



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

**CP (IB) No.776/MB-IV/2020**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Shalimar Paints Private Limited**

[CIN: L24222HR1902PLC065611]

...Operational Creditor/Applicant

V/s

**Deify Infrastructures Limited**

[CIN: U45203MH1991PLC062494]

...Corporate Debtor/Respondent

***Order pronounced on : 12.04.2023***

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Dyuti Ghai, Advocate

For the Respondent(s) : Mr. Rahul Pandey a/w Mr. Devendra  
Ranade, Advocate

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an application being C.P. (IB) No. 776/NCLT/MB/C-IV/2020 filed by Shalimar Paints Private Limited, the Operational Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code,

- 2016 (I&B Code) against Deify Infrastructures Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Application is filed by Mr. Neeraj Gupta, authorized by the Operational Creditor vide Board Resolution dated 28.05.2019, claiming default amount of Rs.12,19,721/- (Rupees Twelve Lakh, Nineteen Thousand, Seven Hundred and Twenty-One only), which includes Principal of Rs.7,24,937/- (Rupees Seven Lakh, Twenty-Four Thousand, Nine Hundred and Thirty-Seven only) and interest of Rs. 4,94,784/- (Rupees Four Lakh Ninety- Four Thousand Seven Hundred and Eighty-Four Only) as on 01.02.2020.
  3. The date of Default is stated as “The debt fell due on the date of issuance of the respective invoice by the applicant” in Part-IV of the Petition. It is further stated that “The default occurred after 30 days from the date of respective invoice due to non-payment of the invoice amount by the Corporate Debtor”. The four invoices were raised on 30.08.2015 (two), 30.09.2015 and 31.10.2015. Accordingly, each invoice falls due for payment on 28.09.2015, 30.10.2015 and 30.11.2015. The petition is filed on 28.02.2020.
  4. The case of the Operational Creditor is as under:
    - a) The Petitioner Company is engaged in the business of manufacturing and marketing of decorative paints and industrial coatings.
  5. The Petitioner submits that the Petitioner as well as the Corporate Debtor engaged in numerous transactions pertaining to sale and purchase of allied products. In respect of the purchase orders, the Petitioner sold goods to the Corporate Debtor till January 2017 and raised certain invoices. The Corporate Debtor was unable to pay off the

dues in entirety against the four invoices dated 30.08.2015, 30.08.2015, 30.09.2015 and 31.10.2015.

6. On the request of the Corporate Debtor, the Petitioner provided a revolving credit facility to the Corporate Debtor as per which goods were periodically supplied to the Corporate Debtor and payments were received by the Petitioner from time to time. On 30<sup>th</sup> March 2017, the Corporate Debtor made payment of Rs. 1,98,880/- in discharge of its outstanding dues. Thereafter, the Petitioner has not received any payment from the side of the Corporate Debtor.
7. The Petitioner issued several reminders to the Corporate Debtor for repayment of outstanding payments. Despite repeated reminders, the Corporate Debtor failed to repay the dues. The Operational Creditor constrained to issued Demand Notice u/s 8 of the Code in Form -3 on 13.08.2019 demanding for repayment of outstanding dues. Upon receipt of Demand Notice, the Corporate Debtor wrote several emails from August 2019 to October 2019 requesting for reconciliation of accounts, but failed to reply to the Demand Notice within statutory period.

#### **Reply by the Corporate Debtor**

8. The Corporate Debtor filed reply dated 14.04.2022 to the Company Petition and submitted that the Petition was not maintainable and liable to be dismissed.
  - 8.1 It is submitted that there are several discrepancies in the amount of claim as detailed in copy of ledger account of the Corporate Debtor in the books of applicant appended with the Petition. In one case goods supplied under invoice no. 6311510281 dated 31.08.2015 were never received by the Corporate Debtor and there are certain

sums which are reflected in the books of Corporate Debtor but are not reflecting in the said ledger account. Accordingly, Petitioner was asked for reconciliation of account so that exact amount payable can be quantified.

- 8.2 The Corporate Debtor has also enclosed a reconciliation statement whereby it has admitted a sum of Rs.1,78,733/- payable as on 20.08.2019.
9. We have heard both the counsels and perused the materials available on record.
10. We find that the Corporate Debtor has admitted a sum of Rs.1,78,733/- in its reply as due and payable as on 20.08.2019 and no payment has been claimed to have been made to the Petitioner against this. Further, as regards the dispute of non-receipt of material under invoice no. 6311510281 dated 31.08.2015, on perusal of the ledger account appended to the Petition and referred in the reply, we find that there is a debit of Rs.3,07,009/- against doc/invoice no. 6311510281 dated 31.08.2015. We further, find that the Applicant has raised two invoices no. 6311510276 and 6311510277 on 30.08.2015 each for a value of Rs.1,72,710/-, sum of which comes to Rs.3,45,420/-. Accordingly, we find that there exist sum discrepancies as claimed by the Corporate Debtor. However, we notice that the minimum threshold limit prescribed u/s 4 of the Code was Rs.1.00 Lakh as on date of filing of present petition and the Corporate Debtor has admitted a debt of Rs. 1,78,733/- as due and payable as on 20.08.2019, which has not been paid.
11. We find that the default occurred during the period from 28.09.2015 to 30.11.2015 and last payment was made on 30.03.2017. Further, the

Corporate Debtor has admitted in its reply that a sum of Rs.1,78,733/- is due and payable as on 20.08.2019 out of goods supplied to it by the Petitioner. Accordingly, we find that present Petition is maintainable in view of Section 18 of the Limitation Act, 1963.

12. The Petition is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
13. The Financial Creditor has proposed the name of Mr. Shashi Bhushan Prasad, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00676/2018-2019/12114] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

### **ORDER**

- a) This Application being C.P. (IB) No. 776/NCLT/MB/C-IV/2020 filed by Shalimar Paints Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Deify Infrastructures Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) 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;
  - 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. Shashi Bhushan Prasad, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00676/2018-2019/12114], Phone No. 9810332269, email- [Shashihp@gmail.com](mailto:Shashihp@gmail.com) as Interim Resolution Professional to carry 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.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial 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/-**

Prabhat Kumar  
Member (Technical)

**Sd/-**

Kishore Vemulapalli  
Member (Judicial)

12.4.2023