

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

C.P. (IB) 1138/MB/2019

Under section 9 of the IBC, 2016

**In the matter of**

Bedmutha Industries Limited

Plot No: A-70/71/72, Sinnar-Shirdi  
Road, Musalgaon, Sinnar, Dist.  
Nashik 422 112

....Petitioner/Operational Creditor  
v/s

Sham Elecktromech Private Limited  
201, Anantraj, C.H.S.,  
Captchandavekar Lane, Dhanukar  
Wadi, Kandivali (W), Mumbai 400  
067

..../Corporate Debtor

**Order pronounced on: 30.09.2019**

**Order delivered on: 15.10.2019**

Coram: Hon'ble Shri.Bhaskara Pantula Mohan, Member (Judicial)  
Hon'ble Shri.Shyam Babu Gautam, Member (Technical)

For the Petitioner: Ms. Indrayani Patani and Mr. Monish K. Vig,  
Advocates

For the Respondent: None

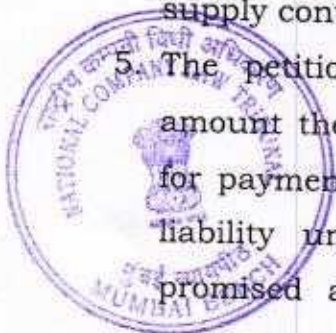
**Per: Bhaskara Pantula Mohan, Member (Judicial)**



**ORDER**

1. This Company Petition is filed by Bedmutha Industries Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Sham Elecktromech Private Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default from 22/05/2015 to 15/02/2019 in making payment to the extent of Rs. 2,45,22,011.40/- (Rupees Two Crores Forty Five Lakhs Twenty Two Thousand eleven and forty paise only) including interest and

- other expenses and future interest @ 24% p.a. by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The petitioner is a company bearing identification number L31200MH1990PLC057863 whereas the respondent is a company bearing CIN U70109MH2005PTC158046 incorporated on 14/12/2005 having authorized capital of Rs.2,50,00,000/- and paid up capital of Rs.2,24,00,000/-.
  3. According to the Petition filed by the Petitioner, the corporate debtor during their course of business approached and negotiated with the petitioner for supply of Copper materials such as Copper bus bar, copper strips, copper rods etc. manufactured by the operational creditor. Thereafter, the supply terms were also finalized. Pursuant to the negotiations, the corporate debtor placed requisitions for supply of facility copper wire rod etc. which the operational creditor supplied under its invoices raised during the period starting from 22/05/2015 to 15/02/2019 for a total debt amount of Rs. 2,45,22,011.40 for which the corporate debtor had agreed to pay the invoice amounts within a period of 60 days.
  4. But according to the contentions made by the petitioner, the respondent neglected as well as failed to pay the aforesaid invoices amount and has committed breach in agreed terms under the supply contract.
  5. The petitioner further contended that for recovering the said amount the petitioner rigorously followed up with the respondent for payment and in response the corporate debtor admitted their liability under the supply contract and in discharge thereof promised and assured unto the petitioners to pay the entire amount with interest.
  6. Therefore, the petitioner sought for the payment of a total amount of Rs. 2,45,22,011.40 as on 15/02/2019 with further interest until its realization. The invoices annexed at Exhibit-2 has a mention about the rate of interest to be charged @ 24% p.a. from the date of due till the date of payment if the dues are not paid.
  7. The petitioner mentioned that there is no dispute regarding the supplied quantity, quality and rates of whatsoever nature as according to them it was duly received and acknowledged by the respondent.



8. The petitioner mentioned that there were problems in sending the copy of petition as when the copy was sent to the address of the corporate debtor, it was returned with an endorsement as "Company Closed". Therefore, the petitioners were directed to take out substituted service by publication in English as well as vernacular newspaper and file proof of service.
9. The statements of accounts of the petitioner is annexed at Exhibit I for showing the details of the bank transactions.
10. The petitioner has also annexed at Exhibit 2 the copies of invoices raised during the period 22/05/2015 to 15/02/2019 along with the Delivery challans and packing list.
11. The petitioners have also annexed at Exhibit-3, the copy of Demand Notice in respect of unpaid operational debt due from the corporate debtor served under Rule 5 of the Insolvency and Bankruptcy (Application and Adjudication Authority) Rules, 2016 dated 19/12/2018. There is no mention of any reply of corporate debtor to this notice.
12. The Director of the corporate debtor Mr. Santosh Shyam Chapekar, DIN: 00939993, who was present before this court on date 30/07/2019 had requested grant of time to this court for amicably settling this matter. Again, the petitioner on date 19/08/2019 stated that there is a likelihood of amicable settlement of the dispute. But there was no settlement.
13. On 24/09/2019, this court had directed the petitioner to submit the Ledger Account extract and accordingly it was submitted by the petitioner on the next date of hearing i.e. 30/09/2019.
14. We have heard the counsel appearing on behalf of the petitioner and have also gone through all the documents annexed by the petitioner. Even after giving ample opportunity to the respondent, there was no representation on behalf of the respondent.
15. On the previous occasion i.e. on 24/09/2019, the director of the corporate debtor Mr. Santosh Shyam Chapekar again appeared before this court to mention that he has no objection on the admission of this matter.
16. Therefore, we are pleased to pass the following order:

**ORDER**

17. We have heard the counsel appearing on behalf of the petitioner at length. There was no representation on behalf of

the respondent. On several occasions, chance was given to the respondent, yet he did not turn up.

18. There were chances of amicable settlement of the dispute between both the parties for which time was granted by this court upon request of the director of corporate debtor Mr. Santosh Shyam Chapekar as well as at the request of the petitioner on two different occasions but it did not succeed.
19. The Petitioner further submitted that since no payment was being made to them by the Corporate Debtor, he was constrained to send them a Demand Notice seeking repayment of the amount due. However, the Corporate Debtor failed to repay outstanding amount to the Petitioner. There is no mention of any reply by the corporate debtor to this notice.
20. The petitioner has placed on record enough documents so as to establish the liability of the corporate debtor to pay the debt amount with interest.
21. The Petitioner also submitted that since, even after these communications the Corporate Debtor failed to make any payments towards the outstanding due. Hence, on 25.03.2019, the Petitioner filed a petition under section 9 of the Code.
22. The petitioner mentions the existing debt to be amounting to Rs. 2,45,22,011.40 including the interest due and that the respondent is liable to pay the said amount and also that there is no dispute regarding the supply of goods to the corporate debtor by the petitioner and that there is default on the part of the corporate debtor.
23. Also, on date 24/09/2019, the director of the corporate debtor mentioned that he has no objection on the admission of this matter.
24. Therefore, 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 and Bankruptcy Code. Hence, petition admitted, moratorium is declared herewith 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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; 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 15.10.2019 till the completion of the corporate insolvency resolution process 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 corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- f. That this Bench hereby appoints Mr. Naren Sheth, having office at 1014 Prasad Chamber, Tata Road No: 1, Opera House Mumbai, Maharashtra-400 004; having Registration No. 10275 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
25. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.



Sd/-  
**SHYAM BABU GAUTAM**  
Member (Technical)

Certified True Copy  
Copy Issued "free of cost"

05/11/2019

Sd/-  
**BHASKARA PANTULA MOHAN**  
Member (Judicial)

Assistant Registrar

National Company Law Tribunal Mumbai Bench