

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP No.4719 (IB)/MB/C-IV/2018

Under Section 9 of the IBC, 2016

In the matter of

ABC Infra Equipment Private Limited

...Operational Creditor

v/s.

A R Coating Solutions (India) Pvt. Ltd.

...Corporate Debtor

Order Delivered on 20.09.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: M/s. Dhaval Vussonji & Associates.

For the Respondent: None Present

Per: Rajasekhar V. K. Member (Judicial)

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by ABC Infra Equipment Private Limited (CIN: U34103MH2010PTC205189), a Company limited by shares ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against A R Coating Solutions (India) Private Limited ("the Corporate Debtor"), [CIN: U52100MH2012PTC236758].
2. The Corporate Debtor is a company incorporated on 12.10.2012 under the Companies Act, 1956, as a private limited company under the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U52100MH2012PTC236758. Its registered office is at 402, B-Wing, Sector-15, Plot No.53, Brahma Shopping Complex, CBD

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Belapur, Navi Mumbai Thane, 400614. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 21.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.11,34,230/-(Rupees Eleven Lakh Thirty-Four Thousand Two Hundred and Thirty only) as principal amount with interest thereon at the rate of 18% per annum as per invoices (**Annexure 'C'** to the petition at pp.10-15). The date of default is 08.06.2017.
4. The case of the Operational Creditor is that he had supplied Boom Lifts 120 ft crane at site of the Corporate Debtor at Jaipur, Odisha against which the Operational Creditor raised the invoices which are as follows:

Sr. No.	Invoice Date	Invoice No.	Amount in Rs.	Amount Due and payable
1	11.03.2017	573	2,95,107/-	75,983/-
2	14.04.2017	038	2,80,245/-	2,80,245/-
3	08.06.2017	147	1,86,830/-	1,86,830/-
4	08.06.2017	148	3,60,922/-	3,60,922/-
5	08.03.2017	149	1,55,250/-	1,55,250/-
6	31.03.2017	Debit Note	75,000/-	75,000/-
			Total	11,34,230/-

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5. The Operational Creditor submitted that the Corporate Debtor has issued its letter dated 08.06.2017 inter alia releasing Crane and acknowledged the Outstanding Amount (**Annexure 'D'** to the petition at p.16). The Operational Creditor further submitted that the Corporate Debtor issued a cheque bearing No.104302 dated 16.04.2017 for Rs.5,50,983/- in favour of the Operational Creditor, which was dishonoured.
6. The Operational Creditor further submitted that the Corporate Debtor issued another cheque bearing No.276222 dated 17.07.2018 for Rs.11,34,232/- drawn on SBI in favour of the Operational Creditor, which was also dishonoured (**Annexure 'E'** to the petition at p.18). The Operational Creditor has attached copy of bank statement of ICICI Bank stating that the cheque bearing No.276222 dated 17.07.2018 of Rs.11,34,232/- deposited in account was returned as reason "unrealized in clearing" (**Annexure 'E'** to the petition at p.20).
7. The Operational Creditor had served a Demand Notice in Form 3 dated 19.10.2018 to the Corporate Debtor (**Annexure 'H'** to the petition at pp.23-41) in terms of section 8 of the IBC. The Corporate Debtor has not sent a reply to the Demand Notice. The Corporate Debtor has also not filed a reply to the Petition.
8. We have heard the Learned Counsel for the Operational Creditor and perused the record.
9. The Petition is filed by Mr. Praveen Sharma, Director of ABC Infra Equipment Private Limited duly authorised by the Board Resolution passed at the Board Meeting held on 19th of October (year not mentioned in the Board Resolution extract at p.8 of the Petition).
10. It is noticed from the Petition that there is no pre-existing dispute regarding the unpaid operational debt and the principal amount of

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Rs.11,34,230/-remained unpaid as per invoices and date of default is 08.06.2017. Thus, the existence of both debt and default is established.

11. In our order dated 06.06.2019 and 06.09.2019 we have given further opportunity to the Corporate Debtor to file the reply. However, despite service of court notice on the Corporate Debtor, no reply has been filed. There is no representation from the Corporate Debtor side. Therefore, it is held that the Corporate Debtor does not dispute its liability and has defaulted in the payment to the operational creditor.
12. In compliance of sec 9(3)(c) of the Insolvency and Bankruptcy Code,2016, the Operational Creditor submitted the certificate of ICICI Bank Limited dated 17.12.2018 certifying that no credit of Rs.11,34,230/- from the Corporate Debtor is deposited into the account of the Operational Creditor during the period from 01.06.2017 to 16.12.2018.
13. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In the view of this, this Tribunal admits this petition and orders initiation of CIRP against the Corporate Debtor.
14. The Operational Creditor has proposed the name of Mr. Hemantprakash Shyamsundar Jain, Registration No. IBBI/IPA-001/IP-P00883/2017-18/11480, as Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application

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to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration.

15. It is, accordingly, hereby ordered as follows: -

- (a) The petition filed by **ABC Infra Equipment Private Limited** under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the corporate debtor i.e. A R Coating Solutions (India) Private Limited (CIN: U52100MH2012PTC236758) 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.

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- (c) Notwithstanding the above, during the period of moratorium, -
- (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) **Mr. Hemantprakash Shyamsundar Jain**, Registration No. IBBI/IPA-001/IP-P00883/2017-18/11480, having address at 7, Jyotikapark Society, Near Police Commissioner's Office, Shahibaug Road, Ahmedabad, 380004, email: hpsjca@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP 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.

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- (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, Mumbai, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days**.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)
20.09.2019

Sd/-

RAJASEKHAR V.K.
Member (Judicial)