

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.P. No. 2925/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

JSK Corporation Pvt. Ltd.

4th Floor, Sudhakar Apartment, Plot No. 23,

Surendra Nagar, Nagpur – 440 015

.... Petitioner

v/s.

Enestee Engineering Limited

Plot No. 38, Flat No. 103, First Floor, Royal

Orchid, Kachimet, Amravati Road, Nagpur –

440 023

.... Corporate Debtor

Order delivered on: 17.09.2019

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

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

For the Petitioner : Mr. Harsh Kesharia, Advocate.

For the Corporate Debtor: Mr. Kenny Thakkar, Advocate.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This company Petition is filed by JSK Corporation Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Enestee Engineering Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 01.11.2017 in making payment of Rs. 54,92,306/- including interest @18% p.a., 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 supplied structural steel to the Corporate Debtor during September 2017 to October 2017 and raised 8 invoices amounting to Rs. 54,50,502/- on the Corporate Debtor. The ledger account shows that an amount of Rs. 54,50,502/- remains payable for a period from 01.04.2017 to 09.05.2018 annexed at page 79 of the petition. The ledger account by the Corporate Debtor at page 80 also captures the fact that an amount of Rs. 54,50,502/- is due and payable to the Petitioner herein.

3. On 01.11.2017, the Corporate Debtor has made a part-payment of Rs. 3,93,253/- and after adjusting the same, a sum of Rs. 50,57,249/- (as per the ledger statement annexed at page 80 of the petition) is due and payable by the Corporate Debtor.

4. On account of non-payment of outstanding dues, on 21.05.2018, the Petitioner issued Demand Notice demanding a sum of Rs. 54,92,306/- including interest @18% p.a. under Section 8 of the Code. The Corporate Debtor had not replied to the demand notice and the Petitioner filed affidavit under section 9(3)(b) of the Code stating that no dispute was raised by the Corporate Debtor.

5. The counsel for the Petitioner submitted that the petition was served on the Corporate Debtor and proof of service was filed to that effect. The petition was filed on 13.07.2018. Even though the petition was listed on several times i.e. on 14.11.2018, 09.01.2019, 06.03.2019, 02.05.2019, 09.07.2019 and 05.09.2019 nothing has happened. On 09.07.2019 last chance was given to the Corporate Debtor to file reply but no reply was filed. On 05.09.2019 during the hearing of the matter one Ms. Kenny, advocate appeared on behalf of the Corporate Debtor and requested time to file vakalatnama and reply. Since the matter is pending for a long time, this Bench is not inclined to give further time, and heard the counsel for the Petitioner. During the hearing of the petition the counsel for the Petitioner agreed to waive interest since there is no provision for claiming interest in the invoice. The Petitioner enclosed two cheques, vice cheque number 586894 dated 07.06.2018 for Rs. 30,77,861/- and 586895 dated 02.06.2018 for Rs. 19,77,836/- drawn on South Indian Bank, Nagpur branch, issued by the Corporate Debtor and both cheques were returned by the bank for the reason of insufficiency of funds. These facts leads to a conclusion that the debt is due and the Corporate Debtor defaulted in making the payment to the Petitioner.

6. One Mr. Atul Rajwadkar, office at 47, Hindusthan Colony, Wardha Road, Nagpur – 440 015; having email address- vervecapital@gmail.com, having Registration No. IBBI/IPA-001/IP-P00152/2017-18/10321 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

7. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application 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 17.09.2019 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 Mr. Atul Rajwadkar, office at 47, Hindusthan Colony, Wardha Road, Nagpur - 440 015; having email address- vervecapital@gmail.com, having Registration No. IBBI/IPA-001/IP-P00152/2017-18/10321 as Interim Resolution Professional to carry the functions as mentioned under the Code.

8. Accordingly, this Petition is admitted.

9. 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)