

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 2323/I&B/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

B.D Impex Pvt. Ltd.

109/110, Abhishek Premises 1st Floor
Plot No. C-5, Dalia Industrial Estate, Off.
New Link Road, Andheri (W), Mumbai-
400053

.... Petitioner

V/s.

Kohinoor Precision Component Ltd.

Narendra Chhaya, Gat No. 480,
Khoregaon Bhima, Tal. Shirur, Pune-
412216.

.... Corporate Debtor

Order delivered on: 02.01.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. M.G Agre,
Adv. Shivangi Kedia,
Adv. Trupthi Shetty,
For the Corporate Debtor: Mr. Pravin D Talkalkar.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company Petition is filed by M/s B.D. Impex Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s Kohinoor Precision Component Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of Rs.6,88,359, including interest @21%p.a. on the delayed payment, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Petitioner have sold, supplied and delivered various kinds of steel materials under two invoices. The Corporate Debtor have received the goods and consumed it without raising any disputes in respect of price, quality and quantity. The Corporate Debtor also availed CENVAT benefits from Excise Department.

3. The Corporate Debtor has made a part-payment of Rs.7,14,402/- in respect of the said invoices and the balance amount of Rs.4,61,986/- is due and payable by the Corporate Debtor, for which the Corporate Debtor is liable to pay interest @21% per annum.

4. The Corporate Debtor had issued cheques bearing Cheque No. 017843 dated 02.012.2017 for Rs.1,04,096/-, Cheque No. 017844 dated 02.12.2017 for Rs.1,72,264/- and Cheque No. 017845 dated 02.12.2017 for Rs.1,72,264/- drawn on Janata Sahakari Bank Ltd. Pune, Chandannagar Branch towards payment of the outstanding dues. When the cheques were deposited for the payment all the cheques were returned with the remark "funds insufficient".

5. On 07.12.2017 the Petitioner issued a demand notice to the Corporate Debtor for the payment of outstanding dues. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no reply from the Corporate Debtor.

6. Initially on 09.10.2019 both sides were present. Mr. Pravin Talkalkar, Director of the Corporate Debtor accepted the liability and default and he further submitted that he will make a payment of Rs. 1 lakh on 14.10.2019 and the balance of around Rs. 4 lakhs will be paid @ Rs. 1 lakh per month over a period of four months.

7. However, it is brought to the notice that the Corporate Debtor issued further cheque vide no. 066810 in a favor of the Petitioner on 30.09.2019 in lieu of settlement amounting to Rs.4,61,986/-, but the same was dishonored and returned with the remark "funds insufficient".

8. The matter was listed on 04.11.2019 for hearing, there is no representation from the side of the Corporate Debtor despite of intimation of date of hearing by the Petitioner. The petitioner has also produced the statement of account of the Corporate Debtor in its books of accounts for the

period 01.04.2014 to 07.09.2019 wherein it was shown that a sum of Rs.4,61,986/- is due from the Corporate Debtor. Thus, it shows that the Corporate Debtor has admitted its liability and defaulted in making the payment of the same and has issued cheques with an intention to settle the claim. However, the Corporate Debtor has not filed any reply, though he appeared on 09.10.2019.

9. On hearing the petition and ongoing through the Form 5 filed the Petitioner, the debt and default is writ large in the petition.

10. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code, admits this petition declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) that the order of moratorium shall have effect from 02.01.2020 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an

order for liquidation of Corporate Debtor under section 33, as the case may be.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints CS Anagha Anagsingarju, residing at 1-2, Aishwarya Sankul, S.No. 17, G.A. Kulkarni Path opposite Joshi railway Museum, Kothrud- Pune 411038; having Registration No. IBBI/IPA-002/IP-N00247/2017-18/10732 as Interim Resolution Professional to carry the functions as mentioned under the Code.

11. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)