

4. The Professional representing the Petitioner submitted that the Petition and the intimation of date of hearing sent to the Corporate Debtor was returned with an endorsement "undelivered" and in view of this the Petitioner was permitted to take out substituted service by publication in two newspapers. Accordingly, the Petitioner effected the substituted service and filed proof of service for the same. However, the Corporate Debtor failed to appear before this Bench.

5. The Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

6. The Professional representing the Petitioner argued the case and has pointed out that he has a valid claim through several unpaid invoices and as per his ledger account statement. There is a clear liability of payment of the said invoices and Corporate Debtor has committed default in payment of the same. Hence, this Petition deserves to be admitted.

7. Mr. Sanjeev Kumar Jain, 2 B/ 31, Kalpataru Estate, Jvir, Andheri (East), Mumbai- 400093; having Registration No. IBBI/IPA-001/IP-P00858/2017-2018/11440 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

8. 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 & 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 judgement, decree or other in any court of law; 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 04.11.2019 till the completion of the CIRP 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 CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Sanjeev Kumar Jain, 2 B/ 31, Kalpataru Estate, Jvir, Andheri (East), Mumbai- 400093; having Registration No. IBBI/IPA-001/IP-P00858/2017-2018/11440 as Interim Resolution Professional to carry the functions as mentioned under the Code.

9. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)