

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 1179/I&BP/NCLT/MAH/2017

Under Section 9 of the I&B Code, 2016

In the matter of

VALIA & CO.

....Operational Creditor

v/s.

BRINZK POWERTECH PVT. LTD Corporate Debtor

Order delivered on: 26.6.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Madhavi Nalluri i/b Amir Arsiwala

For the Respondent: Nigel Quraishy i/b Naved Chawdhary

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 by Operational Creditor, namely Valia & Co. against Corporate Debtor, namely Brinzk Powertech Private Limited stating that the Corporate Debtor failed to make payment of Rs. 57,86,652. The Company Petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. The case of the Petitioner is that it has supplied iron and steel goods and raw materials from its Mumbai and Ahmedabad offices to the Corporate Debtor regularly from 2015 onwards. Invoices for the same were issued accordingly and were due in 60 days from the date of respective invoice.

3. The Petitioner counsel submits that following invoices are unpaid and this Petition is not hit by limitation :

Sr. No.	Bill No.	Bill Date	Due Date/ Date of Default	Amount (Rs.)
1.	MUM/7	16.05.2015	14.07.2015	3,80,000
2.	MUM/15	08.08.2015	05.11.2015	10,23,652
3.	MUM/16	17.08.2015	14.11.2015	8,71,325
4.	Ahd/027	14.09.2015	12.12.2015	8,52,275
5.	Ahd/028	09.10.2015	06.01.2016	13,18,383
6.	Ahd/029	29.11.2015	27.02.2016	4,85,310
7.	Ahd/030	15.12.2015	14.03.2016	4,15,263
8.	Ahd/031	16.12.2015	15.03.2016	4,40,444
Total Amt. Receivable from Brinzk Powertech				57,86,652

4. This Petitioner has through its advocate sent a demand notice dated 26.05.2017 to the Corporate Debtor calling upon it to pay the unpaid dues of Rs. 57,86,652 failing which, corporate insolvency resolution process u/s 9 of IBC will be commenced against the Corporate Debtor. This demand notice has been responded to by the advocate of Corporate Debtor *vide* letter dated 10.06.2017, showing willingness to pay the actual due and payable amount and requesting for some time in view of financial crunch faced by the Corporate Debtor.

5. This Petition clearly reveals that there is a debt as defined in Section 3(11) of IBC, also there is default in this case within the meaning of Section 3(12) of IBC and no evidence of dispute with regard to the claim amount. Moreover as stated above, the Corporate Debtor expressed his willingness to pay the actual debt amount and requested for some time to pay in view

of financial crunch. Additionally, during the hearing on 05.02.2018, the Director of the Corporate Director expressed agreement for admission of this Company Petition.

6. 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 26.6.2018 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 Mr. V. Mahesh (Practicing Company Secretary), having Registration Number [IBBI/IPA-002/IP-N00307/2017-18/10865] as Interim Resolution Professional to carry the functions as mentioned under IBC.

6. Accordingly, this Petition is admitted.

7. The Registry is hereby 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.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)