

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB)No. 50/CTB/2019

**CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)**

In the Matter of:

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;

-And-

In the Matter of:

M/s MT and T Rental Limited, having registered office at 62/2B, New No. 99, Old No. 144, Padur Village, Poonamalle Taluk, Thiruvallur District, Chennai, India – 602105, presented by Nidhi Sharma, Company Secretary authorized by Board of Director, meeting dated 26.03.2018.

.... Operational Creditor/ Applicant

-Versus-

In the Matter of:

M/s Vasava Engineering Pvt. Ltd. having registered office at 113, Friends Arcade, Shastri Nagar, Supela Bhilai, Chattisgarh- 490023.

..... Corporate Debtor/ Respondent

Counsels appeared for the Petitioner

1. Rakesh Kumar Mallick.

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Date of pronouncement of Order: 27th day of September, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. The applicant/Operational Creditor has filed this application under Section 9 of the Insolvency and Bankruptcy Code of 2016 (for brevity IBC, 2016) against the Corporate Debtor/Respondent represented by Ms. Nidhi Sharma, Company Secretary authorized by the Board of Director meeting dated 26.03.2018. The application of initiation of Corporate Insolvency Resolution Process against Corporate Debtor/respondent i.e. **M/s Vasava Engineering Pvt. Ltd.**
2. Notice was served on the Corporate Debtor/ respondent. However, there was no representation for the Corporate Debtor/respondent. Notice by way of publication was also taken out in respect of the Corporate Debtor/respondent in the Times of India dated 23.07.2019. However, there was no representation. Hence, Corporate Debtor/ respondent was set ex-parte on 16.07.2019.

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3. The Operational Creditor/applicant is engaged in the business of providing working solution to industries with specialized access equipment / machines such as Scissors Lifts, Mobile Access Platforms and other aerial working platforms for man and material handling on rent.
4. During the regular course of business, the Corporate Debtor/respondent approached the Operational Creditor/applicant to avail its services with regard to hiring of Rotating Telehandler model MAGNI RTH – 5.35-35 Mtr. Extendable upto 47 Mtr. Along with all necessary attachments (a) rotating extendable man platform – big, (b) rotating extendable man platform – small, and (c) Winch etc. In consideration of payment of rental charges for its work site Vasava Engineering Private Limited, c/o Lafarge India Private Limited, Arasmeta, District Janjgir Champa (CG).
5. Based on the request of the Corporate Debtor/respondent, the Operational Creditor/applicant issued the quotation dated 03.12.2016 regarding the equipment intended to be hired on rental basis and the pricing proposal. The quotation also stipulated that the Operational Creditor/applicant shall pay 100 % advance along with the Work Order. Further, as per the agreed terms of payment as contained in quotation

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as well as in respective invoices, interest @ 18% per annum was chargeable on delayed payment.

6. Accordingly, the Corporate Debtor/respondent issued the service order dated 12.12.2016 on the Operational Creditor/applicant to hire its services on mutually agreed terms and conditions. As per the agreed terms of the said Service Order, the payment against the concerned invoice was to be released by the Corporate Debtor/ respondent within 10 days of the submission of invoice and one month hiring charges was to be paid as advance.
7. Pursuant to the service order issued by the Corporate Debtor/ respondent, the Operational Creditor/ applicant supplied the machinery at the worksite of the Corporate Debtor/ respondent.
8. As per the payment terms agreed between the parties herein, the Operational Creditor/applicant issued invoices on the Corporate Debtor/respondent for payment. The invoices were duly accepted by the Corporate Debtor/respondent without any protest and demur. The total billed/invoiced amount is Rs. 53,60,771/- (Rupees Fifty-Three Lacs Sixty Thousand Seven Hundred Seventy-One Only) out of which the Operational Creditor/ applicant has received on account payments to the

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tune of Rs. 41,79,889/- (Rupees Forty-One Lacs Seventy-Nine Thousand Eight Hundred Eighty-Nine Only). Thus, leaving the balance amount of Rs. 11,80,882/- (Rupees Eleven Lacs Eighty Thousand Eight Hundred Eighty-Two Only) as principle outstanding dues.

9. The amount has become due on account of unpaid/ partly paid invoices raised on Corporate Debtor/ respondent by Operational Creditor/ applicant against the services/hire charges of Rotating Telehandler with attachments hired & utilized by Corporate Debtor pursuance to Service Order dated 12.12.2016 issued by Corporate Debtor/ respondent.
10. The Operational Creditor/applicant submits that in spite of repeated reminders, the Corporate Debtor did not settle the dues under various invoices. The total dues outstanding is sum of Rs. 13,47,435/-. The applicant has submitted the following invoices in support of its claim.
 - i. Invoice No. O/16-17/010039 dated 24.01.2017 of Rs. 1,72,500.00/-.
 - ii. Invoice No. O/16-17/010071 dated 31.01.2017 of Rs. 8,35,962.00/-
 - iii. Invoice No. O/16-17/020055 dated 01.03.2017 of Rs. 1,192,724.00/-
 - iv. Invoice No. O/16-17/030153 dated 31.03.2017 of Rs. 7,81,075.00/-
 - v. Invoice No. O/17-18/040118 dated 01.05.2017 of Rs. 2,08,991.00/-

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- vi. Invoice No. O/17-18/050111 dated 01.06.2017 of Rs. 10,21,731.00/-
- vii. Invoice No. O/17-18/060139 dated 30.06.2017 of Rs. 9,75,288.00/-
- viii. Invoice No. O/17-18/060140 dated 30.06.2017 of Rs. 1,72,500.00/-

11. The Operational Creditor/applicant issue notice under Section 8 of the IBC dated 07.05.2018, however, the Corporate Debtor/ respondent did not reply. Invoices are of the year 2016-2017. Hence, the claim of the Applicant is well within the period of limitation.

12. The applicant/Financial Creditor has not proposed the name of any IRP. In view of the same, this Adjudicating Authority appoints **Mr. Sunil Kumar Keswani** residence of House No. 31, Canal Linking Road, Ravi Nagar, Raipur, Chhattisgarh, 492 001 having **Registration No.: IBBI/IPA-001/IP-P00819/2017-2018/11396** and **E-mail Id.: sunil.keswani.co@gmail.com**. There is nothing on record to show that any disciplinary proceeding is pending against the proposed IRP.

13. In view of the above we are inclined to admit this application by following Order.

ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is

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hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s Vasava Engineering Pvt. Ltd.**, Moratorium Order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

(ii) Moratorium Order is passed for a public announcement as stated in Section 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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;

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- 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 action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- (vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (vii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- (viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (ix) **Mr. Sunil Kumar Keswani** residence of House No. 31, Canal Linking Road, Ravi Nagar, Raipur, Chhattisgarh, 492 001 having **Registration No.: IBBI/IPA-001/IP-P00819/2017-2018/11396** and **E-mail Id.: sunil.keswani.co@gmail.com** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a Resolution Plan.

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(x) We direct the Operational Creditor to deposit a sum of Rs. Two Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days 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.

(xi) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petitioner to the IRP, otherwise coercive steps to follow.

(xii) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by Committee of Creditors.

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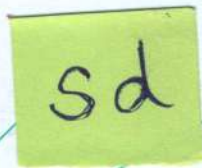
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- (xiii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

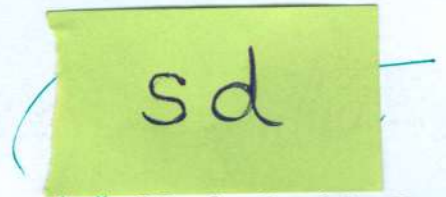
Interim Resolution Professional to file 1st progress report on **30.10.2019.**

List the Matter on **30.10.2019.**

Let the certified copy of the order be issued upon compliance with requisite formalities.



**Shri Satya Ranjan Prasad
Member (T)**



**Ms. Sucharitha R.
Member(J)**

Signed on this, the 27th day of September, 2019.

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