**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**DIVISION BENCH-(Court-II)**
**KOLKATA**

**CP (IB) No. 336/KB/2022**

*An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

In the matter of:

**SS Legacy Engineers Pvt. Ltd.**
**[CIN: U29220KA2011PTC061701]**

*...Operational Creditor*

*Versus*

**MBE Coal & Mineral Technology India Pvt. Ltd.**
**[CIN: U27100WB2009PTC137428]**

*...Corporate Debtor*

**Date of Hearing: 18/05/2023**

**Date of pronouncing the order: 12/09/2023**

**Appearances (through hybrid mode):**

For the Operational Creditor : Mr. Rahul Sharma, Advocate

For the Corporate Debtor : Ms. Urmila Chakraborty, Advocate

**Coram:**

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| **Bidisha Banerjee** | **:** | **Member (Judicial)** |
| **Balraj Joshi** | **:** | **Member (Technical)** |

**ORDER**

***Per Bidisha Banerjee, Member (Judicial)***

1. This Court convened through hybrid mode.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by SS Legacy Engineers Private Limited ***("Operational Creditor")***, represented by **Shri Sreejith S (Director)**, authorized *vide* a Board Resolution dated 11.11.2022[1] seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against MBE Coal & Mineral Technology India Private Limited ***("Corporate Debtor")***.

3. It is submitted in Part-II of the Petition that the nominal share capital of the Corporate Debtor is Rs.12,00,00,000 (Rupees Twelve Crore Only) with paid up capital as Rs.34,93,230 (Rupees Thirty Four Lakh Ninety Three Thousand Two Hundred and Thirty Only).

4. Part-IV of the Petition the details of operational debt for an amount of Rs.1,08,94,132/- (Rupees One Crore Eight Lakh Ninety Four Thousand One Hundred and Thirty Two only) alongwith interest @ 18% per annum on and from 25.12.2021

5. The Corporate Debtor was incorporated on 3 August 2009, having CIN: U27100WB2009PTC137428, under the Companies Act, 1956. Its registered office is at Ecospace Campus- 2B, 6th Floor, Plot NO. 11F/12, New Town, Rajarhat, North 24 Pgs, Kolkata-700156, West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.

6. The present petition was filed on 5 November 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.1,08,94,132/- (Rupees One Crore Eight Lakh Ninety Four Thousand One Hundred and Thirty Two only) alongwith interest @ 18% per annum on and from 25.12.2021. The date on which the debt fell due is on 25.12.2021.

[1] *Annexed at the back of the petition after Page 69*

***Brief facts of the case:***

7. The Operational Creditor is a Private Limited Company having its head office in Bengaluru, Karnataka. The Corporate Debtor placed 2 purchase orders vide purchase order no. 3100015021 dated 19.05.2015 and purchase order no. 3700000262 dated 02.02.2018.[2] The Operational Creditor raised invoices[3] after fulfilling the the purchase orders in accordance with the terms and conditions of the agreement.

8. Inspite of receiving the entire services, the Corporate Debtor has paid only an amount of Rs. 2,44,01,915.25/- and a sum of Rs. 1,08,94,132/- is still due.

9. The Operational Creditor had issued a Demand Notice under Section 8 of IBC, 2016 on 19.10.2022[4] to the Corporate Debtor and the Corporate Debtor did not reply to the said notice. After such notice, the Operational Creditor made several correspondences via telephone, emails etc. to the Corporate Debtor to repay the dues but all such attempts went in vain. Hence, the present petition has been filed.

***Contents of Reply Affidavit filed by the Corporate Debtor***

10. The Corporate Debtor states that it has been engaged in the business of setting up of coal and mineral projects, operation and maintenance services, manufacturing centrifuge etc. The Corporate Debtor belongs to McNally Bharat Group. The holding company of the Corporate Debtor i.e., McNally Sayaji Engineering Limited and the holding company of McNally Sayaji Engineering Limited and McNally Bharat Engineering Companyu Limited, both have become sick and CIRP proceedings are pending thereto.

[2] *Annexure 2 of the Petition*
[3] *Annexure 3 of the Petition*
[4] *Annexure 4 of the Petition*

11. The Corporate Debtor states that it had engaged the Operational Creditor to render services at project jobs awarded by its customer i.e., Vedanta Limited since the Financial Year 2016-2017 and with the progress of execution of the contract awarded to the Corporate Debtor, regular transactions against the services availed had been made till June 2018 and there had been no disputes between the Corporate Debtor and the Operational Creditor. However, due to subsequent disputes with Vedanta Limited followed by withholding payments of the Corporate Debtor, the Corporate Debtor failed to settle the invoices of the Operational Creditor and following overall recession, the Corporate Debtor is trapped in severe financial crunch and is unable to pay the dues of the Operational Creditor.

12. The Corporate Debtor also stated that it has defaulted in servicing financial credit facilities availed from the Banks due to which its accounts with such Banks were decalred as NPA w.e.f. June 2021.

***Contents of the Rejoinder Affidavit filed by the Operational Creditor***

13. The Operational Creditor states that it has successfully completed the projects within the agreed time frame and as per the requirements as assigned to it by the Corporate Debtor.

14. It also stated that the Operational Creditor is neither the cause nor was involved in the disputes between the Corporate Debtor and Vedanta Limited. That due to the non-payment of invoices by the Corporate Debtor, the Operational Creditor is facing financial distress and not being able to discharge its liability towards various other vendors. The Operational Creditor also had to take overdraft facility[5] from its banking partner due to such financial distress.

[5] *Annexure RA of the Rejoinder Affidavit*

***Analysis and Findings***

15. Heard the Learned Counsel appearing for both the parties and perused the record.

16. In para 3 of the Reply Affidavit, the Corporate Debtor has admitted the fact that it had engaged the Operational Creditor to provide services at the project jobs awarded by the customer and also the fact that due to certain disputes between the Corporate Debtor and its customer, the Corporate Debtor has become unable to pay the debts of the Operational Creditor.

17. From the submissions made by both the parties and the documents on record, we find that there is no pre-existing dispute between the parties and that there was a debt which the Corporate Debtor had defaulted to repay. Therefore, we find that the instant petition shall be admitted.

18. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
    a. The application bearing ***CP (IB) No. 336/KB/2022*** filed by SS Legacy Engineers Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against MBE Coal & Mineral Technology India Private Limited, the Corporate Debtor, is ***admitted***.
    b. There shall be a moratorium under section 14 of the IBC.
    c. 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.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. **Mr. Soumendra Podder**, registration number IBBI/IPA-001/IP-P00446/2017-2018/10789, **email:** soumenpodder@hotmail.com**, Mobile No:** 9831085179 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, 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 his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

i. The Operational Creditor shall deposit a sum of ***Rs 3,00,000/- (Rupees Three Lakhs 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).

j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means 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.

19. **CP (IB) No. 336/KB/2022** to come up on **11.10.2023** for filing the periodical report.

20. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

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| **(Balraj Joshi)** | **(Bidisha Banerjee)** |
| **Member (Technical)** | **Member (Judicial)** |

This order is pronounced on 12th day of September, 2023.

*FA_LRA*