

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

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CP (IB) No. 197/9/AMR/2019

In the matter of MVK Global Enterprises Private Limited

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Dated 20th May, 2020

The regular court proceedings have been suspended/closed as per Notice dated 22.03.2020 of NCLT, Principal Bench and subsequent follow up orders due to the COVID-19 pandemic. The order in this case is ready. Counsel for the parties are present in the Video Conference (VC). Order is pronounced through VC. The CP (IB) No. 197/9/AMR/2019 is admitted as per separate sheets.

Upload the same onto the NCLT website. A copy of the order may also be sent to the Registrar, NCLT as per Circular dated 14.04.2020 for necessary action at his end.


MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

*** **

CP (IB) No. 197/9/AMR/2019

**In the matter of a Petition under Section 9 of the Insolvency
and Bankruptcy Code, 2016
and**

In the matter of MVK Global Enterprises Private Limited

Between

Viki Industries Private Limited
1, Krishna Street, Nungambakkam,
Chennai – 600 034
Tamilnadu.

... Petitioner

and

MVK Global Enterprises Private Limited
16-3-549/B, Mutyalapalem,
Near Water Tank, Ramalingapuram,
Nellore – 524 003,
Andhra Pradesh.

... Respondent

Date of Order: 20.05.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Appearance:

For Petitioner: Mr. Ravi Rajagopalan and Mr. G. Bhupesh,
Advocates.

For Respondent: Ms. G. Kalpana, Practicing Chartered Accountant.

ORDER

This is an Application under section 9 of Insolvency & Bankruptcy Code (the Code) seeking Corporate Insolvency Resolution Process (CIRP) of the Respondent Company for default in payment of an operational debt.

2. The Petitioner, a Private Limited Company (CIN: U27209TN1990 PTC019523) having its registered office in Chennai, is the supplier of Steel. The Respondent is a Private Limited Company (CIN: U51909

AP2016PTC104068) with its Registered Office at Nellore, Andhra Pradesh. The Petitioner had supplied steel rods to the Respondent as per orders placed from time to time. The goods were received and accepted by the Respondent as and when supplied. There has been no dispute relating to the quantity or quality of goods. The Petitioner issued six invoices i.e. (i) No. 369 dated 24.08.2018 for Rs. 10,95,067/-; (ii) 475 dated 30.04.2018 for Rs. 1,84,828/-; (iii) 474 dated 30.04.2018 for Rs. 1,11,242/-; (iv) 473 dated 30.04.2018 for Rs. 8,27,096/-; (v) 2707 dated 07.08.2018 for Rs. 9,62,507/-; and (vi) 2706 dated 07.08.2018 for Rs.98,213/- totalling Rs. 32,78,953/-. Out of the total aggregate amount after adjusting for payments received thereon, a sum of Rs. 30,50,049/- remained outstanding. The Respondent failed to make the payment, despite several reminders. For such failure the Respondent is liable to pay interest @ 24% per annum amounting to Rs. 6,60,600/- and the total amount outstanding thus comes to Rs.37,10,649/-. The Petitioner issued the Demand Notice dated 01.07.2019 under section 8 of the Code in Form 4 and sent it by speed post on 05.07.2019. It was delivered to the Respondent on 08.07.2019. It was not responded to. Hence the Petition.

3. The Respondent in its Counter admitted that the Petitioner supplied materials under the invoices mentioned in the Petition and as per the book of accounts of the Respondent, the amount due is Rs. 30,20,049/- and not Rs. 30,50,049/- as claimed by the Petitioner. It is further stated that the Respondent vide their letter dated 25.06.2019 informed the petitioner that in the span of 25 to 30 days an amount of Rs. 2.5 lakhs to Rs.3 lakhs will be paid and requested the Respondent some time to clear the outstanding amount. The same was acknowledged by the Petitioner endorsing that "we received your letter. We will revert back, after discussing with the management & let you know sir". The Petitioner without informing anything and without considering the request of the Respondent issued the Demand Notice and subsequently

came up with the present Petition. Further the Respondent through emails dated 27.11.2019 and 03.12.2019 requested the Petitioner to give some time to pay the outstanding amount. But the Petitioner never reverted back.

4. Heard the counsel for both the parties. Materials available on record clearly indicate that the petitioner had supplied goods to the Respondent in due course of business. It had raised six invoices on various dates for a total sum of Rs. 32,78,953/- and after adjusting the payments made by the Respondent the amount Rs. 30,50,049/- remained due. The Respondent in its counter admitted that a sum of Rs. 30,20,049/- is due to the Petitioner, but not the amount claimed. A difference of Rs. 30,000/-. The Respondent didn't reply to the Demand Notice nor paid any amount to the Petitioner. It was thus in default in payment of an operational debt. It is settled that the amount outstanding even if disputed would come within the purview of a debt. The Hon'ble Apex Court in *Innoventive Industries Ltd. v. ICICI Bank and Anr*: (2018) 1 SCC 407 held as follows:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of debt, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a claim and for the meaning of claim, we have to go back to Section 3(6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).”

5. The Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No. 720 of 2018* decided on 24.07.2019 have also echoed similar views in the following words

“From the aforesaid findings, it is clear that the claim means a right to payment even if it is disputed. Therefore, merely because the 'Corporate Debtor' has disputed the claim by showing that there is certain counter claim, it cannot be held that there is pre-existence of dispute.”

6. From these materials it would appear that the Respondent owed an operational debt to the Petitioner. Despite notice it defaulted in making the payment. The Respondent has neither sent any notice of dispute nor shown any record of dispute as to the debt. The default interest amount of Rs. 6,60,600/- claimed can be acceded to the same being part of the invoices. The petitioner has not proposed the name of the Interim Resolution Professional (IRP). The Petition is otherwise complete. It thus needs to be admitted. Hence ordered.

ORDER

The Company Petition is admitted on contest. The Corporate Insolvency Resolution Process of the Respondent shall commence from this date and shall be completed within 180 days hence.

- i. Shri Kalyanam Raja Gopal, (Registration No. IBBI/IPA-002/IP-N00412/2017-18/11204), having office at 25-2-797, 9th Cross Road, Savithri Nagar, AK Nagar, Nellore – 524004, Andhra Pradesh; e-mail: kalyanam1955@rediffmail.com; Mobile: 9493665921 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He is directed to furnish his consent in form 2.
- ii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of the Code and Rules made thereunder.
- iii. Moratorium in respect of the Respondent is hereby declared under Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Respondent (Corporate Debtor) shall extend all assistance and cooperation to the IRP as stipulated

under section 19 of the Code for effective discharge of his functions under the Code.

- v. The Registry shall communicate the order to the Petitioner and the Respondent forthwith.
- vi. The Petitioner/OC and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-

MOHAMMED AJMAL
MEMBER JUDICIAL