

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH

CP(IB)1910(MB)/2019

(Under Section 9 of the IBC, 2016)

Duskline Infrastructure Pvt Ltd ...Petitioner/Operational Creditor

Vs

Vertex Safety Products Pvt Ltd ... Respondent/Corporate Debtor

Order delivered on 11.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Petitioner: Mr. D. B. Pereira

For the Respondent: None present

Per: V. Nallasenapathy, Member(Technical)

ORDER

It is a Company Petition filed u/s 9 of Insolvency and Bankruptcy Code, 2016 by the Operational Creditor, viz. Duskline Infrastructure Pvt Ltd stating that this Operational Creditor sent their quotation No.DIPL/NGP/Q-017/17-18 dated 13.1.2017 against which the Corporate Debtor sent their Purchase Order No.56/16-17, dated 14.1.2017, based on which the Operational Creditor delivered the material/products to the Corporate Debtor, and raised their Invoice No.DIPL/16-17/085 dated 16.1.2017 for Rs.3,04,644/-, which was accepted by the Corporate Debtor, viz. Vertex Safety Products Pvt Ltd. Copies of the quotation/purchase order and Invoice is annexed with the Petition as Annexure 2

2. The Operational Creditor in its Petition submits that as against the invoice raised, the Corporate Debtor issued a cheque for Rs.2,96,243 which was bounced. Thereafter, the Corporate Debtor made the part



payment vide two cheques of Rs.25,000/- each dated 18.2.2017 and 20.2.2017, aggregating to Rs.50,000/-. Therefore, the total outstanding left to be paid by the Corporate Debtor works out to Rs.2,54,644/-.

3. Since the Corporate Debtor having failed to make payment of the remaining amount of Rs.2,54,644/-, in spite of several repeated reminders to the Corporate Debtor, the Operational Creditor on 27.3.2019 sent Form 3 notice under the Insolvency and Bankruptcy Code, 2016 (Code) to the Corporate Debtor calling upon them to make the payment of its outstanding debt of Rs.2,54,644/- with interest within 10 days of receipt of the notice. The said Form 3 notice issued to the registered office of the Corporate Debtor returned with the postal remark as "Unknown address". The Operational Creditor therefore issued the said Form 3 notice on the Corporate Debtor on their local address which was duly served on the Corporate Debtor on 6.4.2019. The scanned copy of the said notice was also sent to the email id of the Corporate Debtor on 5.4.2019. Since there was no reply to the said notice, the Operational Creditor filed this Company Petition under Section 9 of Code on 9.5.2019.

4. This Company petition was listed for hearing on 20.6.2019 wherein a direction was given to the Operational Creditor to issue court notice on the Corporate Debtor. The Operational Creditor has filed the affidavit of service which shows that the court notice was served on the Corporate Debtor.

5. Thereafter, this matter came up for hearing on 23.8.2019 when the Counsel for the Corporate Debtor appeared and took time to file Vakalatnama and reply. On 17.10.2019 and 10.12.2019, the Corporate Debtor failed to appear and therefore was set ex-parte.

6. On perusal of the material documents placed before this Bench, it is clear that the invoice is reflecting supply of goods, after the receipt of the part payments there is still a balance due of Rs.2,54,644/- payable by the Corporate Debtor. The Corporate Debtor failed to make the payment despite receipt of the demand notice, which proves that the Corporate Debtor defaulted in making the payment.

7. The Operational Creditor has also proposed the name of a registered insolvency resolution professional to act as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code



along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.

8. The Petition under Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition 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.

9. Accordingly, this Petition is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

1. 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 activity 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.
2. 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.
3. 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.

4. 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.
 5. That the public announcement under section 13 of the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
 6. That this Bench appoints Mr. Dhanshyam Kantilal Patel, a registered insolvency professional having Registration Number [IBBI/IPA-001/IP-P01373/2018-19/12155] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.
10. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor, and the Interim Resolution Professional by way of email. Compliance report of the order by Designated Registrar is to be submitted immediately.

Sd/-

V NALLASENAPATHY
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 17.02.2020


Assistant Registrar
National Company Law Tribunal Mumbai Bench