

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

C.P. (IB) No. 4633/NCLT/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of:

M/s. Rahul Engineers

...Operational Creditor / Applicant

V/s

M/s. Ferrox Chemicals Private Limited

...Corporate Debtor / Respondent

Order Dated: 9th October 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Piyush Sohanraj Chhajed (Practising Chartered Account)

For the Respondent: None Present

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being CP 4633(IB)/MB/2018 filed by **M/s. Rahul Engineers**, the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **M/s. Ferrox Chemicals Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed by Mr. Rajesh Rambhajan Yadav, Proprietor of Operational Creditor, claiming a total default of ₹21,11,187/- (Rupees Twenty One Lakh Eleven Thousand One Hundred and Eighty Seven Only) including interest @24% as on 17.09.2018.

3. The Applicant submitted that based on the Purchase Order dated 03.01.2018 and verbal discussion for modification, the Applicant manufactured and delivered "Distillation Column (2KL) Complete set" to the Corporate Debtor and raised an Invoice dated 04.04.2018. The Purchase Order and Invoice for goods supplied are annexed to the Application. The statement of calculation of claim amount is also annexed to the Application.
4. The Applicant submitted that despite having received the goods the Corporate Debtor failed to pay the due amount outstanding under the invoice. Therefore, Applicant sent follow up emails dated 17.05.2018 and 28.05.2018 requesting the Corporate Debtor to release outstanding payment in respect of goods supplied. The Corporate Debtor did not reply to the emails. Further, the Corporate Debtor issued a Cheque of ₹5,00,000/- (Rupees Five Lakh Only) to the Applicant towards part payment however, the said cheque got dishonoured on 05.06.2018 and 09.07.2018 on account of "Funds Insufficient". The copy of emails dated 17.05.2018 and 28.05.2018 and Cheque along with cheque return memos are annexed to the Application.
5. The Applicant issued Demand Notice dated 18.09.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of the outstanding amount of ₹21,11,187/- (Rupees Twenty One Lakh Eleven Thousand One Hundred and Eighty Seven Only). The Corporate Debtor failed to reply to Demand Notice however, the Corporate Debtor vide its email dated 25.09.2018 contended that the Applicant had unloaded the distillation column at site not belonging to Corporate Debtor. In the same email the Corporate Debtor also requested the Applicant to take back the distillation column as it was not required.
6. The Applicant filed present Application on 13.12.2018. The Corporate Debtor filed its Affidavit in Reply dated 04.07.2019 and contended that it has not received the goods till date and it has

not signed or acknowledged any forged, fabricated or bogus invoice issued by the Applicant. The Corporate Debtor further contended that the Applicant had exorbitantly increased the invoice amount without any approval or consent of the Corporate Debtor and therefore the Corporate Debtor did not honour the cheque of ₹5,00,000/- when presented in Bank by the Applicant.

7. The Applicant in its Rejoinder has rebutted all the contentions of the Corporate Debtor. The Applicant submitted that only after the receipt of Demand Notice, the Corporate Debtor for first time vide its email dated 25.09.2019 raised the issues regarding non-receipt of goods and increase in invoice amount of goods. The Applicant submitted that the Corporate Debtor had issued the Cheque of ₹5,00,000/- to the Applicant only after the delivery of goods. The Applicant also submitted that on account of modifications suggested by the Corporate Debtor the invoice amount was increased and the invoice was personally handed over by the Applicant to the Director of Corporate Debtor.
8. No one appeared on behalf of Corporate Debtor during hearing. We heard the submissions of Applicant and perused the records.
9. On perusal of the documents submitted by Applicant, it is evident that Applicant has supplied goods for which Corporate Debtor has failed to make payment. The outstanding, operational debt of more than Rupees One Lakh is due and payable against the Corporate Debtor and Corporate Debtor has committed default in making the payment.
10. Further, in case of ***Mobilox Innovtions Private Limited Versus Kirusa Software Private Limited***, the Hon'ble Supreme Court of India observed that:

"What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be"

Therefore, with regard to the contentions raised by the Corporate Debtor in the present matter, it is observed by this bench that after the delivery of goods on 04.04.2018 and after the receipt of Demand Notice, the Corporate Debtor for first time raised various disputes with regard to the goods supplied by the Applicant and the Corporate Debtor has not provided any evidence to prove that any such dispute existed at any time prior to receipt of Demand Notice. Further, the contention of Corporate Debtor that it did not receive the goods is contrary to its own statements made in email dated 25.09.2018, wherein the Corporate Debtor has requested the Applicant to take back the distillation column. Therefore, in absence of any other documentary evidence in support, the defence raised by Corporate Debtor cannot be treated as pre-existing dispute. Therefore, the contentions of the Corporate Debtor are not tenable and hence rejected.

11. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not established any pre-existing dispute with respect to the debt claimed in the Application.
12. The Application is complete and has been filed under proper form within limitation. Copy of the Demand Notice dated 18.09.2018, Affidavit in compliance of section 9(3)(b) dated 11.12.2018 stating that the Applicant has not received any notice of dispute from the Corporate Debtor and Bank Certificate in compliance of section 9(3)(c) dated 20.11.2018 have been filed with this Bench.
13. The Applicant has not proposed the name of Insolvency Resolution Professional to act as Interim Resolution Professional and to carry out the functions as mentioned under I&B Code, 2016.
14. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is

also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **M/s. Rahul Engineers**, Operational Creditor / Applicant against **M/s. FerroX Chemicals Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**.

We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 Securitization 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified

by the Central Government in consultation with any financial sector regulator.

- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Prakash Nath Mishra**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-003/IP-N000115/2017-2018/11219]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

15. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)

9th October 2019