

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-I

C.P. No. 4302/IBC/MB/2019

(Under Section 9 of the Insolvency and Bankruptcy Code,
2016 read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudication Authority) Rule 2016)

In the matter of

M/s. Mahesh Hardware & Pipes Pvt. Ltd.

(U25209KA2009PTC049271)

Registered Office at: No. 167/2, R. V. Road, Mavalli,
Bangalore – 560004.

.....Operational Creditor/Petitioner

Vs

M/s. Viraj Projects (India) Private Limited

(U45101PN2001PTC015935)

Registered office at: 211, Nilanjali Society, Bhushan Aprts
Kalyani Nagar Pune, Pune MH 411014 IN.

..... Corporate Debtor/Respondent

Order Reserved On : 19.06.2023

Order Pronounced On : 28.06.2023

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anu Jagmohan Singh, Member (Technical)

Appearances:

For the Petitioner : Mr. Mayur Agrawal, Advocate

For the Respondent : Mr. Ashwin Shete, Advocate

ORDER

Per: H. V. Subba Rao, Member (Judicial)

1. The above Company Petition is filed by **M/s. Mahesh Hardware & Pipes Pvt. Ltd.** hereinafter called as “Operational Creditor” seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Viraj Projects (India) Private Limited** hereinafter called as “Corporate Debtor” by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 28,84,797/-.

2. The brief facts of the above Company Petition are as follows:

I. The Corporate Debtor had placed several purchase orders with the Operational Creditors for supply of Supreme plumbing products since 2017. As is the practice, on a purchase order being placed by the Corporate Debtor, the Operational Creditor would instantly supply the products to it. Until recently, the Operational Creditor and the Corporate Debtor had a healthy business relationship. However, the Corporate Debtor failed to fully clear the pending invoices of the Operational Creditor from the year 2018 due to reasons best known to it.

II. The total principal amount due and payable by the Corporate Debtor to the Operational Creditor is Rs. 26,53,139/- (Rupees Twenty-Six Lakh Fifty- Three Thousand One Hundred and Thirty-Nine only). The said amount has been calculated based on the various pending tax invoices, which have not been cleared by the Corporate Debtor till date. It is also apposite to note that the Corporate Debtor vide its email dated 09.04.2018 enclosed their account statement, according to which a sum of Rs. 29,68,892.84/-

was due and payable to the Operational Creditor. Out of the said sum of Rs. 29,68,892/- (Rupees Twenty-Nine Lakh Sixty-Eight Thousand Eight Hundred and Ninety-Two only) certain sums were paid to the Operational Creditor and therefore, the Operational Creditor claims a principal amount/balance sum of Rs. 26,53,139/- (Rupees Twenty-Six Lakh Fifty- Three Thousand One Hundred and Thirty-Nine only) in the present application that is still due and payable to the Operational Creditor.

III. On various occasions, the Operational Creditor had orally requested the Corporate Debtor to clear the outstanding sums that has been long pending. On all these occasions, the Corporate Debtor sought time to clear the said outstanding dues. However, like every other undertaking provided by the Corporate Debtor the promise of clearing the outstanding payments was reduced to another empty promise.

IV. Upon the Corporate Debtor failing to pay heed to the requests by the Operational Creditor, the Operational Creditor was constrained to issue a demand notice dated 27.07.2019, vide email dated 20.09.2019 and vide RPAD - which was received on 20.09.2019, seeking payment of Rs. 28,84,797/- (Rupees Twenty - Eight Lakh Eighty- Four Thousand Seven Hundred and Ninety-Seven only), which is inclusive of simple interest at the rate of 15% per annum from 01.10.2018, i.e., the date of default till 27.07.2019. The proof of service of the demand notice upon the Corporate Debtor can be evidenced from the postal acknowledgment downloaded from the official website of the postal department.

V. Despite receipt of the aforementioned demand notice dated 27.09.2019, the Corporate Debtor chose not to respond to the same. Rightly so, as there exists no valid legal defence or any defence

under Section 8 of the Insolvency and Bankruptcy Code, 2016. However, after the receipt of the Demand Notice, the Corporate Debtor had a telephonic conversation with the Operational Creditor and sought time to clear the dues. Seeing no payment forthcoming despite the assurances, the Operational Creditor is constrained to file the present application.

VI. Thus, the total outstanding amount that remains due and payable as on this date to the Operational Creditor by the Corporate Debtor is Rs. 28,84,797/- (Rupees Twenty-Eight Lakh Eighty-Four Thousand Seven Hundred and Ninety-Seven only). The aforementioned debt amount is inclusive of simple interest at the rate of 15% per annum from 01.10.2018, i.e., the date of default till 27.07.2019. The Operational Creditor also claims interest from 28.07.2019 till the date of actual payment at the rate of 15% per annum.

3. The Corporate Debtor filed Affidavit in Reply of one Mr. Santosh Lalchand Dudhadiya without raising any substantial legal plea except general denial. The important Paras of the reply are extracted hereunder for ready reference:

- a. Respondent states that the Petitioner has annexed various different Purchase Orders at Annexure-3 of the said Petition. However, it is pertinent to note that it settled principle of law that the different claims(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate. Hence for the said reason the present petition is not maintainable. In detail list of Purchase orders is mentioned in the reply.*
- b. Hence it is abundantly clear that there are Purchase Orders clubbed up as one common default, however in reality each purchase order is a*

different agreement, thus each purchase order arises a different cause of action. Therefore, they cannot be clubbed together.

c. The Petition is faulted with many defects, which makes this Petition incurable including but not limited to the defects of clubbing the different claims arising out of different claims arising out of different Purchase Orders.

d. Therefore, the present petition is liable to dismissed it does not discloses proper cause of action.

4. Heard Mr. Mayur Agrawal, counsel appearing for the Petitioner/Operational Creditor and Mr. Ashwin Shete, counsel appearing for the Respondent/Corporate Debtor.

5. The only contention raised by the counsel appearing for the Corporate Debtor during the course of final argument is that the Mr. Mahendra Jain, who signed and filed the present Company Petition was only authorised to file the same on behalf of the “Operational Creditor” before the NCLT, Bengaluru and not before the NCLT, Mumbai and therefore the above Company Petition has to be dismissed for want of specific authorization for filing the present Company Petition before NCLT, Mumbai. It is not his case that Mr. Mahendra Jain is not the Director of the Operational Creditor Company nor has not proper authorization. Therefore, the above plea of the Corporate Debtor is very trivial and technical in nature which will not cause any prejudice to the Corporate Debtor.

6. Except the above plea, the counsel appearing for the Corporate Debtor did not raise any substantial plea.

7. After hearing the counsels appearing on both sides, this Bench is convinced that the Operational Creditor has successfully proved the existence of “debt and default”.
8. Accordingly, the Company Petition is admitted by passing the following order:

ORDER

- a. The above Company Petition No. (IB) 4302 (MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Viraj Projects (India) Private Limited.**
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints Mr. Rajesh Jhunjunwala, (jhunjunwala.rajesh@gmail.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00647/2017-2018/11102 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend

the above amount only towards expenses and not towards his fee till his fee is decided by COC.

- d. 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.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Shubham

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)