

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.130
CP(IB) 469 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Creative Engineers & Services Pvt Ltd
V/s
B & C Energy Infra Ltd

.....Applicant

.....Respondent

Order delivered on ..03/01/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.469 of 2019

[An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

Creative Engineers and Services Private Limited

(CIN No: U51109GJ2013PTC076401)

Having registered address at:

16/B, Sangini Complex,
Nr. Parimal Crossing,
Nr. Doctor House, C.G. Road,
Ahmedabad, Gujarat, 380009

..Operational Creditor

Versus

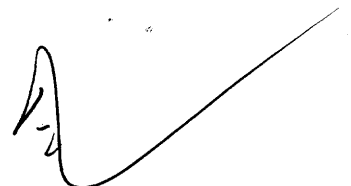
B & C Energy Infra Limited

(CIN No: U31900GJ2012PLC071773)

Having registered address at:

405, Chandrababhu Corporate House,
B/h Sales India Showroom,
Modhera Char Rasta,
Mehsana, Gujarat, 384002

...Corporate Debtor



Order reserved on 13.12.2021
Order pronounced on 03.01.2022

Coram: Madan B. Gosavi (Member Judicial)
Ajai Das Mehrotra (Member Technical)


Appearance:

Ld. Counsel Mr. Pratik Thakkar appeared for the Applicant

Ld. Counsel Mr. Nachiket D Mehta appeared for the Respondent

ORDER
[PER BENCH]

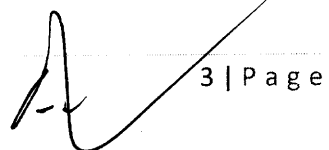
1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC 2016**") by Operational Creditor, Creative Engineers and Services Private Limited to initiate the Corporate Insolvency Resolution Process against Corporate Debtor, B & C Energy Infra Limited for the default amount of Rs. 7,34,716/-
2. The facts, in brief, are that the Operational Creditor had sold 11kv breaker panel of 400 Amps to Corporate Debtor on 30.11.2016 and raised an invoice of Rs. 9,46,690/- out of which the Corporate Debtor had paid Rs. 3,00,000/- in advance.
3. The Applicant submitted that the Corporate Debtor issued a letter dated 08.12.2016 regarding mismatch of material in response to



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the issue of Invoice No. 16-55 dated 30.11.2016 to the Operational Creditor. However, the goods were consumed by the Corporate Debtor.

4. The Operational Creditor issued demand notice on 26.02.2019 under Section 8(1) of IBC, 2016 read with Rule 5 of IBBI (Application to the Adjudicating Authority) Rules, 2016 (hereinafter referred to as "**AA Rules**") of the I.B. Code, 2016 in Form 3 to the Corporate Debtor.
5. The Operational Creditor further submitted that the Corporate Debtor in his reply dated 12.03.2020 has stated that there was a pre-existing dispute between the Operational Creditor and the Corporate Debtor with regard to mismatch of material. The reply was made beyond 10 days of statutory period of reply. The Corporate Debtor has also annexed letter dated 08.12.2016 regarding intimation of mismatch of material to the Operational Creditor.
6. The Operational Creditor in his reply dated 03.07.2020 stated that the letter dated 08.12.2016 is forged and fabricated. It is also stated by the Operational Creditor that the signature is also fabricated by the Corporate Debtor. Since the Corporate Debtor has failed to repay the default amount to the Operational Creditor, the Operational Creditor has filed this present application for initiation of the Corporate Insolvency Resolution Process

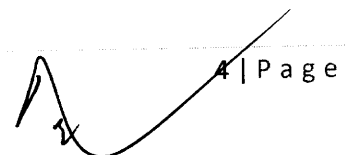



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(hereinafter referred to as "**CIRP**") on 03.07.2019 before this Authority.

7. We have heard the learned counsel of the Operational Creditor as well as the Corporate Debtor and perused the material on record. It has been noted that the Invoice No. 16-55 dated 30.11.2016 of Rs. 9,46,690/- has been raised by the Operational Creditor against which payment of Rs.3,00,000/- has been made by the Corporate Debtor. The Corporate Debtor issued a letter dated 26.02.2019 regarding mismatch of materials to the Corporate Debtor. It is stated in the letter that the items sent by the Operational Creditor were not as per the order. A demand notice has been issued by the Operational Creditor on 26.02.2019. The pre-existing dispute raised by the Corporate Debtor is not sustainable as goods were consumed by the Corporate Debtor which is an admitted fact. These goods were consumed and were not returned.

8. We perused the Service Report/Minutes of Meeting dated 10.08.2017, to which our attention was drawn by the Learned Counsel of the applicant, where it is recorded that the breaker panel is found "fully satisfactory" and it is signed by the representative of the Corporate Debtor. It is also admitted that the Corporate Debtor had issued a cheque of Rs. 2,00,000/- dated 01.08.2017 to the Operational Creditor for payment of the default



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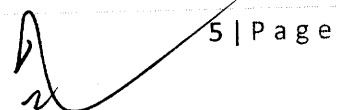
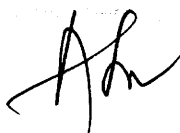
amount, which was dishonored. Thereafter, an undated cheque of Rs. 8,46,690/- was issued to the Operational Creditor which is a clear admission of debt by the Corporate Debtor. It is also noted that there is no such evidence on record to show that the letter dated 08.12.2016 was delivered to the Operational Creditor. The invoice also meet out the threshold as envisaged under section 4 of IBC 2016, and well within the limitation for filing the present application.

9. The present application is defect-free and complies with all the relevant provisions of the IBC 2016. The Operational Creditor has not proposed the name of Interim Resolution Professional (hereinafter referred to as "IRP") in the application, therefore we appoint Mr. Shah Sanjay Jitendralal having registration No. IBBI/IPA-001/IP-P01915/2020-2021/13096 as IRP. In view of the above observations the present application is allowed with the following directions;

ORDER

1. The instant application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree, or*



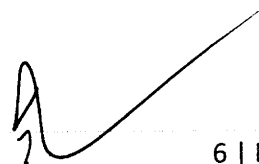

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order in any court of law, tribunal, arbitration panel, or other authority;

- (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 Securitisation 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 the possession of the corporate debtor.*

2. 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 Adjudicating Authority approves the Resolution Plan under Section 31(1) or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

3. The Operational Creditor has not proposed the name of IRP in the application, therefore we appoint Mr. Shah Sanjay Jitendralal having registration No. IBBI/IPA-001/IP-P01915/2020-2021/13096 and registered mail ID sshahfca.ss@gmail.com to act as an IRP.



4. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under Section 19 of the IB Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
5. This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
6. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
7. The IRP shall be duty-bound to protect and preserve the value of the property of the Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going



concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

8. The Operational Creditor is directed to pay an advance of Rs. 25,000/- to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.
9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.469 of 2019** is allowed and disposed of.



(Ajai Das Mehrotra)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)