

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

CP (IB) 384/MB /2023

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Rite Builtech Private Limited

Through Authorised Representative

CA Mr. Niranjan S. Karmarkar

CIN: [U45100MH2004PTC162319]

...Operational Creditor/Applicant

Versus

Premier Lighting Industries Private Limited.

[CIN:U52100MH1961PTC012221]

...Corporate Debtor/Respondent

Order Delivered on 15.05.2024

Coram:

Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Operational Creditor : Mr. Amir Arsiwala, Adv

For the Corporate Debtor : Mr. Yash Badkur, Adv

ORDER

Per: Virendrasingh Bisht, Member (Judicial)

1. The instant application is filed by M/s Rite Bultec Private Limited. (hereinafter referred as '**Applicant**'/'**Operational Creditor**') on 22.03.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the **Code/IBC**') with a prayer to initiate Corporate Insolvency Resolution Process ("**CIRP**") against M/s Premier Lighting Industries Private Limited (hereinafter referred as '**Respondent**'/'**Corporate Debtor**') for nonpayment of Operational Debt of Rs.1,47,17,846/- (Rupees One Crore Forty seven Lakhs Seventeen Thousand Eight Hundred Forty Six Only), along with interest at the rate of 18% p.a. The Date on which debt stands due was on 04.04.2022 and therefore 04.04.2022 is also the date of Default.
2. The Corporate Debtor is incorporated on 20.12.1961 under the Companies Act, 1956. The Corporate Debtor's registered office is situated at 16 Cama Industrial Estate Walbhat Road, Goregaon East, Mumbai, Maharashtra-400063 Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Submissions made by the Petitioner:

3. The Operational Creditor is engaged in the Business of real estate as well as repair and refurbishing of commercial as well as residential premises since 2004.
4. The Operational Creditor submits that the Corporate Debtor approached them inter alia requesting them to assess the situation and provide a fare quotation in respect of the charges which the Corporate Debtor would have to incur in case the Corporate Debtor opt to go ahead with the repairs and maintenance work.

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5. The Operational Creditor submits that after assessing the condition of the factory and the office premises, the Operational Creditor have issued a letter of quotation dated 01.07.2021 through quotation/Proforma invoice no. 032 for an amount of Rs.1,22,15,478/-.
6. As soon as the confirmation of work order which was issued by the Corporate Debtor, the Operational Creditor initiated the repair and maintenance work of the factory premises from 01.08.2021.
7. The Operational Creditor submits that it was mutually agreed between both the parties that Operational Creditor will raise monthly invoices for the services being rendered. The Corporate Debtor assured the Operational Creditor about the timely repayment and entire amount will be repaid once the work is completed. The Operational Creditor submits that they have completed the entire work in the first week of January,2022.
8. The Operational Creditor submits that after completing the entire work they have raised invoices for a total amount of Rs.1,22,15,478/- and the same was acknowledged by the Corporate Debtor. It is pertinent to note that after raising the invoice for payment, the Corporate Debtor did not dispute in respect to the quality of services which was provided by the Operational Creditor. Following are the invoices and date on which the payment was due and payable:

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Tax Invoice No.	Dated	Amount In (Rs.)
036/2021-22	07.08.2021	27,75,974.00
058/2021-22	06.09.2021	23,42,607.00
076/2021-22	05.10.2021	25,06,462.00
090/2021-22	11.11.2021	11,30,269.00
107/2021-22	04.12.2021	17,68,254.00
120/2021-22	03.01.2022	16,91,912.00
	Total=	1,22,15,478/-

9. The Operational Creditor submits that they have served upon the Corporate Debtor with various notices demanding the outstanding amount. However, the Corporate Debtor didn't pay any heed to the notices and therefore the debt amount remained unpaid till date.
10. The Operational Creditor aggrieved from non-payment and there wasn't any response from the Corporate Debtor, hence on 01.03.2023 the Operational Creditor issued a Demand Notice in Form-4 under this code to the Corporate Debtor, calling upon the Corporate Debtor to clear the outstanding dues for a sum of Rs.1,47,17,846/- along with interest of 18% P.a. until the actual date of payment. The Operational Creditor submits that till date they haven't received any payment or any response from Corporate Debtor.
11. The Operational Creditor submits that even though the entire repairs and maintenance work had been completed by the Operational Creditor

and at the time when the payment was due and payable, the Corporate Debtor failed to make payment as per the terms.

Submissions made by the Corporate Debtor:

12. Per contra, the Corporate Debtor through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety. The present Petition filed by the Operational Creditor does not make out any ground for admission into CIRP against the Corporate Debtor.
13. The Corporate Debtor submits that they are engaged in the business of manufacturing and supply of professional lighting systems in the country. Furthermost the business of the Corporate Debtor was in a viable condition until the onset of Covid-19 in March 2020. The business of the Corporate Debtor suffered major losses and the Corporate Debtor was unable to recover from the same until December 2020 due to the lockdown imposed across the country.
14. The Corporate Debtor submits that they have resumed their business in January 2021, as their financial condition became viable. The Corporate Debtor restarted its manufacturing plants thereafter. The Corporate Debtor submits that their factory as well as the office premise of Corporate Debtor is 20 years old and was in dire straits, therefore the Corporate debtor decided to hire the Operational Creditor to repair and perform the maintenance work at the factory as well as the office premises.
15. The Corporate Debtor submits the fact which was agreed between both the parties that the work shall be completed within a period of 6 months from the date of issuance of work order. The said work commenced on 01.08.2021 and as per the term the entire work was to be completed by

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05.12.2021 but the entire work was completed in the first week of January,2022 with a delay of over 30 days from the agreed timelines. The delay was intimated to the representative of the Operational Creditor. The Corporate Debtor contends the delay in completing the repair and maintenance work for over 30 days which has suffered a huge loss of Rs.20,00,000 as the Corporate Debtor was unable to perform any of their business obligations for the said period because of the delay.

16. The Corporate Debtor submits that the Operational Creditor raised invoices from time to time, the payment for the said outstanding invoices were not cleared by the Corporate Debtor because the Operational Creditor breached the term of work order and delayed in completing the work.
17. The Corporate Debtor submits that the Operational Creditor didn't act according to the terms which was mutually decided.
18. The Corporate Debtor lastly submits that they are not liable to pay the principal amount along with the interest which the Operational Creditor has demanded.

Findings:

19. Heard learned Counsel for both the parties and have duly perused the documents on record.
20. The Corporate Debtor asserts that they are in the business of manufacturing and supply of professional lighting systems within the country. Moreover, the Corporate Debtor's business was thriving until the emergence of Covid-19 in March 2020. However, due to the subsequent nationwide lockdown and the consequential economic

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downturn, the business incurred significant losses, which persisted until December 2020.

21. The Operational Creditor submits that they have served Corporate Debtor with various notices demanding the outstanding amount. However, the Corporate Debtor didn't pay any heed to the notices and therefore the debt amount remained unpaid till date. The Operational Creditor aggrieved from non-payment and there wasn't any response from the Corporate Debtor, hence on 01.03.2023 the Operational Creditor issued a Demand Notice in Form-4 of this code to the Corporate Debtor, calling upon to clear the outstanding dues for Rs.1,47,17,846/- along with interest of 18% P.a .The Corporate Debtor neglected to respond to the demand notice in Form-4 of this code. From the records and from the submission made by Operational Creditor we note that till date, they haven't received any payment or any response from Corporate Debtor.
22. It is trite law that the default date for each invoice is to be taken into consideration and limitation with reference to each date of default is to be ascertained for the purpose of Limitation aspect. Details of transactions and the invoices that is raised by the Operational Creditor:

Tax Invoice No.	Dated	Amount In (Rs.)
036/2021-22	07.08.2021	27,75,974.00
058/2021-22	06.09.2021	23,42,607.00
076/2021-22	05.10.2021	25,06,462.00
090/2021-22	11.11.2021	11,30,269.00
107/2021-22	04.12.2021	17,68,254.00
120/2021-22	03.01.2022	16,91,912.00
	Total=	1,22,15,478/-

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23. It is asserted by the Corporate Debtor that both parties agreed upon the completion of the work-maintenance of the Operational Creditor's factory and office Premises within six months from the issuance of the work order. The work began on 01.08.2021, and thereafter it was to be finished by 05.12.2021. However, the entirety of the work was concluded in the first week of January 2022, with a delay exceeding 30 days from the agreed timeline. The delay was communicated to the representative of the Operational Creditor. The Corporate Debtor contends that the delay in completing the repair and maintenance work for over 30 days led to a significant loss of Rs. 20,00,000, as they were unable to fulfill any of their business obligations during that period due to the delay. It is observed that there is insufficient substantial evidence to support the assertion of any pre-existing dispute between the parties, as the Corporate Debtor has failed to provide any evidence to substantiate that the delay of 30 days was communicated to the representative of the Operational Creditor.
24. Accordingly, we find that the present application is defect free as per section 9 (5) of the IB Code, and the outstanding amount meets the threshold limits as section 4 of the IB Code. Hence, we allow this application with the following directions;

Order

- a. In the above circumstances the petition bearing **CP(IB) 384/MB/C-I/2023** filed by **Rite Bultec Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/S Premier Lighting Industries Private Limited**, the Corporate Debtor, is **admitted**.

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- b. This Bench hereby **appoints Mr. Vishnu Kant Kabra, Registration No: IBBI/IPA-001/1P-P-02178/2021-2022/13747 as the Interim Resolution Professional** having **email: - ipvishnukabra@gmail.com** , to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. 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 Financial 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.
- d. 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 Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

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- e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. 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 Code. 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.
- i. The Registry is directed to communicate this Order to the Financial 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. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a

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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/-
PRABHAT KUMAR
Member (Technical)

SD/-
JUSTICE V.G BISHT
Member (Judicial)