In the National Company Law Tribunal
Mumbai Bench

MA 2804/2019 IN C.P. (IB) 2742(MB)/2019

Application Under **Section 9 of the Insolvency and Bankruptcy Code,** 2016 read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules,2016

In the matter of

S Z Deshmukh & Co.

….Financial Creditor
(Petitioner)

V/s

VOVL Limited.

…. Corporate Debtor
(Respondent)

Registered Office No- 171, Mittal Court, C- Wing, 17th Floor
Nariman Point, Mumbai 400021
and also at Auto Cars Compound, Adalat Road,
Aurangabad, Maharashtra 431005

Heard on: 06.11.2019
Date of Order : 08.11.2019

Coram: Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner : Piyush Pande and Faran Khan

For the Respondent : Sandeep S Ladda and Sabze Alam

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on 16.07.2019 by the Petitioner 'S.Z .Deshmukh & Co' in the capacity of "Operational Creditor", against M/s VOVL Ltd (hereinafter as 'Corporate debtor') having registered address at Auto Cars Compound, Adalat Road, Aurangabad, Maharashtra 431005 and also at 171, Mittal Court, C-Wing, 17th Floor, Nariman Point, Mumbai 400021

2. The Petitioner has submitted Form-5 as prescribed under the rules. In the requisite Form, under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹2,36,00,000/- (Rupees Two Crore Thirty Six lakhs only) as on 23.05.2017.

(A) Background of the Case :

3. The Petitioner is a Chartered Accountants Firm, inter-alia, engaged in providing consultation in relation to accounting and finance. The petitioner was appointed for providing consultation services to the respondent company (Corporate debtor) M/s VOVL Ltd incorporated under the Companies Act 1956.

4. The Respondent M/s VOVL Limited is a Company incorporated under the Companies Act, 1956 formally known as 'Videocon Oil Ventures Limited' having its registered office at Auto Cars compound, Adalat Road, Aurangabad, Maharashtra 431005 and also at 171, Mittal Court, C Wing 17th Floor, Nariman Point, Mumbai 400021 and is engaged in the business of participation interest in Oil & Gas Assets situated overseas. The Respondent M/s VOVL Limited is wholly owned subsidiary of M/s Videocon Industries Limited, which is presently going through Corporate Insolvency Resolution Process (CIRP)

(B) Submission by the Operational Creditor

5. The Petitioner who is Operational Creditor in the present case was appointed by the Corporate Debtor for providing consultation service for preparing books of accounts, financial statements, advisory services for Accounting and finance, evaluate financial implication, etc. for the year 2018-2019 i. e. from 1st April 2019 to 31st March 2019 for a lumpsum Consultation /Professional fee of Rupees 2,00,00,0000 (Rupees Two crores only) excluding taxes.

6. The Operational Creditor was assured by the Corporate Debtor that within seven days of the raising of the invoice for the services provided by the Operational Creditor the payment would be made. This fact has been mentioned in the copy of Board Resolution dated 03.04.2018 of the Corporate Debtor which has been annexed to this Petition by the Petitioner.

7. The Petitioner after the completion of the consultancy period on 15.05.2019 raised an invoice for Rs. 23,600,000/- (Rupees Two Crore Thirty-Six Lakhs only) out of which Rs. 2,00,00,000/- (Rupees Two Crore) was toward the payment of professional fee while Rs. 36,00,000 (Rupees Thirty Six Lakh) was towards CGST and SGST @ 9 per cent each. The Petitioner has attached a copy of the invoices with the Petition to substantiate his claim.

8. The Petitioner in his Petition mentioned that he is apprehensive that the Corporate Debtor has lost its substratum subsequent to the holding company of the Corporate Debtor i.e. M/S Videocon Limited is already under CIRP. Therefore, the Petitioner mentioned that

with no remedy insight, the Petitioner has issued a Demand Notice to the Corporate Debtor i.e VOVL on 15.06.2019 under Section 8 of the I & B Code calling upon the Respondent Company to pay a total sum of Rs. 23,600,000/- (Rupees Two Crore Thirty-Six Lakhs only) which includes Rs. 36,00,000/- (Rupees Thirty Six Lakhs Only) as tax. A Copy of Demand Notice has been attached by the Petitioner in his Petition.

9. The Petitioner mentions that the Corporate Debtor to his demand Notice vide its reply dated 25.06.2019 has admitted the said claim of Rs. 23,600,000/- (Rupees Two Crore Thirty-Six Lakhs only). However, the Corporate Debtor has requested for a period of six month to make good the said dues as they are suffering from the Financial crisis.

10. The Petitioner has finally argued that since the Corporate Debtor has become insolvent and is unable to pay its outstanding debt. The Bench may admit the Insolvency application of the Petition and initiate Corporate insolvency resolution process against M/s VOVL limited.

(C) <u>Submission by the Corporate Debtor</u>

11. The Corporate Debtor M/s VOLVO Limited has submitted that it is hundred percent subsidiary of Vide0con Industries Limited and that M/s VOLVO was constituted as an SPV to hold rights, benefits, interest and other properties, assets, participating interest of foreign Oil and Gas assets acquired by the Parent Company i.e Videocon Industries limited.

12. The Corporate Debtor mentioned that CIRP proceeding against the Parent Company that i.e M/ s Videocon Industries Limited has been admitted on 06.06.2018 due to which the funding to the Corporate Debtor has come to a stand-still. The Corporate Debtor mentioned that all Oil and Gas asset are at the stage of Development and therefore no revenue is being generated from these assets currently. Moreover, due to initiation CIRP against the holding companies Videocon Industries Limited the Corporate Debtor is not having any finance available to meet any necessary expenses including the one of the Operational Creditor.

13. The Corporate Debtor Admits that the principle amount of Rupees 2,00,00,0000 (Rupees Two crores only) is due to the Petitioner for rendering Consultancy Services to the Corporate Debtor. However, the Corporate Debtor mentions that the interest portion levied by the Petitioner is illegal.

(D) <u>Findings</u>

14. This Bench has gone through the submission of both the parties and pleadings on record. On the basis of the evidence on record the Operational Debtor has established that it was appointed by the Corporate Debtor to provide Consultancy Services.

15. From the Board Resolution of M/s VOLVO limited dated 03.04.2018 it is clear that M/s S Z Deshmukh and Company, Chartered Accounts were appointed for the Financial year

2018-19 at a Professional fee of Rs 2,00,00,000/- (Rupees Two Crore only) excluding taxes. The excerpts from the Board Resolution of 03.04.2018 is as under:-

"The Chairman informed that the Board that the Company is required to prepare Books of Accounts, financial Statements and other documents in terms of the requirements under the Companies Act, 2013 and the Rules made thereunder; the Accounting Standards issued thereunder; and other Applicable Laws, Rules, Regulations, Guidelines, Notifications, circulars, Orders passed by the Government. In view of the stringent compliance norm, the Company is required to ensure that the accounting treatments given in the books are true and fair and in compliance with all the applicable laws."

Further, the Company is required to evaluate financial implications and accounting treatments, from time to time, in respect of any corporate events and actions. He apprised that it is necessary to have complete details of financial implications and accounting treatments of each and every action failing which it could result to non-compliances and consequently monetary loss in the form of penalty.
Accordingly, it is necessary to appoint a firm of Chartered Accountant(s) to advise the Company on various issues relating to above.

"RESOLVED FURTHER THAT any one of the Directors of the Company be and is hereby authorised to negotiate and finalise the scope and terms of appointment of M/s. S. Z Deshmukh & Co, Chartered Accountants as adviser/consultants to the Company from time to time."

"RESOLVED FURTHER THAT in consideration of providing above services the Company shall pay a consolidated lumpsum consultation/professional fees of Rs. 2,00,00,000/- (Rupees Two Crore Only) excluding Taxes but shall include out of pocket expenses by them in performing their services."

"RESOLVED FURTHER THAT after M/s S.Z Deshmukh & Co. issues proforma invoice, the Company shall make payment of the same within 7 (Seven) days."

This clearly shows that the chartered accountancy company Respondent was duly appointed M/s VOLVO subsequent Board Resolution for a sum of Rs. 2 crore excluding taxes for the financial year 2018-19.

16. An Invoice was dully raised by the Petitioner for their payment on 15.05.2019. Further, a Demand Notice in Form 3 under rule 5 of the IBC was also raised by the Petitioner on 15.06.2019.

17. In reply to the Demand Notice of 15.06.2019, the Corporate Debtor has admitted the dues of Rs. 2.36 crores for providing accounting service during 2018-19. However, the Corporate Debtor have mentioned that in view of the financial situation of the company it may not be possible for them to make the payment and that the Operational Creditor may give time for a period of six month to clear the dues.

18. A perusal of the submission made by the Applicant brings out clearly that the amount of Rs. 2,36,00,000/- (Rupees Two Crore Thirty Six lakhs only) includes the dues for providing consultancy services and taxes on the same but does not include any interest amount whatsoever.

19. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an **'Operational Debt'** as defined under Section **5 (21)** of the definitions under the Code. There is a "Default" as defined under Section **3 (12)** of the Code on the part of the Debtor.

20. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that the Debtor received the same but not paid the amount of unpaid outstanding due. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under Section 8 (20) of the code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt. Instead, the act of the Corporate Debtor to acknowledge the debt clearly reveals that the amount defaulted is payable and the liability has been admitted by the Corporate Debtor.

21. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner/Applicant, it is my conscientious view that this Petition deserves **'Admission'** specially wherein the Debtor is accepting its default.

22. The Operational Creditor has proposed the name of Interim Resolution Professional (IRP). Consequentially, this Bench hereby appoints **Mr. Rakesh Rameshwar,** having registration number IBBI/IPA-001/IP-P00696/2017-2018/11211, as Interim Resolution Professional for initiation of CIRP. The address of the IRP is at 21, 2nd Floor, Hassan Ali Bldg, Jijibhoy Dadabhoy Lane, Behind Videocon House, Fort, Mumbai -400001 (Maharashtra) India.

SD/-	SD/-
CHANDRA BHAN SINGH	**M.K. SHRAWAT**
Member (Technical)	**Member (Judicial)**

08.11.2019
Sushil