**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) No. 4154/MB/2019

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Classic RMC & Aggregates India Private Limited,
CIN: U26960MH2014PTC251915
17-17a, 3rd Floor, Nadirshah Sukhia Street,
Opp. Rehman House, Fort.Mumbai-400001.

… Operational Creditor/Petitioner

Versus

Salasar Exteriors and Contour Limited
CIN: U45309MH2018PLC306212
A-922/923, Corporate Avenue, Sonawala Road,
Near Udyog Nagar Bhuvan, Goregaon East,
Mumbai-400063.

…Corporate Debtor/Respondent

Order Delivered on:11.01.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical): Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Vishal Tiwari, Advocate

For the Corporate Debtor : Mr. Shashikant Chandak, Advocate

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. The present Company Petition is filed by **Classic RMC & Aggregates India Private Limited** (hereinafter referred to as **"the Operational Creditor"**) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process **("CIRP")** against **Salasar Exteriors and Contour Limited,** (hereinafter referred to as **"the Corporate Debtor"**).

<u>Submissions advanced by the Operational Creditor</u>

2. The total amount of debt claimed to be in default by the Corporate Debtor is Rs.17,67,891/- (Rupees Seventeen Lakh Sixty Seven Thousand Eight Hundred and Ninety One Only) comprising principal amount of Rs.9,85,714/- (Rupees Nine Lakh Eighty Five Thousand Seven Hundred and Fourteen only) and interest of Rs.7,82,177/- (Rupees Seven Lakh Eighty Two Thousand One Hundred and Seventy Seven only) at the rate of 18% p.a.

3. The Operational Creditor is engaged in the business of manufacturing, sale, supply and trade in ready mix concrete and providing ancillary services.

4. It is submitted that the Corporate Debtor through its managing director Mr. Shreekishan Joshi approached the Operational Creditor to avail supply of ready-mix concrete and pumping service for the project undertaken by the Corporate Debtor. The Operational Creditor basis the commercial understanding between the parties supplied materials and pumping services in the year 2014-2015.

5. It is further submitted that the Operational Creditor supplied the said material through transport and has paid consignment notes and freight invoices on behalf of the Corporate Debtor.

6. The Operational Creditor submits that the materials supplied were duly accepted by the Corporate Debtor without any demur or protest, likewise for the pumping services no objection was raised by the Corporate Debtor. The Operational Creditor has issued invoices in the year 2014-2015 which were duly accepted by the Corporate Debtor.

7. It is submitted that the Corporate Debtor has acknowledged these invoices from time to time and has never raised dispute with regard to the terms of the invoices prior to issuance of Demand Notice.

8. The details of the invoices and due date are reproduced herein below:

Sr. No.	Invoice No.	Invoice Date	Amount Due (in Rs.)	Date on which the debt fell due
1	P/14-15/93	06.02.2015	22,239/-	21.02.2015
2.	T/14-15/037	19.02.2015	3,27,750/-	06.03.2015
3.	M/15-16/018	17.07.2015	6,24,325/-	01.08.2015
4.	P/15-16/010	27.10.2015	11,400/-	11.11.2015

9. It is submitted the amounts fell due 15 days from the issuance of the invoice. The date of default has to be fifteen days from the issuance of first outstanding invoice i.e. 21.02.2015.

10. Moreover, it is submitted that invoices amounting to Rs.1,16,60,119.68/- (Rupees One Crore Sixteen Lakh Sixty Thousand One Hundred and Nineteen only) were raised by the Operational Creditor, out of which the Corporate Debtor has made part payment amounting to Rs.1,06,71,931/- (Rupees One Crore Six Lakh Seventy-One Thousand Nine Hundred and Thirty One only).

11. Since, the Corporate Debtor failed to pay the balance amount, cheques dated 19.12.2018 bearing no. 961774 and cheque dated 22.01.2019 bearing no. 961775, 961776, 961777, 961778, 961779 were issued in favor of the Operational Creditor. The said cheques were dishonored along with cheque return memos dated 20.12.2018 and 23.01.2019.

12. In view of cheques being dishonored, the Operational Creditor sent a legal demand notice under Section 138 of Negotiable Instruments Act, 1881. However, the Corporate Debtor neither paid nor replied to the said Demand Notice. Accordingly, the Operational Creditor had no option but to initiate proceedings against the Corporate Debtor before the Metropolitan Magistrate Court, Sewree.

13. Since, no payment was forthcoming from the Corporate Debtor, the Operational Creditor sent the statutory demand notice dated 20.09.2019 under Section 8 of the Code. The said demand notice was received as 'unclaimed' by the Operational Creditor, therefore, the demand notice was served on the key managerial persons of the Corporate Debtor through email. The Corporate Debtor has replied to the demand notice through email dated 11.10.2019 wherein the Corporate Debtor has alleged discrepancies in the rates mentioned in the invoices issued by the Operational Creditor per contra with the purchase order, thereby seeking to establish pre-existing dispute.

14. The Operational Creditor submits that the defense taken by the Corporate Debtor in its reply to demand notice is merely an afterthought as the said issue was never communicated to the Operational Creditor orally or in writing. Moreover, the issuance of part payment and cheques after receipt of invoices by the Corporate debtor does not bolster the argument canvassed.

Submissions advanced by the Corporate Debtor.

15. The Corporate Debtor submits that there was clearly a dispute due to the differential billing done by the Operational Creditor. Therefore, there was never bill to bill payment made and the payment were made only "on account" basis. It is submitted that on one hand the Operational Creditor has issued necessary "Purchase Order" dt. 20.11.2014 marked as Exhibit "A" in the Affidavit-in-Reply but has failed and neglected to comply with the rates mentioned in the PO issued by it. The Operational Creditor has charged higher rates not in consonance with the rates as per the PO dt. 20.11.2014 and thus there was material dispute in respect of billing done by the Operational Creditor.

16. As far as part payment is concerned, the Corporate debtor submits that payment was made due to the long standing relationship and does not

amount to acceptance of the bills raised by the Operational Creditor. Further, the Corporate Debtor submits that the 4 bills/invoices were not served on the Corporate Debtor.

17. The Corporate Debtor submits that the invoices were disputed and there were differences which are visible on the face of it by having a look at the rates mentioned in the PO and the rates charged / levied in the bills, the same was communicated to Operational Creditor and thus there existed and exists a dispute in respect of the alleged liability. It is pertinent to note that out of the 4 Invoices, the Invoice dt. 06.02.2015 (Page No. 49) and Invoice dt. 27.10.2015 (Page No. 53) do not bear any acknowledgment. Another Invoice dt. 17.07.2015 (Page No. 51) bears the rubber stamp of Salasar Exteriors Civil and Interiors Contractors which is completely a different legal entity distinct from the Corporate Debtor. The stamp appearing on the Invoice dt. 19.02.2015 merely resembles the fact that the Invoice has been received by the recipient (Operational Creditor) but the said stamp doesn't certify to the genuineness / truthfulness regarding the contents of the Invoice.

18. The Operational Creditor submits that the differences in the rates charged by Operational Creditor in the bills have been conveyed and Corporate Debtor was assured that Operational Creditor shall reconcile

the ledger statement and considering the long term relationship since the year 1978 and in utmost good faith, Corporate Debtor have made the on account payment to Operational Creditor without insisting on the Revised Invoices immediately.

Findings

19. We have heard the submissions of both sides and perused the records.

20. It appears from the ledger statement placed on record by the Operational Creditor that payments have been by the Corporate Debtor from time to time, moreover, it is the Applicant's case that part payment to the tune of Rs.1,06,71,931/- (Rupees One Crore Six Lakh Seventy-One Thousand Nine Hundred and Thirty One only) was made by the Corporate Debtor. It can be deduced from the conduct of the Corporate Debtor that payments were made periodically in good faith due to long standing relationship between the parties.

21. The defense raised by the Corporate Debtor is that the Operational Creditor has charged higher rates vis-a`-vis the agreed rates as mentioned in the purchase order, thereby constituting pre-existing dispute. On this issue, we observe that for invoice dated 19.02.2015 the rate per unit is Rs.5700/- (inclusive of all taxes) while the agreed rate as per the purchase order is Rs.5350/- and there is no mention of taxes

being additional which lead to conclusion that this agreed rate was also inclusive of taxes, therefore, the contention of the Respondent that the Operational Creditor has charged higher rates per unit stands substantiated.

22. This Tribunal does not have power to adjudicate the dispute between the parties and it can not proceed any further if it is satisfied that there exists a prima-facie dispute which require further adjudication. For imitation of proceedings u/s 9 of the Code, the debt alleged to be in default must be undisputed debt. Hence, we are of considered view that the present application is not maintainable in terms of provisions of section 9 of the Code.

23. Accordingly, **CP(IB) No. 4154 of 2019** stands **dismissed**.

Sd/-	**Sd/-**
PRABHAT KUMAR **Member (Technical)**	**JUSTICE V.G. BISHT** **Member (Judicial)**

11.01.2024