

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

CP (IB)2092/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

JSK Corporation Private Limited
...Operational Creditor

Versus

**Velani Roadbuilders India Private
Limited**
Corporate Debtor

Order Delivered on : 10.12.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr. Harsh Kesharia, Advocate
For the Corporate Debtor : None Present

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **JSK Corporation**

Private Limited("the Operational Creditor"),a Private Limited Company represented by its Director Mr. Gopal Agrawal,duly authorised by the Board Resolution dated 20.09.2018(**Annexure 'B'** to the petition at p.33),seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Velani Roadbuilders India Private Limited**("the Corporate Debtor").

2. The Corporate Debtor is a private Company limited by shares and incorporated on 21.02.2017 under the Companies Act, 1956, with the Registrar of Companies (RoC), Mumbai, Maharashtra. Its Corporate Identity Number (CIN) is U45200MH2017PTC291502. Its registered office is at Shop – 221,2nd Floor, D Wing, Neelkanth Business Park, Kiroli Village, Near Bus Depot, Vidyavihar (W), Mumbai, MH 400086. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 31.05.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.14,81,295/-(Rupees fourteen lakh eighty-one thousand two hundred and ninety-five only) as principal and Rs.82,547/-(Rupees eighty-two thousand five hundred and forty-seven only) as interest as on 12.06.2018, which is the date of default.

4. The case of the Operational Creditor is as follows: -
- (a) The Corporate Debtor has placed the purchase order dated 05.05.2018 with the Operational Creditor for supply of TMT Bar. [p.37 of the Petition];
- (b) Pursuant to the above-mentioned transaction, the Operational Creditor had raised following invoice:
- i) Invoice No.183/18-19 dated 05.05.2018 for Rs.14,18,295/-.
Invoice copy is at p.34;
5. Invoice has been placed on record as **Annexure 'C'** at p. 34. The invoice provides for interest in case of delayed payments, to be charged at the rate of 24% per annum. However, the Operational Creditor has demanded interest only at the rate of 18% per annum as per p. 8 of the Petition. Bank statements are also attached as **Annexure 'F'** at pp. 41-51. The total debt due and payable to the Operational Creditor is Rs. 15,63,842/- (Rupees fifteen lakh sixty-three thousand eight hundred and forty-two only), as mentioned at p.7 of the Petition.
6. Thereafter, the Operational Creditor had served a Demand Notice in Form 3 dated 01.10.2018 on the Corporate Debtor (**Annexure 'I'**, pp.55-66). The proof of the service of Demand Notice has been attached to the Petition at p.68 of the Petition.

No reply to the said Demand Notice has been sent by the Corporate Debtor.

7. The Operational Creditor has filed an affidavit under section 9(3)(b) of the IBC to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Further the Operational Creditor states that there is no dispute with respect to operational debt.
8. The Operational Creditor has also submitted the copy of statements of accounts issued by Axis Bank, Surendra Nagar, Nagpur Branch confirming that there is no payment of the relevant unpaid operational debt by the Corporate Debtor during the period from 01.04.2019 to 30.04.2019 (**Annexure 'F'** to the petition at pp.41-51).
9. The copy of the Petition was served on the Corporate Debtor on 03.06.2019. Court Notice was also served on the Corporate Debtor on 03.09.2019. Necessary affidavits of service in this regard have been placed on record.
10. We have heard the arguments of Ld. Counsel for the Operational Creditor and perused the records. None appeared for the Corporate Debtor, no reply was sent to the Demand notice and Petition in spite of service of the same.

11. It is observed from the records that the Corporate Debtor has acknowledged the invoice raised by the Operational Creditor. Considering the nonappearance in spite of serving the Court Notice, no reply either to Demand Notice and Petition, it can be safely presumed that the Corporate Debtor does not want to contest the matter/accept the liability.
12. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
13. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
14. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB)2092/MB-IV/2019** filed by **JSK Corporation 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 **Velani Roadbuilders India Private Limited [CIN: U45200MH2017PTC291502]**, the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Operational Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

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- (c) Notwithstanding the above, during the period of moratorium, -
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the

IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued, as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) 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.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one 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).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by

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Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) 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/-

Ravikumar Duraisamy
Member (Technical)
10.12.2019

SD/-

Rajasekhar V.K.
Member (Judicial)