

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

C.P. (IB) No.141/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. MAK Enterprises
(A Proprietary Concern)
C.S. No.376, Anant Laxmi Apartment,
Sambhare Road, Gaonbhag Sangli,
Maharashtra - 416 416. - Petitioner/Operational Creditor

Versus

M/s. Sovereign Industries Limited
Regd. Off: 2nd Floor,
Triveni Complex, Yadwad Road,
Mudhol, Bagalkot,
Karnataka - 587 313. - Respondent/Corporate Debtor

Date of Order: 23rd August, 2019

Coram: 1.Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Medha Kulkarni
For the Respondent : Shri Prajwal K. Aradhya

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.141/BB/2018 is filed by M/s.MAK Enterprises, a Proprietary Concern (hereinafter referred to as 'Petitioner/Operational Creditor') U/s 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Sovereign Industries Limited (hereinafter referred



to as 'Respondent/Corporate Debtor') on the ground that it has committed default for total outstanding amount of Rs.76,21,319/- (Rupees Seventy Six Lakhs Twenty One Thousand Three Hundred and Nineteen Only) which includes Rs.57,31,533/- being the Principal amount and Rs.18,89,786/- towards the interest claimed @ 24% on unpaid amount (calculated till 31.03.2018 from due date of payment).

2. Brief facts of the case, as mentioned in the Company Petition, and in written submissions, are as follows:

- (1) M/s. MAK Enterprises (hereinafter referred to as 'Petitioner/Operational Creditor') is a Proprietary Concern with GST Registration Number: 27ACCPK5283B1ZU dated 22.09.2017 and having office at C.S.No.316, Anant Laxmi Apartment, Sambhare Road, Gaonbhag Sangli, Maharashtra-416416. It is in the business of providing electrical goods.
- (2) M/s. Sovereign Industries Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Public Company incorporated on 05.01.2009 under the provisions of Companies Act, 1956 with CIN: U74900KA2009PLC069837 having its registered office at 2nd Floor, Triveni Complex, Yadwad Road, Mudhol, Bagalkot, Karnataka-587313. The Authorised Share Capital of the Company is Rs.26,00,00,000/- (Rupees Twenty-Six Crores Only) and Paid-up Share Capital of the Company is Rs.6,05,100/- (Rupees Six Lakh Five Thousand One Hundred Only). The Company is engaged inter alia in the manufacture of M grade sugar, S-1 grade sugar, S-2 grade sugar, S-3 grade sugar and Big crystal sugar, etc.
- (3) It is stated that the Respondent Company has entered into agreement for delivery of equipment and machineries with

M/s.Hi-Tech Engineering Corporation India Pvt. Ltd. M/s.Hi-Tech Engineering, in turn, entered into contract with various other entities including the Petitioner for delivery of equipment and machinery to Respondent.

- (4) During the process in supplying the material of goods, Hi-Tech Engineering Corporation India Pvt. Ltd. was not able to support complete installation due to their financial stress. Delayed delivery of the supply of Capital Goods would delay commissioning of Respondent's plant. As business of the Respondent is Sugar crushing activity and being it is a seasonal activity, any delay in commissioning of Plant shall result in losing of one year's revenue.
- (5) It is stated that in June 2016, Hi-Tech Engineering Corporation communicated in writing to deliver goods directly to Respondent, after getting full payment against Proforma Invoice as agreed by Chairman of Respondent Company - Mr.Shivkumar Malghan. Subsequently, Respondent transferred two payments of Rs.8,06,659/- and Rs.1,18,82,206/- in April 2016 and June 2016 respectively.
- (6) Post this understanding of working directly with Respondent in order to support commissioning, the Petitioner raised direct Purchase Order with the Respondent. Accordingly, the Petitioner has supplied material as per Purchase Order and raised the following invoices:

Sr. No.	Invoice No.	Amount (inRs.)	Appearing in Sovereign Industries Ltd. as Purchases
1.	Bill # 6425	5,00,000	Yes
2.	Bill # 6438	18,97,078	Yes
3.	Bill # 6439	18,47,560	Yes
4.	Bill # 6440	2,48,461	Yes
5.	Bill # 6441	7,02,141	Yes
6.	Bill # 6442	9,64,133	Yes
7.	Bill # 6443	8,64,034	Yes
8.	Bill # 6452	12,85,490	Yes

9.	Bill # 6453	8,04,723	Yes
10.	Bill # 6468	87,582	Yes
11.	Bill # 6479	43,656	No
12.	Bill # 6481	19,64,457	Yes
13.	Bill # 6482	7,10,363	Yes
14.	Bill # 6504	4,73,489	Yes
15.	Bill # 6505	25,577	Yes
16.	Bill # 6506	5,93,687	Yes

- (7) It is further stated that Form-C of Declaration under the Central Sales Tax which certify goods are received by the Respondent in order.
- (8) It is stated that Respondent has given two cheques with following details to create confidence and assurance about payment to the Party. Below are the details of two undated signed cheques:

Sr. No.	Name of the Bank	Cheque No.	Amount (in Rs.)
1.	Vijaya Bank	050456	5000000
2.	Vijaya Bank	050427	3000000

- (9) As the payment was not received, Petitioner followed up in writing on 05.02.2018 along with the Account Statement. However, no response was received from the Respondent in this regard. It is stated that there was no dispute raised on serving Form-3 Demand Notice under Rule 5 of the I&B (AAA) Rules, 2016. There is no dispute as there are Purchase Orders raised, Form-C as per Central Sales Tax as proof of delivery of goods and Invoices appearing in books of both Petitioner and Respondent. As per Section 5(21) of the Code, the claim in respect of the supply of LT Motors, IT and HT Cables and other electrical and hardware material becomes the 'Operational Debt'. The default amount is stated as Rs.57,31,533/-.
- (10) It is further stated that the Respondent has been under financial stress for some time as is evidenced from below:

Sr. No.	Particulars	Amount (in Rs.) As on 31.03.2018	Amount (in Rs.) As on 31.03.2017
1.	Share Capital	4,21,87,100	6,05,100
2.	Reserves and Surplus	-4,89,02,622	-1,08,65,709
	Net Worth	-67,15,522	-1,02,60,609

(11) In the AOC-4 filing with the Registrar of Companies for Financial Year 2018, the Auditor has pointed out unfavourable remark on payment of statutory dues. The Company is not in position to pay statutory dues. Further, as per Audit Report of the Corporate Debtor, the Company has defaulted in repayment of dues to following financial institutions:

Sr. No.	Bank	Amount (in Rs.)
1.	The Belgaum DCC Bank Ltd.	5,00,00,000
2.	The Kanara DCC Bank Ltd.	4,28,56,000
3.	The Karnataka State Co-op. Apex Bank Ltd.	7,30,32,000
4.	Vijaypur DCC Bank Ltd.	4,28,56,000
5.	South Canara DCC Bank MT-739	6,42,84,000
6.	Bajpe VSS Bank Ltd.	1,42,84,000
7.	Kodagu DCC Bank Ltd.	1,42,84,000
	Total	30,15,96,000

Therefore, it is prayed to initiate CIRP under the Code with all consequential orders.

3. The Company Petition is opposed by the Respondent by filing the Statement of Objections dated 19.02.2019, by inter alia contending as follows:

(1) It is stated that the Respondent is a Company having 90 permanent and 180 seasonal employees, and its sugarcane plant is situated in Terdal, Mudhol with a Paid-up Share Capital of Rs.4,21,87,100/-. The Company at present is facing many challenges due to various economic and geographical conditions. The Company in 2017-18 had a turnover of Rs.23,23,26,111/- and has reported loss during the last previous financial years.

W/O

(2) It is stated that the application filed by M/s.MAK Enterprises ('Applicant') seeking to initiate CIRP is frivolous and vexatious, and has no merit in law or in fact. The Applicant has approached this Hon'ble Tribunal with unclean hands and misrepresented facts, to seek undue advantage from the Respondent. There are no amounts payable by the Respondent to the Applicant whatsoever, and these claims made by the Applicant are false and an abuse of the process of law, and hence, the application is liable to be dismissed in *limine*.

(3) It is further stated that the Applicants have intentionally suppressed the critical facts to further their own interests. The Applicant herein is trying to retrieve a sum/payment which he is legally not entitled to receive from the Respondent Company, and therefore, the Respondent wishes to lay down the following facts in order to clarify the complex nature of this dispute:

- i. The Respondent Company entered into an agreement with a Company called Hi-Tech Engineering Corporation India Private Limited (hereinafter referred to as 'Hi-Tech'), having its registered office at G-17, MIDC, Baramati, Maharashtra-413102, to purchase industrial tools, equipment, heavy machinery, and ancillary hardware resources required for the setting up and working of the Company, which is a sugarcane crushing factory located at Terdal, Mudhol, Karnataka.
- ii. The Respondent Company duly fulfilled all obligations towards Hi-Tech and paid the agreed sums of money for the procurement of the aforementioned tools and equipment.



- iii. Hi-Tech entered into an arrangement with the Petitioner to procure the material and tools and to supply to the Respondent Company, the machinery as required in accordance with the Purchase Order Agreement. The Respondent Company only received the Invoices in its name as it was the Consignee and the arrangement was between the Applicant/Petitioner and Hi-Tech wherein Hi-Tech was to pay directly to the Applicant. And it is not the responsibility of the Respondent to ensure such payments to the petitioner.
- (4) It is stated that in good faith, the Respondent Company herein had also paid the workers of Hi-Tech during their financial crisis. The fact that the Respondent Company herein has made these payments goes on to prove the honest and bonafide conduct of the Respondent Company. Despite having known all these facts, the fact that the Petitioner is demanding payments, which are not entitled for. The Respondent Company had entered into Purchase Orders dated 11.04.2016 and 16.05.2016 for sums of Rs.26,88,865/- and Rs.5,00,000/- respectively with the Petitioner. The Respondent Company has made payments of Rs.8,06,659/- (on 13.04.2016) and Rs.18,82,206/- (on 27.06.2016) against the Purchase Order dated 11.04.2016 and Rs.5,00,000/- (on 02.07.2016) against the Purchase Order dated 16.05.2016, without any default.
- (5) It is further stated that the Respondent Company has a good reputation in the market. If the Application were to be admitted, the Company and its employees would be put to irreparable hardship and inconvenience. The Respondent is a Company incorporated under the provisions of Companies Act, 1956 and has been in operation since 2009. For the



establishment of a Sugar Factory in Bagalkot, the Respondent required certain machineries and equipment, and to procure the same the Respondent placed several Purchase Orders on the Petitioner.

- (6) In addition to the Purchase Orders placed on the Petitioner, the Respondent has also entered into agreements for the delivery of equipment and machineries on various other entities and one such entity was M/s.Hi-Tech Engineering Corporation India Pvt. Ltd. It is stated that a major portion of the equipment required for the establishment of the sugar factory was to be supplied by the said M/s.Hi-Tech Engineering Corporation India Pvt. Ltd. The Respondent has made payment in full to the said M/s.Hi-Tech Engineering Corporation as per the agreement entered into between them.
- (7) The Respondent received the equipment and machineries from the Petitioner under two contracts, one under the Purchase Order placed by the Respondent on the Petitioner and the other the agreement/sub-contract entered into between the Petitioner and M/s.Hi-Tech Engineering Corporation India Pvt. Ltd. to which the Respondent herein is a third party and is not privy to the contract between them.
- (8) It is stated that the Petitioner raised invoices on the Respondent for the delivery of goods under both the contracts since the Respondent was eventual consignee of the goods to be delivered by M/s.Hi-Tech Engineering Corporation India Pvt. Ltd. The tax invoices also were raised upon the Respondent for the same purpose. As already stated, the Respondent has already made payment to M/s.Hi-Tech Engineering Corporation for the goods to be delivered by them to the Respondent. Thus, if at all any



amount to be paid to the Petitioner, it is M/s.Hi-Tech Engineering to make payment to the Petitioner.

- (9) Against the invoices raised on the Respondent for the goods delivered by the Petitioner for the Purchase Orders placed by the Respondent, the Respondent has already made payment to the Petitioner. In addition to the said payment, the Respondent has also made additional payment of Rs.99,44,399/- to the Petitioner due to oversight.
- (10) The Respondent has thus paid the Petitioner a sum total of Rs.1,37,05,866/- (Rupees One Crore Thirty-Seven Lakhs Five Thousand Eight Hundred and Sixty-Six Only) which includes a sum of Rs.37,61,467/- (Rupees Thirty-Seven Lakhs Sixty-One Thousand Four Hundred and Sixty-Seven Only) which was legally due to the Petitioner and a sum of Rs.99,44,399/- which was paid by the Respondent in excess to the Petitioner. Thus, Respondent does not owe any money to the Petitioner.
4. Heard Ms.Medha Kulkarni, learned PCA for the Petitioner and Shri Prajwal K. Aradhya, learned Counsel for the Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the Code.
5. Ms.Medha Kulkarni, learned PCA for the Petitioner, while reiterating the averments made in the main Company Petition and written submissions, has further submitted that the instant Company Petition is filed in accordance with law and the debt and default is not disputed and a qualified Resolution Professional is suggested for appointment as the Interim Resolution Professional in respect of the Corporate Debtor, who has also given his written consent in Form-2 dated 21.04.2018 along with Affidavit dated 21.04.2018.

6. Shri Prajwal K. Aradhya, learned Counsel for the Respondent, while reiterating various averments made in the statement of objections already filed, as briefly stated supra, has further submitted that the debt in question is in dispute, and in fact the petitioner is liable to be pay them an amount of Rs.99,44,399/- and they have also issued legal notices dated 26.03.2019 followed another notice dated 21.05.2019 to the Petitioner. He therefore, urged the Adjudicating Authority to dismiss the Petition as not maintainable and lacks merits.
7. The case is listed for admission on various dates viz. 10.08.2018, 03.09.2018, 27.09.2018, 05.10.2018, 29.11.2018, 07.12.2018, 13.12.2018, 10.01.2019, 19.02.2019, 13.03.2019, 29.03.2019, 29.04.2019, 30.05.2019, 13.06.2019, 25.06.2019, 03.07.2019 and 22.07.2019, and it is adjourned on those dates at the request of the parties, on one ground or the other including on the ground of exploring the possibility of the settlement of the issue as the Corporate Debtor is stated to be going concern having so many seasonal and regular employees. It is also on record that there are two other cases viz. C.P. (IB) No.142/BB/2018 and C.P. (IB) No.18/BB/2019 filed against the very same Corporate Debtor namely M/s.Sovereign Industries Limited, on the ground that it has committed default for a total outstanding amount of Rs.1,11,72,515/-. The Tribunal also has given sufficient time to the Respondent to explore the possibility of settlement, if any, for the above debts in all the three cases amounting to Rs.1,87,93,834/-. While reserving the matter on 22.07.2019 also, at the request of the Respondent to give one more opportunity to settle the issue, the case is kept pending till without pronouncing order of admission. Since there is no information is coming from the parties about settling the issue in question, we are deciding the case as per merits.



8. As stated supra, there is no dispute with regard to the debt and default in question. Shri Arvind Vinayak Kelkar, the proprietor of Operational Creditor has filed a notarised affidavit dated 21st April, 2018 by inter alia declaring that Notice/Invoice demanding payment in Form 3 and Form 4 dated 02.04.2018 were duly served on the Respondent/Corporate Debtor and no notice was received from the Respondent. The defence raised by the Respondent that they have on the contrary issued legal notices dated 26.03.2019 and 21.05.2019 by demanding on the Petitioner to pay Rs.99,44,399/ is not tenable and it is an afterthought and it cannot be a valid dispute. It is also to be pointed here that the Petitioner while accepting that they have received goods in question and paid part payments to the Petitioner, has contended that there is no privity of contract exist between the Petitioner and the Respondent. The Petitioner has also suggested a qualified Resolution Professional namely Shri Laxman Digambar Pawar having Registration No.IBBI/IPA-003/IP-N00015/2017-18/10104 to appoint as IRP, who also has filed his written consent in Form-2 dated 21.04.2018 by inter alia affirming that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending against him with the Board or Institute of Cost Accountants of India.
9. The instant Petition is filed strictly in accordance with law and the Debt and default in question is not in dispute and the defence raised by the Respondent is not at all tenable and only the quantum of debt can be verified by the IRP appointed in the case. IRP suggested is prima facie eligible to be appointed as Interim Resolution Professional. Therefore, it is a fit case to admit by initiating CIRP against the Corporate Debtor, appointing IRP, Moratorium etc., as per the Code.



10. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, C.P. (IB) No. 141/BB/2018 is hereby admitted with the following consequential directions:

- (1) We hereby appointed **Shri Laxman Digambar Pawar with IP Registration No.IBBI/IPA-003/IP-N00015/2017-18/10104**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely **M/s. Sovereign Industries Limited** and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.
- (2) The following moratorium is declared prohibiting all of the following, namely:
 - 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 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.

- e. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **09.09.2019**.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL