

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3885/MB.IV/2019

*Under section 9 of the Insolvency and
Bankruptcy Code, 2016*

In the matter of

Tremco India Private Limited
[CIN: U74999TN2017FTC131726]

...Operational Creditor

Versus

Kaskal Facade Private Limited
[CIN: U74999MH2016PTC281973]

... Corporate Debtor

Order pronounced on : 15.07.2020

Coram:

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

Appearances:

For the Operational Creditor : Mr Dharmesh S Jain i/b Mr Anil
T Agarwal, Advocate
For the Corporate Debtor : No representation

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Tremco India Private Limited (Operational Creditor) [CIN: U74999TN2017FTC131726], a

company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Director, Mr Shardul S Kamalapurkar, on the basis of a Board Resolution dated 28.05.2019, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Kaskal Facade Private Limited (*Corporate Debtor*).

2. The Corporate Debtor is a private company limited by shares and incorporated on 02.06.2016 under the Companies Act, 2013, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U74999MH2016PTC281973. Its registered office is at No.801, Hari Om IT Park (8thFloor), No.5, Bhakti Vedanta Swami Marg, Mira Road, Thane 401107, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 06.11.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹16,64,563.17 (Rupees sixteen lakh sixty-four thousand five hundred and sixty-three and paise seventeen only) as principal and ₹1,98,083.00 (Rupees one lakh ninety-eight thousand and eighty-three only) as interest as on 26.01.2019, which is stated to be the date of default.
4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor is in the business of sale of roofing materials and services, construction sealants, glazing and gaskets and waterproofing systems. The Corporate Debtor approached the Operational Creditor and placed purchase orders for procurement of glazing materials between 11.08.2018 and 11.01.2019 for a total value of ₹16,64,536.17. The Purchase

Orders have been placed on record as Annexure '2' (colly) at pp.17-23 (para 1 & 2 at page 5 of the Petition);

- (b) The Operational Creditor supplied the same vide invoices between 16.08.2018 and 21.01.2019, aggregating to a sum of ₹16,64,563.17. The goods in question were received without any demur with reference to quality, quantity, price or time of delivery (para 3 at page 6 of the Petition);
- (c) Payments in respect of the invoices were to be made within sixty days. However, the Corporate Debtor failed to do so despite several reminders made orally as well as in writing, including emails dated 03.05.2019, 16.05.2019, 24.07.2019, 19.08.2019 and 21.08.2019. However, there was categorical admission of the outstanding liability by the Corporate Debtor towards the unpaid invoices, *vide* email dated 07.05.2019 (p.69 of the petition) and 09.07.2019 (pp.65-66 of the petition).
5. Invoices have been placed on record as Exhibit '3' at pp.24-32. The invoices do not provide for interest in case of delayed payments. Bank statements are attached as Exhibit '11' at pp.82-103. The total debt due and payable to the Operational Creditor is ₹18,62,646.17 (Rupees eighteen lakh sixty-two thousand six hundred and forty-six and paise seventeen only), as mentioned at page 81 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 27.09.2019 to the Corporate Debtor (Exhibit '8', pp.46-52) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply, wherein they have stated that they "*will revert on it soon.*" The reply has been annexed at Exhibit '9' at pp.80 of the Petition. There was a further reply on 07.11.2019, wherein the Corporate Debtor has simply denied all the averments in the Demand Notice, but were

willing to have a "without prejudice" meeting on 11.11.2019 to explore the possibility of a settlement. This Reply has been taken on record after being submitted by Learned Counsel for the Operational Creditor during the course of hearing.

7. The Corporate Debtor has unequivocally acknowledged the debt *vide* its letters placed at p.pp.65-66 and p.69.
8. The Corporate Debtor has neither entered appearance nor filed any reply to the petition.
9. We have heard the arguments of the Learned Counsel for the Operational Creditor and perused the records.
10. It is noted that the Corporate Debtor has admitted the liability by the letters placed at pp.65-66 and p.69.
11. The Demand Notice dated 27.09.2019 has been duly served on the Corporate Debtor on 03.10.2019 as per postal acknowledgement card placed at p.78 of the petition. The Petition itself has been served on the Corporate Debtor on 07.11.2019 by RPAD.
12. Court Notice dated 08.11.2019 was sent by Registered Mail dated 08.11.2019, but the same has been returned with the remarks "Item Returned. Refused" by the postal authorities. The Affidavit of Service is taken on record.
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 at the relevant time. Therefore, the default stands established and 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 CIRP against the Corporate Debtor.

14. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
15. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) No.3885/MB.IV/2019 filed by Tremco India Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Kaskal Facade Private Limited [CIN: U74999MH2016PTC281973], 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, -
- (i) 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;
 - (ii) That 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) Since the Operational Creditor has not proposed the name of any IRP in the matter, this Adjudicating Authority hereby appoints Mr Rupnarayan Shankarlal More, Registration No.IBBI/IPA-001/IP-P00713/2017-2018/11210, having address at No.101, Gulmohar Cooperative Housing Society Limited, Aarey Cross Road, Near Rajasthani Hall, Goregaon (West), Mumbai, 400 104 [email: rnmoresassociates@gmail.com] as the IRP. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency and 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 IBC.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP of the Corporate Debtor.
- (i) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh 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 9(5)(i) of the IBC, the Registry is 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) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-
Ravikumar Duraisamy
Member (Technical)

15.07.2020

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