

In the National Company Law Tribunal
Mumbai Bench.

No. C.P. (IB)-146/MB/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Batliboi Impex Limited : Petitioner/Operational Creditor
V/s

Tiger Steel Engineering (India) Pvt. Limited : Respondent/Corporate Debtor.

Date of Hearing : 11.05.2018
Order delivered on: 18.05.2018

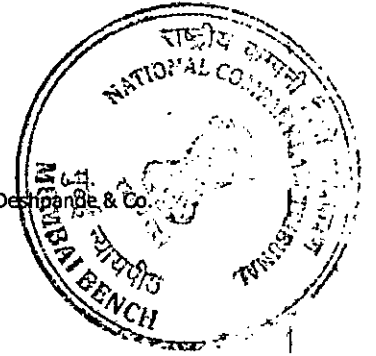
Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

Present:

For the Petitioner(s) : 1. Mr. Nikhil Rajani, Advocate, i/b M/s. V. Deshpande & Co.

Per M.K. Shrawat, Member (Judicial).



ORDER

1. A Petition was filed on Form No.5 on 25.01.2018 by the Petitioner/Operational Creditor M/s. Batliboi Impex Limited, Registered Office at "Bharat House", 5th Floor, 104, B.S. MARG, Mumbai 400 001 invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for the purpose of initiating Corporate Insolvency Resolution Process for an outstanding Operational Debt of ₹26,66,302/- against the Corporate Debtor M/s. Tiger Steel Engineering (India) Pvt. Ltd., 4th Floor, Building No. 5, Sector - 3, Millennium Business Park, Mahape Navi Mumbai - 400710, Maharashtra.

2. Brief particulars of the claim is as under:-

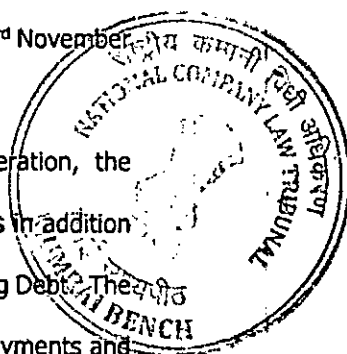
2.1. The Petitioner/Operational Creditor is engaged in the business of rendering services for clearing and forwarding agents for clearance of Import Shipment at various ports whereas the Corporate Debtor is engaged in the business of manufacturing Pre-Engineered Metal Building solutions and undertakes Design, Engineering, Fabrication, Supply and Erection of steel buildings.

2.2. On or about February-March, 2016, the Corporate Debtor approached the Operational Creditor with a request to submit their quotation for rendering services for clearance of Import Shipments of the Corporate Debtor from JNPT/ACC Sahar/Mumbai – Sea Port. The Operational Creditor vide its letter dated 01.04.2016 provided a detailed quotation for the services as sought for. Upon acceptance of the said quotation, including the payment terms which included payment of service charges to be paid within 10 days from the date of the Bill and payment of Interest on delayed payments @ 24% p.a., the Corporate Debtor appointed the Operational Creditor as its clearing and forwarding Agent for clearance of Import Shipment. Accordingly, the Operational Creditor rendered services for clearing import shipment of Corporate Debtor from various Ports and raised Invoices towards its Agency charges and reimbursement of Costs, Charges and Expenses incurred in the process of clearing the said import shipment.

2.3. The Operational Creditor alleged that between 06.05.2016 to 18.07.2017, around 29 Invoices were raised as per the Petition for a total Debt amount of ₹88,22,135/-, however, an amount of ₹26,66,302/- is still outstanding for payment since 23rd November 2017.

2.4. In respect of the claim of outstanding Debt, now under consideration, the Operational Creditor stated that he had issued several reminders and emails in addition to personal contacts, requesting the Corporate Debtor to clear the outstanding Debt. The Petitioner has further stated that the Corporate Debtor made certain part payments and advances against the Order placed with Invoices raised by the Operational Creditor. After adjusting and appropriating the said part payments made from time to time, the impugned amount of ₹26,66,302/- still remained due and payable.

2.5. Thereafter, the Operational Creditor held personal meetings with the Corporate Debtor on various occasions. In one of such meeting held on or about last week of September, 2017, it was assured by the Corporate Debtor that a sum of ₹4 – 5 lacs would be remitted during the course of the week. Despite the assurance, no payment was actually made by the Corporate Debtor. Therefore, the Petitioner/Operational Creditor



Issued one more email on 31st October, 2017, requesting payment, relevant portion reproduced below :-

"It is very unfortunate there is no response from your side regarding payment. Pls understand Batliboi having invested time and energy in clearing your consignments about 19 months back have not been paid for the services rendered even statutory payments made on your behalf have not been paid. During our last week meeting on Friday it was assured 4-5 lacs will be remitted. Today we are on Tuesday. All along we have stood by Tiger Steel now it is time you reciprocate as we are in dire need of funds and your immediate action will be appreciated."

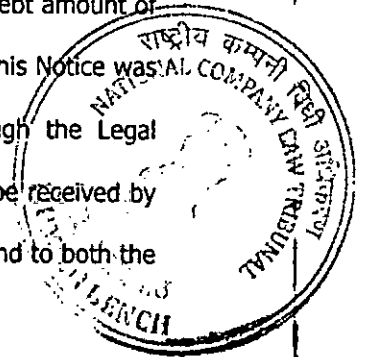
2.6. The Operational Creditor further stated that the Corporate Debtor had admitted, acknowledged and confirmed that a sum of ₹25,97,799/- remained due and payable in respect of the Invoices raised, issued and delivered upon the Corporate Debtor by the Operational Creditor. Further, the Petitioner stated that it was clarified to the Debtor that the difference of ₹1,53,705/- was due to 'detention charges' to the satisfaction of the Debtors.

2.7. Thereafter, the Operational Creditor claimed that despite reconciliation of the account, admission and acknowledgment by the Corporate Debtor, the Corporate Debtor failed to make payment of the impugned Debt amount of ₹26,66,302/-.

3. Aggrieved, the Petitioner/Creditor issued a Demand Notice dated 22.11.2017, calling upon the Corporate Debtor to make payment of the outstanding Debt amount of ₹26,66,302/- within 7 days from the date of receipt of the said Notice. This Notice was further followed up by another Legal Notice dated 05.01.2018 through the Legal Representative of the Petitioner by Registered Post which was stated to be received by the Corporate Debtor on 08.01.2018. However, the Debtor did not respond to both the Notices.

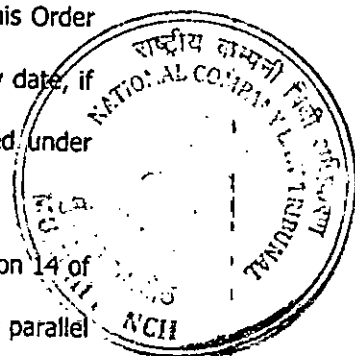
4. Certified copy of the Bank Account statement from 01-11-2017 to 26-12-2017 from Bank of Baroda dated 28-12-2017 showing the payments received from the Corporate Debtor and that the Debt amount was not received, is also available on record.

5. The Petitioner served Notices and also intimated the Dates of Hearing to the Corporate Debtor from time to time, however, the Respondent had not attended any of the proceedings nor disputed the claim. Therefore, it is assumed that he has nothing to say/represent in the matter.



FINDINGS :-

6. Having considered the totality of the facts and circumstances mentioned above, the impugned outstanding Operational Debt of ₹26,66,302/- and the occurrence of **default** are established. According to the Bank Statement on record and considering the communication between the parties, duly placed on record, the Debtor had admitted the Liability. Considering the circumstances mentioned *supra*, this Petition under consideration deserves to be "Admitted".
7. The Petitioner/Operational Creditor has proposed the name of the IRP Mr. Anil Seetaram Vaidya, Registration No. IBBI/IPA-002/IP-N00067/2016-17/10145, Address: Plot No.107, Survey No.62/65, Mahatma Society, Bhusari Colony, Kothrud, Pune 411 038, Email: anilvaidya38@gmail.com. The so appointed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending. On due consideration, the proposal of appointment is hereby confirmed.
- 7.1. 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. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.
8. 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 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.
9. Accordingly, this **C.P. (IB)-146/MB/2018 stood Admitted.**

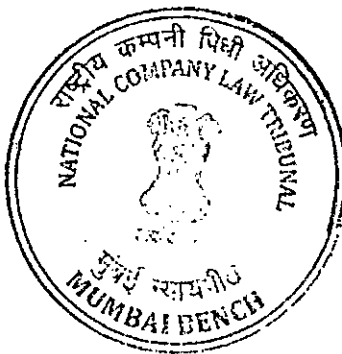


10. The Corporate Insolvency Resolution Process is commenced from the date of this order.

SD/-

M.K. SHRAWAT
Member (Judicial)

Date : 18.05.2018.
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Copy issued "free of cost"
On 08/06/2018

Assistant Registrar
National Company Law Tribunal Mumbai Bench

