

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

CP (IB) No.336/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

Whiteland Engineering Technologies
Private Limited

[CIN: U32109GJ1999PTC035760]

...Operational Creditor

v/s.

AA Auctioneers and Contractors Private
Limited

[CIN: U74991MH2003PTC141327]

...Corporate Debtor

Order Delivered on:27.01.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Pranav Thakkar, Ld. Counsel

For the Respondent:

Ms. Sarita Yadav, Ld. Counsel

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by White Land Engineering Technologies Private Limited, (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against A.A Auctioneers And Contractors Private Limited, (“the Corporate Debtor”).
2. The applicant/OC submitted, it provided work of *“Execution of HDDs for crossings at KKB MPL- PH-II-SEC-1”* and invoice no 063/2018-19 dated 31.03.2019 for a sum of Rs. 18,18,380/- services to the Corporate Debtor in terms of MOU. On perusal of the record it is also noticed that the applicant OC wrote a letter dated 12.12.2018 to the Corporate Debtor that *“we have been repeatedly reminding on phone, emails to clear due payment amounting to Rs. 15,41,000(without GST). You have been falsely promising us of releasing the payment since November 2018”*.
3. The applicant/Operational Creditor issued the Demand Notice in Form 3 on 12.08.2019 asking the Corporate Debtor to pay the outstanding dues.
4. The Corporate Debtor has not filed any reply to the demand notice. The counsel for the Corporate Debtor was present on 09.12.2022 and a reply dated 14.03.2022 was uploaded online. The CD has objected the admission of petition on the ground of pre-existing dispute and non-delivery of services stipulated in the MOU. The CD has referred to one email dated 07.09.2019 to supplement his argument, however we could not locate any such mail on record.

5. We have heard both the Counsel and perused the material on record. The Operational Creditor has filed present application stating the date of default to be 31.03.2019 in part IV of Form 5. The amount of debt claimed is 18,18,380/- plus interest. The application is filed on 16.04.2020. Though the Corporate Debtor has raised issue of pre-existing dispute, but no communication/correspondence has been placed on record. The CD has also objected to present petition submitting that OC/Applicant was under obligation to follow up the realisation of invoices of CD due from IL&FS Engineering and Construction Company Limited. However, on perusal of email dated 07.08.2019 following part of CD's reply it is noticed that nothing was due from IL& FS Engineering and Construction Company Limited. Hence, we do not find any substance in the objections raised by CD
6. Since, the debt and default exists and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.

ORDER

7. The petition bearing CP(IB) 55/MB-IV/2021 filed by **Whiteland Engineering Technologies Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **AA Auctioneers and Contractors Private Limited** ("the Corporate Debtor) is **admitted**.
- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

- (v) 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;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The Operational Creditor has proposed Mr. Rakesh Maganlal Nathwani, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P02058/2020-21/13190 Email Id rakesh@carmn.in Mb No 9503006408. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
Member (Technical)
27.01.2023

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)