

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

CP (IB) No.401/MB/2023

Under Section 9 of the IBC, 2016

In the matter of

M/s. MEHTA METALCON PRIVATE LIMITED

[CIN: U27320MH2011PTC221880]

...Operational Creditor

v/s.

SUNITA DEVELOPERS PRIVATE LIMITED

[CIN: U45200MH2009PTC195327]

...Corporate Debtor

Order Reserved on: 29.08.2023.

Order Delivered on: 01.09.2023.

Coram:

Shri. Charanjeet Singh Gulati

Hon'ble Member (Technical)

Smt. Lakshmi Gurung

Hon'ble Member (Judicial)

Appearances :

For the Operational Creditor:

Mr. Rohan Agrawal, Ld. Counsel.

For the Corporate Debtor:

None Appeared (***Ex-parte***).

ORDER

Per: Lakshmi Gurung, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (“**IBC**”/ “**the Code**”) by M/s. MEHTA METALCON PRIVATE LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SUNITA DEVELOPERS PRIVATE LIMITED, the Corporate Debtor.
2. The Company Petition is filed on 02/12/2022 claiming an amount of Rs. 4,55,77,125/- in default as per the running ledger account as on 12.12.2019.

Background facts:

3. The Operational Creditor and the Corporate Debtor have been into business relation since about February, 2018. The Corporate Debtor has been placing various verbal orders with the Operational Creditor and the Operational Creditor has been supplying various materials of various quantities to the Corporate Debtor from time to time.
4. Pursuant to the aforesaid verbal orders the goods were supplied and delivered to the Corporate Debtor which were duly received by the Corporate Debtor under the list of invoices which are annexed to the application.
5. The Operational Creditor further submits that, the above debt fell due on the dates of the respective invoices. However, part payments to the tune of only Rs. 2,53,56,269/- were received by the Operational Creditor and the last such part payment was made on 12.03.2019 in respect of the running account maintained by the Operational Creditor.
6. In view of the failure on part of Corporate Debtor to make payments of the outstanding dues, the Operational Creditor was constrained to issue

demand notice in Form 3 dated 16.01.2020 to the Corporate Debtor, demanding the outstanding amount of Rs. 4,55,77,125/- (Rupees Four Crores Fifty-Five Lakhs Seventy-Seven Thousand One Hundred Twenty - Five Only) being principal outstanding amount as per running ledger account as on 12.12.2019. The copy of Demand Notice is annexed as Annexure I to the application and the same was served on the Corporate Debtor by hand on 18.01.2020 acknowledgement of the demand notice issued by the Corporate Debtor is seen on the first page of the said notice. Despite receipt of the said demand notice dated 16.01.2020, the Corporate Debtor has not made the payment of the invoices to the Operational Creditor nor has brought to the notice of the Operational Creditor existence of any dispute. Therefore, the Operational Creditor is before us seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

7. It seen from the record, that on 01.06.2023, the Counsel for the Corporate Debtor was present and undertook to file Vakalatnama and reply. This bench directed the Counsel for the Corporate Debtor **“to file reply and Vakalatnama within two weeks failing which the right to file reply shall stands Forfeited”**. Thereafter, this matter was listed on 03.07.2023 but the Corporate Debtor neither filed vakalat nor reply. Thereafter, the matter was listed on 04.08.2023, none appeared for the Corporate Debtor. Therefore, the Corporate Debtor was set **ex-parte** vide order dated 04.08.2023. The matter on 29.08.2023 was heard *ex-parte* and was Reserved for Order.

Analysis and Findings

8. It is noticed that various Invoices during the period from 17.02.2018 to 24.02.2018 have been raised by the Operational Creditor on the Corporate Debtor aggregating to an amount of Rs.4,55,77,125/-.

9. On perusal of Ledger Account of the Operational Creditor in the books of accounts of the Corporate Debtor which is annexed as Annexure II to the application, it is seen that Corporate Debtor has made payment to the tune of Rs. 2,53,56,269/- during the period from 15.02.2018 to 12.03.2019 against the above invoices and the last payment was made by the Corporate Debtor on 12.03.2019. The said ledger account was also acknowledged and duly signed by the Corporate Debtor. This is clearly an acknowledgement of the debt on the part of Corporate Debtor on 12.03.2019. As per section 18 of the Limitation Act 1963 a fresh period of limitation starts from the date of the acknowledgement if it is done within the limitation period. The relevant extract of which is reproduced below: -

Section 18 of the Limitation Act.

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

10. Therefore, in the present case a fresh period of Limitation started from 12.03.2019, in accordance with section 18 of the Limitation Act.
11. The Petition was filed by the Operational Creditor on 02.12.2022. The **Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 03 of 2020 vide order dated 10.01.2022**, has passed a *suo moto* order excluding the period from 15.03.2020 to 28.02.2022 in view of Covid-19 pandemic. In view of Hon'ble Supreme Court directions, the period from **15.03.2020**

to **28.02.2022** shall be excluded from the period of limitation in the present case also. Therefore, it can be clearly seen that the petition is well within the limitation period prescribed under section 5 of the Limitation Act.

12. As per the material on record and on perusal of the documents submitted by the Operational Creditor, it is clear that Operational 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/Operational Creditor, which amount crosses the threshold limit provided under Section 4 of the Code. Since, the “debt” and “default” exist, and no pre-existing dispute between the parties has been brought to our notice, it is a fit case for admission Under Section 9 of Insolvency and Bankruptcy Code,2016.
13. The Operational Creditor has not proposed the name of Interim Resolution Professional in the matter.
14. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.
15. Accordingly, the above company petition is admitted by passing the following orders.

ORDER

16. The petition bearing CP (IB) No.401/MB/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (Insolvency and Bankruptcy Code, 2016/Code) by M/s. MEHTA METALCON PRIVATE LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SUNITA DEVELOPERS PRIVATE LIMITED, 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 Insolvency and Bankruptcy Code, 2016 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 Insolvency and Bankruptcy Code, 2016 or passes an order for the liquidation of the corporate debtor under section 33 of Insolvency and Bankruptcy Code, 2016, 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 Insolvency and Bankruptcy Code, 2016.
- VI. The bench hereby appoints **Mr. Srikanth Dwarakanath**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00057/2017-18/10135 Email: srikanth.dwarakanath@gmail.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under Insolvency And Bankruptcy Code, 2016, 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 Insolvency and Bankruptcy Code, 2016.
- 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 Insolvency and Bankruptcy Code, 2016. 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 initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, 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/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
01.09.2023.

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)