

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP (IB) 492/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Prime Enterprise

Through its sole proprietor,

Mr. Bipin Kantilal Mody

3A, Giriraj Building, Mezzanine Floor,

Opposite Lift, S. T. Road, Carnac Bunder,

Mumbai – 400 009

...Operational Creditor/ Petitioner

v/s

Awate Engineering Private Limited

Plot No. D-61/62, MIDC Ranjangaon, Tal.

Shirur, Dist. Pune – 421 220

...Corporate Debtor

Order Delivered on: **20.03.2020**

Coram:

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

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Operational Creditor/Petitioner: Ms. Sunita Sonawane,
Advocate.

For the Corporate Debtor: None Present.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is an application being CP(IB)492/MB/2018 filed by **Prime Enterprise** through its Sole Proprietor, Mr. Bipin Kantilal Mody, Operational Creditor/Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against **Awate Engineering Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

SUBMISSIONS BY THE PETITIONER

2. This Application is filed by Mr. Bipin Kantilal Mody, Sole Proprietor of the Petitioner duly authorised to file the present Application.

3. The Petitioner has claimed an amount of Rs. 8,82,867/- from the Corporate Debtor.

4. A brief history of the transaction between the Petitioner and the Corporate Debtor is as follows. On 13.05.2017 the Corporate Debtor placed order for material which includes *prime hot rolled steel sheets in coils* with the Petitioner and the Petitioner delivered the material to the Corporate Debtor and raised invoice on 17.05.2017 on the Corporate Debtor.

5. On 07.02.2018 the Petitioner issued Demand Notice demanding a sum of Rs. 8,82,867/- under Section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and 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.

FINDINGS

6. The petition was served on the Corporate Debtor and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the Corporate Debtor and the matter was listed on 11.12.2019, 09.01.2020, 22.01.2020, 05.02.2020 and on 04.03.2020, despite service of notice there was no representation from the Corporate Debtor's side.

7. The purchase order confirms the order placed by the Corporate Debtor for purchase of material, the tax invoices confirms the sale of said material to the Corporate Debtor.

8. The outstanding debt of more than Rs. 1,00,000/- is due and payable against the Corporate Debtor and Corporate Debtor has committed default in making the payment.

9. The application filed by the Operational Creditor is on proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.

10. The Applicant has proposed name of Mr. Laxman D. Pawar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-N00015/2017-18/10104] as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

11. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Operational Creditor for initiation of CIRP in prescribed Form 5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

12. This application is filed under Section 9 of I&B Code, 2016, filed by **Prime Enterprise** through its Sole Proprietor, Mr. Bipin Kantilal Mody, against **Awate Engineering Private Limited**, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- 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 activity under the Securitization and Reconstruction of Financial 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 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. That this Bench at this moment appoints Mr. Laxman D. Pawar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-N00015/2017-18/10104] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

- VIII. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
- IX. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
- X. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)