

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

**CP (IB) 4587/MB/C-IV/2018**

Under section 9 of the Insolvency &  
Bankruptcy Code, 2016

*In the matter of*

**Balaji Engineering**

...Operational Creditor

Versus

**Piletech Infra Private Limited**

Corporate Debtor

**Order Delivered on 16.10.2019**

***Coram:***

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

***Appearances:***

For the Operational Creditor : Mr. Nevil M. Chopra,  
Mr. Deep Joshi  
Mr. Sheetal Kotecha  
Mr. Vishal Maheshwari,  
Advocates i/b  
M/s PSJ Legal,

For the Corporate Debtor : Mr Sagar Joshi, Advocate, i/b  
India Law LLP

**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 Balaji Engineering ("the

Operational Creditor"), a proprietorship concern represented by its proprietor, Mr Harshad Thakkar seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Piletech Infra Private Limited ("the Corporate Debtor"). Therefore, this Bench has jurisdiction to deal with this petition.

2. The present petition was filed on 10.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.73,63,654.00 (Rupees seventy-three lakh sixty-three thousand six hundred and fifty-four only) as principal and Rs.23,38,093.00 (Rupees twenty-three lakh thirty-eight thousand and ninety-three only) as interest as on 12.11.2018, which is the date of default.
3. The case of the Operational Creditor is as follows: -
  - (a) The Operational Creditor and the Corporate Debtor entered into an arrangement for supply of goods for the business of the Corporate Debtor on the basis of demands made by the Corporate Debtor from time to time. (para Sl No.4 of Part IV at page 5 of the Petition);
  - (b) Invoices were raised from time to time in respect of the supplied goods. A total of 31 invoices starting from 25.11.2016 and ending on 04.07.2017 (both dates inclusive) were raised. (para Sl No.6 of Part V at page 6-8 of the Petition); and

(c) The goods were received by the Corporate Debtor. Goods receipt notices totalling 31 in number are attached to the petition as Exhibit 'E' (para Sl No.7(c) of Part V at page 10-12 of the Petition).

Invoices have been placed on record as **Exhibit 'E'** at pp.134-161. The invoices provide for interest in case of delayed payments, to be charged at the rate of 18% per annum. Bank statements are also attached as **Exhibit 'K'** at pages 188-202. The total debt due and payable to the Operational Creditor is Rs.97,01,747.00 (Rupees ninety-seven lakh one thousand seven hundred and forty-seven only), inclusive of interest, as mentioned at page 5 of the Petition.

4. The Operational Creditor had served a Demand Notice in Form 3 dated 12.11.2018 to the Corporate Debtor (**Exhibit 'A'**, pp.15/26) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.
5. Mr Sagar Joshi i/b India Law LLP, Learned Advocate, appeared on behalf of the Corporate Debtor and made his submissions.
6. The Corporate Debtor has not filed a reply to the Petition. However, Counsel for the Corporate Debtor has filed written submissions on 23.09.2019. In the written submissions, the Corporate Debtor has set up the following defence: -

(a) No proof of delivery of the demand notice dated 12.11.2018 has been annexed to the petition [para (iii) at page 1 of the

written submissions under the heading 'Preliminary Objections.']

(b) There is a dispute with respect to the material supplied by the Operational Creditor to the Corporate Debtor [para (ii), (iii) and (iv) at pages 1 & 2 of the written submissions under the heading 'Submissions on behalf of the Corporate Debtor'].

7. We have heard the arguments of the Learned Counsel for the Operational Creditor, and perused the records, including the written submissions filed by the Corporate Debtor.

8. The Corporate Debtor has stated that the claim of the Operational Creditor is not valid, on the following grounds: -

(a) That the balance outstanding amount of ₹71,80,028/- (Rupees seventy-one lakh eighty thousand and twenty-eight only) was not paid only because of disputes.

(b) The company petition has been filed with a view to pressurising the Corporate Debtor into paying a disputed amount.

The above defences do not hold water because no evidence of the disputes has been placed either on record before us or brought to the notice of the Operational Creditor. It is not possible to lend credence to this contention in the absence of any proof.

9. It is the contention of the Corporate Debtor in Page-4, Para-iv of the Written Submissions that the Corporate Debtor had given two cheques to the Operational Creditor as security deposit with instructions not to deposit the same till the parties sort out the disputes between them. However, this contention also cannot be accepted because no correspondence to this effect has been placed before us. Further, there is no reason why there was no written communication to this effect from the side of the Corporate Debtor to the Operational Creditor. In any case, handing over of a cheque duly signed in favour of a party carries with it the presumption that it has been given in discharge of a legitimate debt. While it is for the Corporate Debtor to rebut this presumption, this has not been done in the present case.
10. 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.
11. The Operational Creditor has proposed the name of **Ms Dipti Atul Mehta**, Registration No.IBBI/IPA-002/IB-N00134/2017-2018/10350, as the Interim Resolution Professional of the

Corporate Debtor. She has filed her written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of the Certificate of Registration.

12. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP(IB)-4587/MB-IV/2018** filed by **Balaji Engineering**, 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 **Piletech Infra Private Limited [CIN: U45309MH2016PTC283208]**, 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.
- (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 Adjudicating Authority 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.

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

CP (IB) 4587/MB/C-IV/2018

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- (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) **Ms Dipti Atul Mehta**, Registration No.IBBI/IPA-002/IB-N00134/2017-2018/10350, having address at 201-206, Shiv Smriti (2nd Floor), 49A Dr. Annie Besant Road above Corporation Bank , Worli, Mumbai, 400018 [email: dipti@mehta-mehta.com, Mobile: 98202-92415], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her 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.

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

CP (IB) 4587/MB/C-IV/2018

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- (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 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)**

**SD/-**

**RAJASEKHAR V.K.**  
**Member (Judicial)**

*Pratiksha Shukla / 16.10.2019*