

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 2231/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Skylark Highway Solutions Limited 1/84,
1st Floor, Sadar Bazar, Delhi Cantt, New
Delhi.

...Petitioner

V/s.

Topworth Infra Private Limited

Regd. Office: 308. 3rd Floor Ceejay
House, Dr. A. B Road, Worli, Mumbai
Maharashtra-400018.

... Corporate Debtor

Order delivered on: 13.11.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Jasdeep Singh Dhillon, Mr. Suyoga Rajguru, Advocates
i/b M.P. Savla & Co.

For the Corporate Debtor: Mr. Ratnaveer Singh, Advocate

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company Petition is filed by M/s Skylark Highway Solutions Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s Topworth Infra Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment of Rs.1,44,70,573/- which is inclusive of the interest @ 18% per annum of 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 and the Corporate Debtor entered in to an agreement, wherein the Corporate Debtor availed the services of the Petitioner, in providing man power for the ujjain-jaora and satna-chitrakoot road projects. Based on the work order nos. TTUPL/WO/14-15/01 dated 18.10.2014 and TTSP/L/WO/14-15/03 dated 01.01.2014 issued by the Corporate Debtor, the Petitioner supplied man power and raised invoices on the Corporate Debtor.
3. When the Corporate Debtor decided to engage another party for the services provided by the Petitioner, on 11.05.2016, a memorandum of understanding was entered in to between the Parties, wherein the Corporate Debtor terminated the services of the Petitioner and agreed to pay a sum of Rs. 1,36,80,923/- to the Petitioner for the services provided, and accordingly issued seven postdated cheques in favor of the Petitioner.
4. The Corporate Debtor has made a part-payment of Rs. 33,90,000/- and the balance amount of Rs. 97,46,022/- is due and payable by the Corporate Debtor.
5. The Petitioner submits that when they have presented the cheques for the payment three cheques of Rs.20,00,000 of each were returned for the reason insufficiency of funds and the returned cheques alongwith the return memo was enclosed to the petition.
6. After repeated requests and reminders were issued to the Corporate Debtor, on account of non-payment of the outstanding balance dues, the Petitioner on 04.08.2018 issued a demand notice to the Corporate Debtor for the payment of outstanding dues. There was no reply from the Corporate Debtor for the Demand Notice.
7. Despite repeated requests and reminders made by the Petitioner and assurances given by the Corporate Debtor, the Corporate Debtor failed to make payment of an outstanding amount. The Corporate Debtor had not raised any dispute regarding the claim amount, infact the said claim arises out of MOU/ settlement dated 11.05.2016 entered between the parties, wherein the Corporate Debtor has agreed to pay the said amount

vide postdated cheques and has defaulted the payment of the same on the when it became due and payable. Hence the Corporate Debtor is liable to pay the amount as claimed by the Petitioner.

8. On 23.09.2019, both sides argued the matter, the counsel of the Corporate Debtor admitted the liability and default, hence the petition deserves admission
9. One Mita Sanghavi, residing at B/17 Giri Sanidhya Chs, Shree Nagar, Wagle Estate Thane (West) 400604; having Registration No. IBBI/IPA-002/IP-N00662/2018-2019/12215 has given his consent in Form No. 2 to act as an Interim Resolution Professional.
10. This Bench having been satisfied with the application 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 13.11.2019 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 Mita Sanghavi, residing at B/17 Girisandhya Chs, Shree Nagar, Wagle Estate Thane (West) 400604; having Registration No. IBBI/IPA-002/IP-N00662/2018-2019/12215 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)