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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V

C.P. (IB) - 925/MB/2020

Under section 9 of the IBC, 2016

In the matter of

Mr. Mukesh Sumermal Sanghvi

Sole Proprietor of Silicon Metal Industries,
Shop No. A/22, Ground Floor, Gora Gandhi
Palace, Plot No. 122, Khetwadi Back Road,
Girgaon, Mumbai – 400 004

....Petitioner

v/s

R. D. Engineers (India) Private Limited A-311B, 3rd
Floor, Eastern Business District, Near Mangatram
Petrol Pump, L. B. S. Marg, Bhandup (west), Mumbai –
400 078

....Corporate Debtor

Order delivered on: 26.10.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Tejas Deshpande a/w Akshay Zantye, Advocates.

For the Corporate Debtor: Mr. Ulhas Shetty, Practising Company Secretary.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is an Petition number CP(IB) 925/MB/2020 filed by Mr. Mukesh Sumermal Sanghvi, Sole Proprietor of Silicon Metal Industries, Operational Creditor/Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (Code) against R. D. Engineers (India) Private Limited, Corporate Debtor, alleging that the Corporate Debtor committed default in making payment to the extent of Rs. 4,23,77,899/- including interest @ 24% p.a. by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

SUBMISSIONS BY THE PETITIONER

2. The Petitioner is a Sole Proprietor of Silicon Metal Industries which is engaged in the business of sale of stainless steel plates products. The Corporate Debtor is a private limited company incorporated and registered under the provisions of Companies Act, 1956 and engaged in the business of manufacture and sale of engineering products.

3. The Petitioner states that the Corporate Debtor through its Director Mr. Devan Dua, approached the Petitioner and states that the Corporate Debtor often required a supply of stainless steel plates, sheets and other products and the Corporate Debtor wished to purchase the said products from the Petitioner.

4. The Corporate Debtor further requested the Petitioner to provide its rates and quotations in respect of the products required by the Corporate Debtor. Pursuant to the request of the Corporate Debtor the Petitioner duly provided its rates and quotations to the Corporate Debtor and the same were accepted by the Corporate Debtor without any demur or protest.

5. Thereafter the Corporate Debtor raised various purchase orders upon the Petitioner. And the Petitioner supplied the said products and materials at Corporate Debtor's site at Nashik as demanded by the Corporate Debtor. The Petitioner raised its respective invoices from time to time in respect of the purchase orders.

6. The Petitioner also states that purchase orders as raised by the Corporate Debtor mention that the credit period for payment of invoices as raised by the Petitioner shall be 90 days from the date of the respective invoice or on letter of credit basis.

7. As per the running ledger account maintained by the Petitioner in the F.Y. 2018-19, a principal amount of Rs. 5,22,43,493/- was due and outstanding in respect of the products supplied by the Petitioner to the Corporate Debtor. The Corporate Debtor made a part-payment of Rs. 2,00,39,976/- and the balance of Rs. 3,22,03,517/- is due and outstanding.

8. The Corporate Debtor has at all times admitted and acknowledged its liability to pay the Petitioner the principal amount of Rs. 3,22,03,517/- and also the liability to pay interest @24% p.a. has been duly admitted and acknowledged by the Corporate Debtor.

9. The Petitioner states that the Petitioner addressed a letter dated
1. 04.2019 to the Corporate Debtor calling upon the Corporate Debtor to confirm the accounts maintained by the Petitioner. The said account details clearly reflect the principal outstanding amount of Rs. 3,22,03,517/-. The Corporate Debtor has duly confirmed, accepted and acknowledged the aforementioned books of accounts of the Petitioner.
 10. Thereafter despite several reminders, the Corporate Debtor failed to clear the outstanding invoices within a period of 90 days and hence defaulted in making payments against the said invoices. On 12.07.2019 the Petitioner through its Advocate Mr. K. P. Dubey sent a legal notice to the Corporate Debtor, demanding a sum of Rs. 3,22,03,517/- plus interest @24% p.a.
 11. On 29.07.2019 the Corporate Debtor replied to the said legal notice through its Advocate Mr. Vinayak Manjrekar, accepting and acknowledging all the contents of the Petitioner's legal notice dated 12.07.2019 and also requested time of 3 to 4 months for payment of outstanding dues.
 12. By letter dated 26.08.2019 the Petitioner has informed the Corporate Debtor to make payments at the earliest. The Corporate Debtor again replied to the said letter stating that the Corporate Debtor is facing a huge liquidity crisis and requested the Petitioner to bear with the Corporate Debtor for some time and promised to pay the Petitioner its dues at the earliest.
 13. The Petitioner further states that after several requests and demands the Corporate Debtor finally agreed to release the outstanding amount payable to the Petitioner in installments and vide RTGS. The Petitioner demanded security cheques, on which the Petitioner shall have the right to encash if the Corporate Debtor failed to make payments to the Petitioner. The Corporate Debtor had given 5 security cheques to the Corporate Debtor which were drawn on the Corporate Debtor's bank i.e. Union Bank of India, Bhandup Branch. The total amount in those security cheques amounted to Rs. 2,58,42,826/-.
 14. The Petitioner on receipt of the security cheques, informed Corporate Debtor vide letter dated 04.10.2019 that the total principal outstanding amount is Rs. 3,55,03,517/- and an interest of Rs. 50,30,400/- had accrued on the aforementioned principal amount as on 04.10.2019. Therefore, the

Petitioner further demanded a security cheque for the balance amount i.e. Rs. 63,60,691/-.

15. Despite promising to pay outstanding dues to the Petitioner vide RTGS, the vide letter dated 04.10.2019 again defaulted in making payments. Thereafter the Petitioner deposited the security cheques and all the said security cheques were returned dishonored by the Bank for the reason "Payment stopped by drawer", a copy of said dishonored cheques and their respective return memos are annexed to the petition.

16. On 13.02.2020 the Petitioner through its advocate sent a demand notice under Section 8 of the Code demanding a sum of Rs. 4,23,77,899/-including interest @24% p.a. to the Corporate Debtor. The Corporate Debtor replied to the said demand notice on 20.02.2020 raising disputes.

SUBMISSIONS BY THE CORPORATE DEBTOR

17. The Corporate Debtor filed reply to the petition denying the liability and raised the following contentions:

- a. The Corporate Debtor mentions that the Petitioner had delayed supply of goods by 2 to 3 months due to which the Corporate Debtor incurred severe damages and heavy losses and also affected the completion schedule of project and caused delay in delivery of the equipment's to the third party. Because of delay the third party cancelled few equipment's from the Corporate Debtor's scope and have Back Charged the Corporate Debtor heavily. The Corporate Debtor adds that the same was communicated to the Petitioner and they were further informed that till the amount of damages is not qualified and crystallized and also since, the payments of the Corporate Debtor were put on hold by the third party, it was made clear that the Petitioner's claimed payment is not payable to them and same has been kept on hold.
- b. The Corporate Debtor mentions that it has replied to each and every notice issued by the Petitioner stating thereon the dispute inter-se the parties and consequent non-agreement or disagreement of the debt amount and the delay in supply of goods from the Petitioner.
- c. The Corporate Debtor also mentions that they had in their letter and email dated 10.10.2019, clearly informed the Petitioner that

the security cheques issued on their request and were not to be deposited towards the dues as the final dues payable to the Petitioner were not agreed upon and was to be settled or finalized based on the damages to be deducted by the third party from their dues.

- d. The Corporate Debtor has duly given notice of dispute as per Section 8 of the Code to the Petitioner on 20.02.2020.

FINDINGS

18. On going through the submissions made by the Counsel from the both the sides and on perusing the documents produced on record, the Bench notes that the Petitioner has supplied stainless steel plates as per the purchase orders issued by the Corporate Debtor from time to time. The Bench also notes that appropriate invoices in respect of the same has been placed by the Petitioner upon the Corporate Debtor wherein the material supplied and the amount mentioned in the invoices has been admitted in all cases by the Corporate Debtor. The Petitioner has thus adequately demonstrated that the principal amount of Rs. 3,22,03,517/- is due and also as contained in invoices if not made within the due date @ 24% p.a. is payable. The interest component so calculated amounts to Rs. 1,01,74,382/- making the total claim amount of the Petitioner as Rs. 4,23,77,899/-.

19. The Bench notes that a confirmation of account up to 31.03.2019 has been made by the Corporate Debtor vide the correspondence dated

1. 04.2019.

20. Further, it has been brought before the Bench that the outstanding payment has been admitted by the Corporate Debtor vide its email dated 20.04.2019 where they have admitted towards the outstanding payment and has pleaded the Petitioner to provide the Corporate Debtor with some more time for payment.

21. It has been brought before the Bench by the Petitioner to have issued two notices to the Corporate Debtor in respect of default of payment by the Corporate Debtor. These notices dated 12.07.2019 and 26.08.2019 respectively was served to the Corporate Debtor by the Petitioner. In reply to both the notices the Corporate Debtor has admitted liability to pay the outstanding dues to the Operational Creditor at the earliest.

22. The bench also notes that thereafter the Corporate Debtor provided surety cheques amounting to total of about Rs. 2,58,42,826/- as security against the promise to pay all the outstanding dues. However, when these cheques were presented on the due dates for encashment was dishonored as the payment was stopped by the drawer.

23. All the above clearly demonstrate that there is a due debt of Rs. 4,23,77,899/- (including interest) which has been accepted and confirmed several times by the Corporate Debtor. However, it is only when Section 8 Demand Notice was sent by the Operational Creditor to the Corporate Debtor, for the first time, the Corporate Debtor raised dispute regarding delays caused by the Operational Creditor in supplying material to the Corporate Debtor and also regarding the total amount of default which as per the Corporate Debtor is not Rs. 3,22,03,517/- but Rs. 2,58,42,826/-. The Bench notes that the Corporate Debtor has filed nothing on record to show that the Corporate Debtor has been back charged by L&T and any such penalty charges has been levied due to the delay by Operational Creditor in supplying material on time.

24. The Bench, therefore, has no doubt in its mind that the Corporate Debtor is liable to pay the Operational Creditor a total amount of Rs. 4,23,77,899/- which includes principal of Rs. 3,22,03,517/- Plus Rs. 1,01,74,382/- as interest @ 24% per annum.

25. This Bench also thinks that the said dispute which is raised by the Corporate Debtor is a dispute raised after the issuance of the demand notice by the Petitioner.

a. The Hon'ble NCLAT in its judgment in Ahluwalia Contracts (India) Ltd v Raheja Developers Ltd has held that an application under Section 9 of the Insolvency and Bankruptcy Code 2016 can only be rejected if the dispute in relation to the claim pre-exists the date of receipt of demand notice or invoice issued under Section 8 of the I&B Code.

b. The Hon'ble Supreme Court in Mobilox Innovations Pvt Ltd v Kirusa Software (P) Ltd had observed that "What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be."

26. The application filed by the Operational Creditor is on proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.

27. Part 3 of the petition, the Petitioner has not proposed any name of IRP. Therefore, this Bench in terms of Section 16(3)(a) and Section 16(4) of the IBC, 2016 and on the basis of panel of Insolvency Professional(s) provided by IBBI, appoints Mr. Laxman Digambar Pawar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-N00015/2017-18/10104], having email address: cmapawar1@gmail.com, as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

28. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Operational Creditor for initiation of CIRP in prescribed Form5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt beyond the threshold limit against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

29. This application is filed under Section 9 of I&B Code, 2016, filed by Mr. Mukesh Sumermal Sanghvi, Sole Proprietor of Silicon Metal Industries, against R. D. Engineers (India) Private Limited, for initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

(a) 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 activity 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.
- (b) 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.
- (c) That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) 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.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- (f) That this Bench at this moment appoints Mr. Laxman Digambar Pawar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-N00015/2017-18/10104], having email address: cmapawar1@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.
- (g) Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
- (h) That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of

Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

- (i) The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.**

30. The Petition is hereby “Admitted”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

**SD/-
Chandra Bhan Singh
Member (Technical)**

**SD/-
Suchitra Kanuparthi
Member (Judicial)**



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