IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

C.P.(IB)No.15/BB/2021
U/s. 9 of the IBC, 2016
R/w. Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

ISGEC Heavy Engineering Limited
Registered Office at:
A-4, Sector-24,
Noida- 201 301
Uttar Pradesh. - Petitioner/Operational Creditor

Versus

Mysore Sugar Company Limited
Registered Office at:
Mysore Open Air Theatre,
Sugar Town,
Mandya- 571 402,
Karnataka. - Respondent/Corporate Debtor

Order delivered on: 07th June, 2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Jacob Alexander, Adv
For the Respondent : None

O R D E R

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by ISGEC Heavy Engineering Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against Mysore Sugar Company Limited (hereinafter referred as 'Corporate Debtor/Respondent') on the ground that the Corporate Debtor has

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committed a default, of payment, for a total outstanding amount of Rs.3,37,51,164/- (Rupees Three Crore Thirty Seven Lakh Fifty One Thousand One Hundred Sixty Four Only), (Principal amount of Rs.2,10,21,048/- along with interest calculated on principal amount at 24% per annum i.e. Rs.1,27,30,116/- from 1st January, 2018 till 10th July, 2020).

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows.

i The Operational Creditor is an Indian heavy engineering company engaged in the business of manufacture, supply and service of process equipment, EPC projects and contract manufacturing etc. The Petitioner was engaged by the Corporate Debtor, a State Government Company, for supply of goods and for refurbishment of boilers at its Mandya Sugar Plant vide Purchase Contract Agreement dated 05.08.2016 and 21.10.2016.

ii The Petitioner commenced work under the Agreements and supplied all material required for repairs, refurbishment and commissioning of the boilers according to the stipulations agreed to. Despite the same, the Respondent delayed in making payments under the Agreements. It is submitted by the Learned Counsel that the Petitioner executed the repairs, refurbishment and commissioning work under the Agreements. The commissioning protocols were jointly signed by the Petitioner and the Respondent. The Respondent has duly certified completion of work on Boiler No.1 on 02.07.2017 and on Boiler No.2 on 01.10.2017. The Commissioning protocols were annexed along with the petition.

iii Despite the successful execution and completion of work and delivery of services, the Respondent failed to discharge its contractual obligations to make payments in terms of the Agreements. The Petitioner has sent numerous requests and reminders to the Respondent to clear pending payments. It is submitted that the Respondent has expressly acknowledged and admitted its liability to pay to the Petitioner a sum of Rs.

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2,03,94,179/- (Rupees Two Crore Three Lakh Ninety- Four Thousand One Hundred Seventy- Nine Only). The letter dated 25.05.2018 from the Respondent acknowledging and admitting its liability is attached along with the petition. Further, it is submitted that the date of default is 01.01.2018, which is three months after date of commissioning of Boiler No.2 by which all payments were to be made by the Respondent.

iv It is stated that the Petitioner addressed a demand notice dated 17.03.2020 seeking payment of pending dues but has not received its total dues from the Respondent till date. The Learned Counsel has also submitted that it is apparent from the Letter dated 25.05.2018 issued by the Respondent to the Petitioner that the Respondent is unable to pay its debt and is on the verge of insolvency. The Operational Creditor has also issued Demand notice dated 10.07.2020 under Section 8 of the Insolvency and Bankruptcy Code, 2016 and proof of delivery is attached along with the Petition.

3. On 07.04.2022, the following order was passed:

> *"1. On 15.03.2022, the following order was passed:*
>
> *"1. Heard Mr. Jacob Alexander, learned Counsel appearing for the Petitioner and none appeared for the Respondent.*
>
> *2. On 19.01.2022, the following order was passed:*
>
> *The learned Counsel for the Petitioner submits that though notices were directed to be served on the Respondent/ Corporate Debtor, since on the last date of hearing, one Mr. Manjunath, learned Counsel for the Respondent contacted him and submitted that he is filing his vakalath for Respondent/ Corporate Debtor on the same date i.e. 24.11.2021 itself he has not sent the notice to the Respondent.*
>
> *The Registry also reported that a vakalath has been filed by Mr. Manjunath, learned Counsel for the Respondent/ Corporate Debtor. However, there is no representation today for the Respondent/ Corporate Debtor.*
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> *In the circumstances, we want three weeks time to file reply and the Petitioner shall file their rejoinder, if any, within two weeks, after service on the other side.*
>
> *List the CP for hearing on 15.03.2022.*
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> *The Petitioner Counsel is directed to serve this order on the Respondent Company and to file affidavit of service thereto.*

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> 3. *In spite of the several opportunities are granted, there is no representation for the Respondent and no statement of objections is filed till date. In the circumstances, their right to file the Counter is forfeited and C.P shall be listed for hearing on 07.04.2022."*
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> 2. *Even today, there is no representation for the Respondent/ Corporate Debtor. Hence, heard Mr. Jacob Alexander, learned Counsel for the Petitioner.*
> 3. *Order Reserved.*
> 4. *However, the Petitioner is permitted to file copies of the judgments, if any, with reference to Rule 5 of the Insolvency and Bankruptcy (AAA) Rules, 2016. This shall be done within one week from today".*

4. In view of the above, heard Mr. Jacob Alexander, learned Counsel appearing for the Petitioner/Operational Creditor and perused the pleadings on record.

5. The Hon'ble Supreme Court of India, in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*[1], is observed as under:

> "**...25.** *Therefore, the Adjudicating Authority, when examining an Application under Section 9 of the Act will have to determine:*
>
> *(i) Whether there is an "operational debt" as defined exceeding Rs1 lakh? (See Section 4 of the Act)*
> *(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And*
> *(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*
>
> *If any one of the aforesaid conditions is lacking, the application would have to be rejected.*
>
> *Apart from the above, the adjudicating Authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9 (5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act".*

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[1](2018) 1 SCC 353)

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6. In view of the above enunciation of Law, this Adjudicating Authority is required to determine the following issues, in an Application filed under Section 9 of the IBC, 2016.

   (1) Whether the Company Petition is filed within the period of limitation?

   (2) Whether the demand notice issued U/S.8 of the IBC, 2016 was duly delivered on the Respondent/Corporate Debtor?

   (3) Whether the debt and default are proved?

   (4) Whether there is any pre existing dispute between the parties?

7. It is observed that date of default is 01.01.2018 and the present Petition was filed on 21.10.2020. Hence, the Company Petition is filed within the period of limitation.

8. It is observed that the Demand Notice in Form 3 was served through DTDC courier but not by registered post or speed post as provided under Rule 5 of I&B (Application to Adjudicating Authority) Rules, 2016. The learned Counsel appearing for the Petitioner by placing reliance on the decision of the Hon'ble NCLAT in G. *Shivaramkrishna Vs. ISGEC Covema Limited & Ors.,* Company Appeal (AT) No. 1109 of 2019 dated 07.02.2020 and another judgement of the Hon'ble NCLAT in *Alloysmin Industries Vs. Raman Casting Private Limited*, Company Appeal (AT) No.684 of 2018 dated 21.01.2019, submitted that the Demand Notice sent and served through courier service can be treated as valid service U/S.8 of the IBC.

9. It is observed that the Respondent by its letter dated 25.05.2018 to the Petitioner has acknowledged its liability to make payment to the Petitioner. Hence, the debt and default are proved.

10. As observed above, there was no representation for the Respondent/Corporate Debtor and that no counter was filed on its behalf. Even on record there was nothing to show that there is any dispute between the parties either about the quantum or about the

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liability of the debt. On the other hand, the Respondent/Corporate Debtor admitted the debt and its liability to pay the same.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the operational debt and for the default amount being above Rs.1,00,00,000/-, the petition is admitted in terms of Section 9 of the IBC,2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(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

(b) any court of law, tribunal, arbitration panel or other authority;

(c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(d) 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;

(e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) It is further directed that 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;

(g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

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(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

12. Since the Petitioner has not suggested any IRP and left the matter to the Adjudicating Authority to appoint suitable IRP, we are inclined to appoint **Mr. B. Balasubramanya Prasad**, Insolvency Professional, bearing Registration No. **IBBI/IPA-003/ IP-N00345/2021-2022/13698** having e-mail: bb.prasad3135@gmail.com appearing at **Sl. No. 12** of the panel of IPs for appointment as IRP or Liquidator, approved for NCLT, Bengaluru Bench by Insolvency and Bankruptcy Board of India from 1st January 2022 to 30th June 2022, is appointed as the Insolvency Resolution Professional. The Law Research Associate of this Tribunal has checked the credentials of Mr. B.Balasubramanya Prasad and there is nothing adverse against him. Therefore, Mr. B.Balasubramanya Prasad is appointed as the Insolvency Resolution Professional of the Corporate Debtor. He shall file his written consent within one week from the date of the receipt of this order. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight. The Interim Resolution Professional shall file his written consent within one week from today.

A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order

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to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)