IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 3562/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

Pravin Electricals Private Limited

E-5/2, First Floor, Highland Park, Jai Shastri Nagar, Mulund Colony, Mulund (west), Mumbai – 400 082

.... Petitioner

v/s.

Ahinsa Buildtech Private Limited

The View, 165, Dr. Annie Besant Road, Worli, Mumbai – 400 018

…. Corporate Debtor

Order delivered on: 04.11.2019

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

For the Petitioner : Mr. Tushad Kakalia a/w Mr. Jelian Lalkaka i/b Mulla and Mulla and C.B.C.

For the Corporate Debtor: Mr. Veenu Khatri, Advocate

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company Petition is filed by Pravin Electricals Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Ahinsa Buildtech Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 11.05.2017 in making payment of Rs. 12,63,817/- along with interest @ 9 % p.a. from 10.07.2018 till the date of realization, 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 rendered services to the Corporate Debtor based on the work order dated 15.03.2011 and raised invoices on the Corporate Debtor, the Corporate Debtor has retained Rs. 12,63,817/- towards retention money. The petitioner has enclosed a communication dated 11.05.2017 wherein the Corporate Debtor sought balance confirmation from the petitioner wherein the Corporate Debtor admitted that a sum of Rs. 12,63,817/- is payable to the petitioner.

3. Based on the above acknowledgement of liability the petitioner issued a notice to the Corporate Debtor through an Advocate on 10.07.2018 demanding a sum of Rs.12,63,817/- lying with the Corporate Debtor as retention money. It seems that there is no response to the said from the Corporate Debtor.

4. Subsequently, the petitioner issued a statutory demand notice on 27.07.2018 under section 8 of the Code in Form 3 to the Corporate Debtor. The petitioner filed an affidavit under section 9(3)(b) of the Code stating that the Corporate Debtor has not raised any dispute in respect of the unpaid Operational debt.

5. The Corporate Debtor filed reply to the petition and contended as below;

(a) M/s Orbit Corporation Ltd. is the holding company of the Corporate Debtor and a winding up order was passed against the said Orbit Corporation Ltd. in C.P. 593/2015 and consequently the same is under the control of Official Liquidator, High Court of Bombay.

(b) The petitioner failed to demonstrate the claim of Rs. 12,63,817/- as retention money but submits that the retention amount is Rs. 1,93,368/- is only even according to the ledger account annexed with the petition.

(c) Even assuming without admitting the claim towards retention money is Rs. 12,63,817/-, then the running bills would be Rs. 2,52,76,340/-, based on the fact that 5 % is the retention money, the petitioner failed to produce the bills to correlate retention the amount claimed in the petition.

(d) The petitioner is not sure whether the debt of default is 31.03.2017 or 11.05.2017.

(e) The petitioner failed to produce any document to show when the work was completed.

(f) In view of the above, there is a dispute between the Petitioner and the Corporate Debtor which is a triable issue and hence, the petition has to be dismissed.

6. Heard both sides. This Bench has gone through the materials enclosed with the petition. The communication sent by the Corporate Debtor on 11.05.2017 to the petitioner seeking confirmation of balance of Rs. 12,63,817/- as payable by the Corporate Debtor to the Petitioner is a clear acknowledgement of liability. The non-payment of the said liability by the Corporate Debtor even after an Advocate's notice and statutory demand notice issued by the Petitioner shows that the Corporate Debtor had defaulted in making the payment. The contentions of the Corporate Debtor in their reply does not hold water in view of the explicit acknowledgement of liability by the Corporate Debtor itself. The Corporate Debtor has simply pleaded that there is a dispute but has not produced any shown any material to show that there is a pre-existing dispute. Hence, the petition deserves admission.

7. One Mr. Vijay Pitambar Lulla, office at 201, Satchitanand Bldg., 12th Road, Opp. Ram Mandir, Khar (west), Mumbai – 400 052; having Registration No. IBBI/IPA-001/IP-P00323/2017-18/10593 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

8. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application 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 04.11.2019 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 Mr. Vijay Pitambar Lulla, office at 201, Satchitanand Bldg., 12th Road, Opp. Ram Mandir, Khar (west), Mumbai – 400 052; having Registration No. IBBI/IPA-001/IP-P00323/2017-18/10593 as Interim Resolution Professional to carry the functions as mentioned under the Code.

9. Accordingly, this Petition is admitted.

10. 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)