BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

Company Petition No.1142/I&BP/NCLT/MB/MAH/2017

CORAM : SHRI M.K. Shrawat, Member (Judicial)

Order Under Section 9 of the Insolvency & Bankruptcy Code, 2016.

In the matter of:-

M/s. Lift and Shift India Private Limited,
96, Chembur Mankhurd Link Road,
Mumbai – 400 043. .... Applicant

Versus

M/s. DBM Geotechnics And Constructions Private Limited
Centaur House, B/301, 3rd Floor,
Shantinagar Industrial Estate,
Vakola,
Santacruz (East),
Mumbai – 400 055 .... Corporate Debtor

Represented by:
Karun Jhangiani, i/b Sidharth Mehta : Advocate for Applicant

(None) : For Corporate Debtor.

ORDER
Heard on : 05-07-2017
Pronounced on 05-07-2017

1. The Petitioner is an "Operational Creditor" hence submitted Form No.5 on 28.06.2017 in respect of unpaid debt amount of Rs.54,96,000/-.

2. The facts of the case in brief are that as per the Work Order dated 07th March 2016 entered into between DBM Geotechnics and Construction Private Limited and Lift & Shift India Private Limited for hiring of Spud Barge (AF-180) for Marine Geotechnical Work at Sewree to Nhava Site (Job No.3745), Invoice No.001 dated 1st April, 2016; Invoice No. 010 dated 13th April, 2016 and Invoice No.035 dated 11th May, 2016, the debt amount fell due on the following dates:-

Date	Amount
11.04.2016	11,45,000
24.04.2016	16,03,000
22.05.2016	27,48,000
Total	**54,96,000**

(Contd...2.)

3. The debt has been proved by way of (a) Work Order dated 7th March, 2016, (b) Invoice No.001 dated 1st April, 2016, (c) Invoice No.035 dated 11th May, 2016, (e) Copies of emails exchanged between the representatives of Lift & Shift India Private Limited and the representatives of DBM Geotechnics and Construction Private Limited, (f) Notice dated 27.06.2016 sent by Lift & Shift India Private Limited to DBM Geotechnics and Constructions Private Limited, (g) Reply dated 30.08.2016 from DBM GEOTECHNICS and Constructions Private Limited to Lift & Shift India Private Limited, (h) Notice dated 19.09.2016 sent by Lift & Shift India Private Limited to DBM Geotechnics and Constructions Private Limited.
4. Demand notice under the Insolvency and Bankruptcy Code, 2016 was sent on 29th December, 2016 by the Operational Creditor, however, the Corporate Debtor did not take any cognizance of this Demand Notice. It is informed that through several correspondence the Debtor had duly acknowledged the services rendered by the Applicant.
5. The Corporate Debtor had never raised any "Dispute" against the outstanding debt.
6. Since this is a case of "Operational Creditor" therefore the Insolvency Resolution Process shall commence as prescribed under section 8 of the I&BP Code, 2016. The occurrence of default is established. Even on service of Demand Notice the amount in question as on date remained unpaid by the "Operational Debtor". The prescribed period of 10 days has also lapsed.
7. Having considered the totality of the circumstances and the Application/Petition for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed supra, it is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply

(Contd.....3.)

of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

8. The Petitioner has proposed the name of Mr. Alok Saksena, C/o. Desai Saksena & Associates, Chartered Accountants, 1st Floor, Laxmi Building, Sir P.M. Road, Fort, Mumbai – 400 001, having Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 to act as the Interim Resolution Professional. The so appointed Insolvency Professional has furnished the requisite Certificate that no Disciplinary Proceedings is pending against him. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional defined under section 18 of The Code. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.
9. The commencement of the Corporate Insolvency Resolution Process is hereby declared subject to the above conditions.

Sd/-
M.K. Shrawat
Member (Judicial)

Dated: 05.07.2017

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