

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.I, MUMBAI BENCH

C.P. (IB)No.2318/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

RDC Concrete (India) Private Limited

...Operational Creditor/ Applicant

V/s

Multi Storeys Projects Private Limited

...Corporate Debtor / Respondent

Order Dated:20.03.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Applicant: Adv.Joshua D'souza i/b Bulwark Solicitors

For the Respondent: None Present

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This is an application being C.P. (IB) No. 2318/NCLT/MB/2019 filed by RDC Concrete (India) Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Multi Storeys Projects Private Limited, the Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Application is filed by Senior Officer (Credit Control) Mr. Nilesh Shinde, authorised signatory of Operational Creditor, claiming a total default amount of Rs.50,00,008/- (Rupees Fifty Lakhs and Eight

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Only). The statement for particulars of claim amount is annexed to the Application.

3. The Applicant submitted that it supplied Ready Mix Concrete (RMC) to the Corporate Debtor at Mumbai from April 2018 to August 2018 and raised invoices for the same upon the Corporate Debtor. Copies of the said invoices are annexed to the Application.
4. The Applicant submitted that it supplied RMC as per order placed by the Corporate Debtor which was total amounting to Rs.61,33,011/-. Further the Applicant submitted that on 23.08.2018 it received a part payment of Rs.9,00,000/- from the Corporate Debtor and sum of Rs.52,33,011/- remained due and payable to the Applicant.
5. The Applicant submitted that even after repeatedly follow up by the Applicant, the Corporate Debtor failed to make the payment of Rs.52,33,011/- to the Applicant. Therefore, the Applicant issued Demand Notice dated 01.12.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of Rs.52,33,011/- and it was not delivered. Further the Applicant submitted that it again served the same Demand Notice to the Corporate Debtor on 03.01.2019 which was delivered on 04.01.2019 and the Applicant also submitted the postal tracking report to that effect.
6. The Applicant submitted that after receipt of the said Demand Notice, the Corporate Debtor on 15.01.2019 made a payment of sum of Rs.2,33,003/-. Further the Applicant submitted that the Corporate Debtor handed over the following cheques to the Applicant:
 - i. Cheque No.000023 dated 04.05.2018 for a sum of Rs.4,34,500/- drawn on HDFC Bank Ltd.
 - ii. Cheque No.000024 dated 09.05.2018 for a sum of Rs.4,95,000/- drawn on HDFC Bank Ltd.
 - iii. Cheque No.000025 dated 16.05.2018 for a sum of Rs.32,75,000/- drawn on HDFC Bank Ltd.

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However, all the aforesaid cheques were dishonoured for the reason "payment stop by drawer". Therefore, a sum of Rs.50,00,008/- was admittedly due and payable by the Corporate Debtor.

7. The Applicant submitted that it enclosed the email communication with the Corporate Debtor dated 23.08.2018 wherein Corporate Debtor has requested Applicant to withdraw the Legal Notice u/s 138 of Negotiable Instrument Act 1881. The Corporate Debtor further confirmed that they had initiated the payment of Nine Lakhs and had detailed discussion with the Applicant for balance payment.
8. The Applicant filed present Application on 19.06.2019. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 16.07.2019. Further the Applicant was directed to publish the notice two in newspapers i.e. in English and one in local vernacular language vide our Order dated 09.12.2019. The Applicant filed its Affidavit of Service of Notice on 29.01.2020. Thus, it is on record that the Corporate Debtor chose not to appear and file any objections in its defence despite service of court notice as well as publication in newspapers.
9. On perusal of the documents submitted by the Applicant and hearing the Applicant's counsel, it is clear that Applicant has supplied Ready Mix Concrete from April 2018 to August 2018 to the Corporate Debtor total amounting to Rs.61,33,011/-. Out of the said amount of Rs.61,33,011/- the Applicant received a part payment of Rs.9,00,000/- on 23.08.2018 and Rs.2,33,003/- on 15.01.2019. Further the Corporate Debtor handed over the Three cheques to the Applicant, but all cheques were dishonoured for the reason "payment stop by drawer". Thus, the Corporate Debtor has failed to make payment of sum of Rs.50,00,008/-.
10. The Applicant, having supplied Ready Mix Concrete to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of

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the goods and the amount to be paid to the Applicant. The Corporate Debtor chose not to file any reply to the petition. Thus, the debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.

11. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 01.12.2018 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 06.06.2019 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.
12. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.
13. This Application filed under Section 9 of I&B Code, 2016, presented by RDC Concrete (India) Private Limited, Operational Creditor / Applicant against Multi storeys Projects Private Limited, Corporate Debtor for initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:
 - 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;

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- 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 Financial 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 I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. That this Bench appoints Mr. Salil Kumar Basu, a registered insolvency resolution professional having Registration Number IBBI/IPA-001/IP-P00036/2017-18/10097, Email Id: b.salil@hotmail.com as Interim Resolution Professional to carry

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out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

V. Nallasenapathy
Member (Technical)
20.03.2020

Sd/-

Suchitra Kanuparthi
Member (Judicial)