

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) 1664/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Rajesh Vaishnav

...Operational Creditor

Versus

**Mining and Construction Equipment
Private Limited**

[CIN: U29249PN2001PTC016073]

...Corporate Debtor

Order delivered on 16.09.2019

Coram:

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

Appearances:

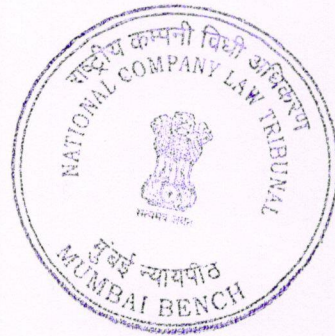
For the Petitioner: CS PS Thakre, i/b PS Thakre & Co, Practising
Company Secretaries

For the Respondent: CS Priyanka Baswal, Practising Company
Secretary

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 Shri Rajesh Vaishnav, an individual ("the Operational Creditor"), seeking to initiate



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Corporate Insolvency Resolution Process (CIRP) against Mining and Construction Equipment Private Limited (“the Corporate Debtor”).

2. The Corporate Debtor is a company incorporated on 20.04.2001 under the Companies Act, 1956, as a private limited company with the Registrar of Companies, Maharashtra, Pune. Its Corporate Identity Number (CIN) is U29249PN2001PTC016073]. Its registered office is at C-21/22, Liberty Society, North Main Road, Koregaon Park, Pune 411 001, Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed on 26.04.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.4,00,000/- as principal amount with interest thereon at the rate of 15% per annum as per invoice as on 15.12.2018, which is the date of default.
4. The case of the Operational Creditor is that he had rendered consultancy services for restructuring and reviving the corporate debtor’s business, as per agreement dated 15.09.2018 [**Annexure ‘B’** to the petition at pp.25-26]. Invoice dated 08.12.2018 for Rs.4,00,000/- (Rupees four lakh only) has been placed on record as **Annexure ‘C’** (p.27). This invoice stipulates that payment should be made within seven days, failing which interest will be charged at fifteen percent per annum. The Operational Creditor



has also attached copies of the bank statements at **Annexure 'F'** (pp.32-33).

5. The Operational Creditor had served a Demand Notice in Form 3 dated 01.04.2019 to the Corporate Debtor (**Annexure 'A'**, pp.20-24) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply dated 04.04.2019, wherein they have acknowledged receipt of the Form 3 Notice, but added that they are still going through major cash crunch situation and are unable to release any payments. They have also stated that they are not in a position to commit any date by which payment will be made [**Annexure 'D'** at p.28].
6. The Corporate Debtor has also filed a reply to the Petition. In para 3 of the reply dated 30.07.2019, the Corporate Debtor has stated that the claim made by the Operational Creditor is correct and that the Corporate Debtor acknowledges that the debt is payable to the Operational Creditor for professional services rendered by him. The Corporate Debtor has expressly stated that it has no objection to the admission of the present petition.
7. We have heard the arguments of both sides and perused the records.
8. It is noticed from the reply dated 04.04.2019 to the demand notice and the affidavit in reply dated 30.07.2019 that the Corporate Debtor has admitted the liability and seeks time for payment. This has also been stated expressly in the correspondence addressed by



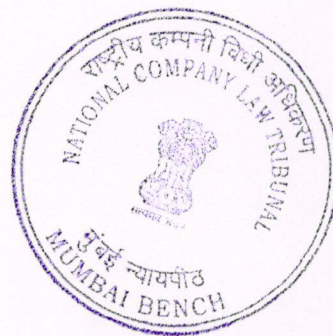
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the Corporate Debtor to the Operational Creditor placed at p.29. Therefore, the reply of the Corporate Debtor to the Demand Notice as well as the petition underscores the fact that the Corporate Debtor is at present unable to meet the liability, which is more than one lakh rupees. This clearly establishes the existence of debt and default within the meaning of sub-sections (11) and (12) of section 3 of the IBC.

9. The application made by the Operational Creditor is complete in all respects as required by law, and it clearly shows that the Corporate Debtor has not paid the dues. 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 Corporate Insolvency Resolution Process against the Corporate Debtor.
10. The Operational Creditor has proposed the name of **Ms. Tanuja Jalan**, Registration No.IBBI/IPA-002/IP-N-00101/2017-18/10244, as Interim Resolution Professional. She has filed her written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.
11. It is, accordingly, hereby ordered as follows: -
 - (a) The petition filed by **Rajesh Vaishnav** under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy

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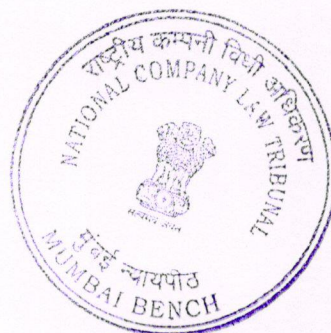
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(Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the corporate debtor is **admitted**.

- (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;
 - (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,-

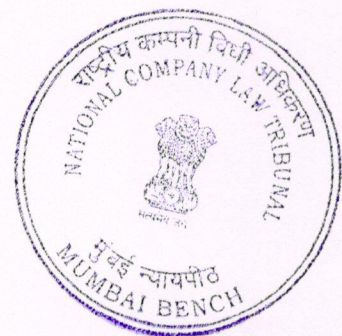
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- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;
- (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply 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.
- (f) **Ms Tanuja Abhinandan Jalan**, Registration No. IBBI/IPA-002/IP-N-00101/2017-18/10244, having address at G-2/12B, Sundar Sangam CHS Limited, SV Road, Sunder Nagar, Malad (West), Mumbai 400 064, email: tanujajalan@yahoo.co.in, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP



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shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 towards issue of 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 Speed Post and email **within two days** from the date of this Order.
- (j) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master



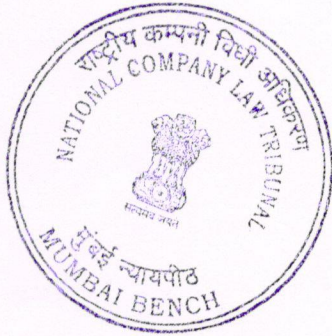
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Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days.**

Sd/-
RAVIKUMAR DURASAMY
Member (Technical)
16.09.2019

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



Certified True Copy
Copy Issued "free of cost"
On 11/09/19
B. A. Patil,
Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India