

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

CP 1605/I&BP/NCLT/MAH/2017

Under Section 9 of the I&B Code, 2016

In the matter of

M/s Madhur Engineers Private Limited.

.... Operational Creditor

v/s.

M/s Varad Forge Private Limited.

.... Corporate Debtor

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Ms. Chaitrika Patki, Advocate

For the Respondent: None

Per Ravikumar Duraisamy, Member

ORDER

1. It is a Company Petition filed u/s 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s Madhur Engineers Private Limited, Operational Creditors against M/s Varad Forge Private Limited, Corporate debtor to initiate Corporate Insolvency Resolution Process against the Corporate debtor on the ground that the Corporate Debtor has defaulted in making the repayment of Rs. 36,63,816.00 along with an interest amount of Rs. 3,05,351/- @ 18% per annum from 15th July, 2015 to 5th January, 2016 and further interest @18% per annum from 6th January 2016 till the realisation of the claim of the Operational Creditor.

2. Brief facts of the case are that the Applicant is engaged in the business of trading special purpose carbon/alloy steel and bright bars under the name and style of M/s Madhur Engineers Private Limited., having its Registered office at Kolkata. The Corporate Debtor M/s Varad Forge Private Limited, having its registered office at Pune, approached the Operational Creditor M/s Madhur Engineers Private Limited on 28th May, 2013 for supply of various quantities and sizes of forging grade alloy steel. Accordingly, after the negotiation with the

Corporate debtor it was agreed to supply the materials for a consideration of Rs. 40,15,593/- by drawing up various tax invoices. As a result, the Operational creditor issued the following tax invoices upon the Corporate debtor:-

Sr No.	Tax Invoice date	Invoice No.	Amount (in Rs)	Amount payable (in Rs.)
1	23 rd January, 2015	MEPL/1634	6,32,347.00	2,80,570.00
2	14 th February, 2015	MEPL/1915	8,59,230.00	8,59,230.00
3	18 th February, 2015	MEPL/1968	6,95,324.00	6,95,324.00
4	31 st March, 2015	MEPL/2476	6,21,161.00	6,21,161.00
5	13 th April, 2015	MEPL/0036/15-16	6,14,650.00	6,14,650.00
6	14 th May, 2015	190	5,92,881.00	5,92,881.00
		Total	40,15,593.00	36,63,816.00

From the above, it can be seen that a total Invoice amount comes to Rs. 36,63,816.00 is indebted to pay to the Operational Creditor. The Operational creditor has accordingly worked out the default amount of Rs. 36,63,816.00 plus interest at the rate of Rs. 18% which comes to Rs. 3,05,351.00 from 15th July, 2015.

3. The Petitioner even after repeated reminders did not receive any payment from the Corporate Debtor. The Corporate Debtor had sent an email dated 3rd September, 2015 that they had received the communication regarding the outstanding bills and since they have been in financial tight spot for the last one year and the situation is improving and they have all intentions of paying all the outstanding but needs time. The Corporate Debtor also ensured that there would be some repayment every month starting September, 2015. Since no payment was made, a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was sent by RPAD on 4th July, 2017 and the same was received by the Corporate debtor on 07.07.2017. The India Post track consignment copy is annexed with the Petition (page No. 65). The Petitioner has submitted on Affidavit dated 29th August, 2017 that since the statutory period of 10 days from the date of receipt of the Demand Notice has expired, it is prayed that the Tribunal may proceed with the Petition. The Petitioner has also annexed with the Petition the bank certificate stating there is no payment made towards the unpaid amount by the Corporate debtor and also the bank statement from 1.4.2015 to 20.04.2015.

4. When a Section 9 Petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4) of section 9, if any.

5. The Petitioner has annexed the demand notice sent to Corporate Debtor as per section 8 of Insolvency and Bankruptcy Code, 2016 and the same was received by the Corporate Debtor, the invoices against which it claims the outstanding amount from the Corporate Debtor as well as the bank certificate and Bank Statements to show that no payment is received from the Corporate Debtor in its bank account. The Corporate Debtor has not raised any dispute regarding the unpaid operational debt which is stated by the Petitioner on Affidavit and is also admitted by the Corporate Debtor. The application made by the Petitioner is complete in all respects as required by law and it clearly shows that the operational debt has not been paid as also confirmed by the Corporate Debtor. It is worth to mention that the Corporate Debtor had never attended the hearing.

6. In totality of the facts and circumstances mentioned supra, we are of the view that the impugned Petition requires 'Admission'.

7. The Corporate Debtor having named the Interim Resolution Professional with his consent, there being no disciplinary proceedings against, this Bench hereby admits this petition filed under Section 9 of IBC, 2016, declaring moratorium with consequential directions as mentioned below:

- I. That this Bench hereby 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 the 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 moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 20.11.2018 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 IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, 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 IBC.
- VI. That this Bench hereby appoints Shri CMA Manoj Kulshrestha (IPACMA Registration No. IPA-ICAI/N/00005) as Interim Resolution Professional to carry the functions as mentioned under IBC.

8. Accordingly, this Petition is admitted.

9. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by speed post and email.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

DT. 20th November 2018