

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 2127/MB-IV/2019

Under **Section 9** of the I&B Code, 2016

In the matter of:

UltraTech Cement Limited

[CIN: L26940MH2000PLC128420]

...Operational Creditor/Applicant

V/s

**Aniirudh Civil Engineers and Contractors
Private Limited**

[CIN: U45400MH2011PTC223994]

...Corporate Debtor/Respondent

Order Dated: 03.03.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vineet Jain i/b Amit A.
Tungare, Advocates.

For the Respondent(s) : None Present.

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 2127/MB/C-IV/2019 filed on 11.06.2019 by Mr. Vikash Bubna, Senior General Manager of UltraTech Cement Limited, the Operational Creditor/Applicant,

under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Anirudh Civil Engineers and Contractors Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor has filed Board Resolution dated 24.01.2019 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Operational Creditor.
3. The present petition was dismissed on 06.11.2019 claiming the Corporate Debtor got admitted by Court-1 in CP (IB) 3991/2018 on 14.10.2019 on-dias, however, no final order was passed to the effect, hence CIRP didn't commence against the Corporate Debtor. Later, this matter got de-reserved on account of reconstitution of the Bench. Considering these facts, IA 673/2022 was filed in the present petition for restoration of the main petition which was allowed vide order dated 16.11.2022.
4. The Corporate Debtor is in the business of Construction Activities and the Operational Creditor is in the business of manufacturing and supplying cement. The total amount claimed is Rs.4,09,168/-, as on 30.06.2017. The amount due is on the account of the ledger account maintained by the Operational Creditor for cement bags sold, supplied and transported at the location of the Corporate Debtor i.e. Mumbai.
5. Further, the Corporate Debtor issued three cheques aggregating to Rs. 2,74,668/-; bearing No. 723201 drawn on Punjab National Bank, Chembur Branch dated 22.01.2016, bearing No. 322439 drawn on Axis Bank, Chembur Branch dated 15.10.2016 and last cheque bearing No. 924067 drawn on Punjab National Bank, Chembur

Branch dated 16.06.2017, respectively, in favour of the Operational Creditor. The Operational Creditor has annexed the copies of memos issued by the ICICI Bank Ltd. i.e. the banker of the Operational Creditor, onto it dated 27.01.2016, 28.10.2016 and 22.06.2017 stating the reason for dishonour of the said cheques deposited with it as “Funds Insufficient”.

6. The Operational Creditor has submitted a letter dated 17.07.2017 by the Corporate Debtor confirming the outstanding balance due to the Operational Creditor.
7. The Operational Creditor has submitted a Bank Statement dated 26.03.2018 by the Corporate Debtor confirming that there is no credit received from the Corporate Debtor to its bank account from 22.01.2016 to 26.03.2018.
8. The Applicant issued a Demand Notice u/s 8 of the Insolvency And Bankruptcy Code, 2016 dated 01.01.2018 upon the Corporate Debtor. The Corporate Debtor neither paid the outstanding amount nor replied to the said demand notice.
9. The Corporate Debtor in its Reply dated 04.10.2019, raised an objection on the ground of- A) copy of resolution of authorisation for initiation of CIRP not being annexed to the petition, B) Limitation & bogus, undated letter of acknowledgement C) Raised dispute as to the amount of the alleged debt. The Corporate Debtor has also cited certain judgements to oppose the admission of the present petition.
10. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

11. The Corporate Debtor has neither responded to the Demand Notice nor repaid the amount claimed in the said demand notice until the date of filing of the present petition.
12. We find that the Operational Creditor has calculated the date of default as stated in Part IV of the Application as per the day on which the bank memo was received informing the dishonour of the first cheque issued by the Corporate Debtor to the Operational Creditor i.e. on 27.01.2016. The present petition is filed on 11.06.2019. There was an unequivocal admission on the part of the Corporate Debtor for the said outstanding amount vide letter dated 17.07.2017 confirming the outstanding balance due to the Operational Creditor. This acknowledgement is disputed by the Corporate Debtor as being forged. On perusal of this document, it is noticed that it is duly signed, and signatory has stated the fact of confirmation in his own hand writing. It is also noticed that the other two cheques for an amount of Rs. 50,000/- each were dishonoured on 15.10.2016 and 16.06.2017. In view of these facts, we find that the Application has been filed within limitation. About the authorisation by the Board of Directors in favour of the Finance Committee, the Applicant has placed on record the resolution dated 25.04.2018. Accordingly, the authorisation given by the Finance Committee in favour of signatory to the Application is in order. About the dispute raised by the Corporate Debtor, we find that no evidence has been placed on record substantiating the existence thereof.
13. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to Rs.1,00,000/- or more (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant and there is default by the Corporate Debtor in payment of

debt amount. Further, no dispute exists in relation to the debt as is further substantiated by the fact of issuance of cheques by the Corporate Debtor. The application is complete and has been filed under the proper form. Hence, the Application filed by the Operational Creditor is liable to be admitted.

14. The Applicant has proposed the name of Mr. S Gopalakrishnan, Registered Insolvency Resolution Professional having Registration No. IBBI/IPA-002/IP-N-00151-2017-2018-10398 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

This Application being C.P. (IB) No. 2127/NCLT/MB/C-IV/2019 filed under Section 9 of I&B Code, 2016, filed by UltraTech Cement Limited, Operational Creditor/ Applicant against Anirudh Civil Engineers and Contractors Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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;
 - 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 Operational Assets and Enforcement of Security Interest Act, 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.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench hereby appoints Mr. S Gopalakrishnan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N-00151-2017-2018-10398], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Operational Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)