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

**CP (IB) No.1152/MB-IV/2020**

Under Section 9 of the IBC, 2016

*In the matter of*

WAM INDIA PRIVATE LIMITED

[CIN: U29150MH1998PTC113380]

…Operational Creditor

v/s.

SN ENGINEERING SERVICES PVT. LTD.

[CIN: U45200MH2007PTC167672]

…Corporate Debtor

**Order Delivered on: 17.03.2023**

*Coram:*

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner: Mr. Nausher Kohli a/w Mr. Rushil Mathur, Ld. Counsel

For the Respondent: Mr. Viral Vora, Ld. Counsel.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) WAM INDIA PRIVATE LIMITED, ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against SN ENGINEERING SERVICES PVT. LTD, ("the Corporate Debtor").

   1.1. The petition is filed on 15.07.2020 claiming an amount of Rs.1,43,33,765 as on 30.06.2020 comprising of the principal outstanding amount of Rs. 1,08,04,672/- and an amount of Rs. 35,29,093/- as an aggregate interest calculated from the date of default of each invoice till 30.6.2020 along with interest of 18 % p.a. from 01.07.2020 till the date of payment and/or realization of the entire outstanding amounts along with interest.

2. The Operational Creditor/Applicant is a company is engaged in developing, manufacturing equipment's and plant components for bulk solids and processing. The Corporate Debtor is engaged in service of providing TV channels on various networks.

3. The Corporate Debtor is a leading engineering company and also a pioneer in technical consultancy. The Corporate Debtor deals in supply of aggregates, construction and paving services in Maharashtra and Karnataka.

   3.1. The Operational Creditor and the Corporate Debtor had a long-standing business relationship with each other. Corporate Debtor used to issue purchase orders to the Operational Creditor for materials/goods/items whenever required for its business purpose and Operational Creditor based on the purchase orders prepared and dispatched the goods along with the invoices for the goods.

3.2. The Operational Creditor/Applicant provided satisfactory services to the Corporate Debtor thereby abiding, implementing and ensuring compliance of the Agreement and raised the invoices for the consideration on the Corporate Debtor for the services. The Corporate Debtor did not raise any grievance with relation to the services and invoices provided by the Operational Creditor and continued to make part payments for the outstanding invoices from time to time. The Invoices would become due and payable within a period of 90 days and if there is a default in payment towards the invoice then interest @ 18% per annum would be attracted on the pending invoices and/or outstanding 2 invoices.

3.3. The Operational Creditor time and again continued to follow up regarding its outstanding debt and the Corporate Debtor kept assuring the Operational Creditor that the outstanding debt would be cleared at the earliest. The said email correspondence exchanged between the parties in October, 2018 is annexed at Exhibit PP1 at page 196 – 197 of Volume II.

3.4. On 28.11.2018, meeting was held between the representatives of the parties to discuss the outstanding due and payable amounting to Rs. 1,35,73,702/-at relevant time. Pursuant to the said meeting, email correspondence was exchanged between the parties through the year 2019 wherein the Corporate Debtor time and again admitted to clearing the outstanding amount.

3.5. In spite of several requests, the Corporate Debtor refused, neglected and avoided to pay its outstanding amounts, the Operational Creditor/Applicant issued a Demand Notice in Form 3 under the Insolvency and Bankruptcy Code, 2016 dated 03.03.2020 to the Corporate Debtor demanding payment in respect of the outstanding amount, though

no reply was received by the Corporate Debtor to the said Demand Notice.

3.6. Pertinently, no notice of dispute/response was given by the Corporate Debtor to its aforesaid Demand Notice, which in itself is a proof of admission of the Operational Debt and manifests the conduct of the Corporate Debtor and its unwillingness to repay the outstanding Operational Debt. In fact, on receipt of this notice, the Corporate Debtor reached out to the Operational Creditor to discuss the matter.

3.7. Accordingly, a meeting was held between the parties on 16.03.2020 when it was discussed that the Corporate Debtor would clear the entire outstanding debt based on a payment schedule agreed between both the parties. As per the discussions held in the said meeting, the Operational Creditor once again requested the Corporate Debtor to submit the payment schedule vide its email of 20.03.2020, however the Corporate Debtor once again gave a false assurance on 23.03.2020 that the outstanding would be cleared. Despite the assurances given by the Corporate Debtor at the meeting, the Corporate Debtor failed to clear the outstanding debt of the Operational Creditor.

3.8. The Operational Creditor vide its Affidavit in Rejoinder of 19.02.2022 highlighted that the Corporate Debtor is raising false and baseless issues pertaining that the Corporate Debtor ever disputed the invoices raised by the Operational Creditor; nor has it ever raised any dispute in relation to the goods provided by the Operational Creditor.

4. The Corporate Debtor, vide its Affidavit in Reply of 12.08.2021, raised issues regarding quality of material supplied; huge delay in the clearance of materials; frequent stoppage of supply of goods. The Corporate Debtor has

also filed a Sur-rejoinder and Additional Affidavit dated 14.04.2022 and 25.04.2022 respectively, wherein it once again attempts to further its case raising disputes. It has also raised an issue of novation of claim which stood settled in the meeting held on 28.11.2018.

*Findings*

5. We have heard the submissions made by the counsel on both the sides and perused the records.

5.1. This bench notices that as per the above narrated facts and material placed on record that there is no dispute raised with regards to the Debt of the Operational Creditor and towards repayment of the same. Secondly, there is admission of liability in the meetings, correspondence and part payments made by the Corporate Debtor. The submission of the Corporate Debtor that it has paid a sum of Rs 62,80,326 since the meeting held on 28.11.2018 with Operational Creditor to address the issue of delayed payment. We have perused the copy of ledger account of the Corporate Debtor in the books of account of the Operational Creditor and find that a sum of Rs. 1,30,30,264.76 was due from the Corporate Debtor on the date of this meeting and a sum of Rs. 1,08,04,673.76 is shown as receivable in the ledger account 15.12.2021. Accordingly, the contention of Corporate Debtor that it paid 62,80,326/- subsequent to the meeting is incorrect. We further find that there was mentioned of any dispute in the minutes of the meeting 28.11.2018 and even emails thereafter do not record existence of any meaningful dispute in relation to the outstanding. In view of this, the plea of dispute raised by the Corporate Debtor looks vexatious and artificial.

5.2. We find that in case of **M/s. A2 Interiors Products Pvt. Ltd. Vs. M/s. Ahluwalia Contracts (India) Ltd. (2021) SCC online NCLT 438,** the

Principal Bench had allowed the petition holding that debts arising from different work order(s) can be clubbed to satisfy the minimum threshold limit. The Para 27 of the said judgement reads as under -

> *"27. Considering the documents on records and submissions made, it is observed that there exists an operational debt which is due and payable by the Corporate Debtor. Further with respect to the maintainability of an application, with regards the issue that whether for various claims arising out of separate work orders, single application can be filed by operational creditor. There are various judgments passed by separate claims can be part of single application. The Judgments are also relied by the applicant as referred above."*

5.3. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Therefore, the Application filed by the Operational Creditor is liable to be admitted.

6. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.

**ORDER**

The petition bearing CP (IB) No.4002/MB-IV/2019 filed by **WAM INDIA 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 **SN ENGINEERING SERVICES PVT. LTD (**"the Corporate Debtor) is **ADMITTED.**

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 Operational 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

a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

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. The bench hereby appoints Mr. Pradeep Kumar Chakravarty, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-003/IP-N000123/2017-2018/11338 Email: pkc195710@gmail.com Mb No 9619452835. 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.

VII. 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.

VIII. 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).

IX. 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.

X. 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)**
**17.03.2023**

**Sd/-**

**KISHORE VEMULAPALLI**
**MEMBER (JUDICIAL)**