

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

CP 4752 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Vikas Shuttering Store Private Limited

...Operational Creditor/ Applicant

v/s

Supreme Infrastructure India Ltd.

...Corporate Debtor

Order Dated 30.09.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Applicant: Adv. Ranit Basu

For the Respondent: Adv. Bhavik Manek, Adv. Vinay Taliwal & Adv.
Tushar Goradia

Per Rajesh Sharma, Member (Technical)

ORDER

1. This application has been admitted vide our order dated 30.09.2019.
2. This is an application being CP 4752/2018 filed by **Vikas Shuttering Store Private Limited**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Supreme Infrastructure India Ltd.**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
3. This application is filed by Mr. Dayanand Saini, Director of the applicant company duly authorised vide board resolution dated 23.10.2018.
4. The Applicant had supplied certain shuttering and related material to the Corporate Debtor pursuant to various work orders and raised several invoices, latest invoice being dated 31.12.2015 for an

amount of ₹1,12,283/-. All the invoices clearly declare as being running bills.

5. The Applicant, in its Form-5, has filed its application claiming an amount of ₹14,26,91,442.31 is due and payable against the corporate debtor.
6. The applicant contends that the account of the corporate debtor is a running account wherein the last invoice raised and submitted on record by the Applicant is dated 31.12.2015 and thereafter the last payment of ₹10,00,000/- is received on 31.10.2016. The present application is filed on 03.12.2018 which is well within stipulated period of limitation.
7. The Applicant sent a Demand notice in Form-3 dated 06.07.2018 demanding payment of ₹14,26,91,442.31/-. The demand notice was received by the Corporate Debtor on 23.07.2018 and was duly replied vide e-mail dated 03.08.2018. The Applicant has filed an affidavit in compliance of section 9(3)(b) of the I&B Code stating that he has not received any payment after service of notice. The Applicant has stated in its affidavit that the Corporate Debtor has denied its obligation to pay the outstanding amount claimed by the Applicant.
8. The Corporate Debtor raised a dispute that the Applicant have supplied substandard and bad quality material due to which the Corporate Debtor have incurred huge losses. It is alleged that the Corporate Debtor has communicated these disputes to the Applicant at the time of certification of bills which is before sending of Demand notice. It is to be noted that the Corporate Debtor has merely raised these disputes in its reply to the Demand notice and in its affidavit in reply without any supporting document to prove the dispute or their communication to the Applicant.
9. On perusal of the documents submitted by the operational creditor, it is clear that debt amounting ₹14,26,91,442.31 is due and payable by the Corporate Debtor which is also evident from the various invoices raised by the Corporate Debtor and the fact that the Corporate Debtor has made last payment of ₹10,00,000/- on 31.10.2016. The Application is filed on 03.12.2018 in this Tribunal. The account of the Corporate Debtor is a running account and

therefore the application is filed within 3 years of prescribed period of limitation from the date of making last payment on 31.10.2016.

10. The Corporate Debtor has not denied the supply of goods by the Applicant.
11. The outstanding debt of more than Rs One Lac is due and payable against the corporate debtor and corporate debtor has committed default in making the payment.
12. The application filed by the operational creditor is on proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.
13. The Applicant has not proposed name of any registered Insolvency Resolution Professional, to carry the functions of **Interim Resolution Professional** as mentioned under I&B Code.
14. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form 5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 9 of I&B Code, 2016, filed by **Vikas Shuttering Store Private Limited**, against **Supreme Infrastructure India Ltd.**, 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 activity under the Securitization and Reconstruction of Financial 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 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 at this moment appoints Mr Prashant Jain, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01368/2018-19/12131] 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.

15. The Registry is at this moment 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/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

30th September 2019