

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-375 (ND)/2017

In the Matter of

M/s Vedanta Limited

....Applicant

Vs.

M/s Sequal Alloys and Wires Private Limited

...Respondent

SECTION: U/s 9 of the IBC Code, 2016

Order Delivered on: 15.11.2017

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SH. S. K. MOHAPATRA, HON'BLE MEMBER (T)

For the Petitioner(s): Mr. Manish Garg and Ms. Samridhi, Advocates

For the Respondent(s): None

ORDER

As Per Ms. Ina Malhotra Member (J)

The present petition has been filed under the Section 9 of the Insolvency Bankruptcy Code 2016 (herein after referred to as the Code). The petitioner has alleged to be an Operational Creditor, being engaged in the business of manufacture and supply LME 'A' Grade Copper Cathodes and Cast Copper Wire Rods. The Respondent/ Corporate Debtor had placed an order for supply of the products after accepting the general terms and conditions. The goods were sent against 3 Letters of Credit drawn on Indian

Overseas Bank to be negotiated within a period of 120 days. The Operational Creditor supplied the required material, which is duly corroborated by the lorry receipts, pursuant to which they negotiated the letters of credit for collection of the amounts. At the request of the Corporate Debtor, the LCs were presented for negotiation through State Bank of India, Delhi Branch though initially they were restricted only to HDFC Bank. Upon amendment made to allow negotiation through any bank, the same was presented to the State Bank of India which did not discount them. On account of the technicalities, the letters of credit could not been encashed and the LCs lapsed in due course. The only recourse left to the Operational Creditor was to request the Corporate Debtor to pay the outstanding amounting to Rs. 32,67,395/-. Though the Corporate Debtor promised to renew the LCs, no further steps were taken to liquidate the aforesaid liability, constraining the Operational Creditor to invoke the provisions of the IBC. The Operational Creditor has raised the claim in terms of the general conditions for supply, which includes payment of interest @14% till 90 days and 18% from the 91st onwards.

The debt claimed by the Operational Creditor is detailed as under:-

Sr. No.	Purchase Order date and quantity	Invoice Value	Interest @14% till 90 days	Amount due till 90 th Day	Interest @ 18% from 91 days till 28.08.2017	Amount due till 28.08.2017
1	10.06.2016 for 2.5 MT Copper Cathode	11,91,997	54,865	12,46,862	1,94,377	Rs. 1,441,239
2	10.06.2016 For 2.8 MT Copper Wire Rod	9,46,535	43,567	9,90,102	154,350	Rs. 11,44,452
3	26.07.2016 for 2.4 MT Copper Cathode	9,96,047	34,384	10,30,431	151,290	Rs. 11,81,721
	TOTAL	Rs. 31,34,579		Rs. 32,67,395		Rs. 37,67,411

2. The present petition has been filed in the required format and has been instituted by a duly authorised person. Notice as mandated under Section 8 has been issued accompanied by copies of the invoices and the dishonoured LCs. The provision of Section 9 (3) (b) and (c) of the Code have also been complied with.

3. Upon notice being served, the Respondent put in appearance through Mr. S. K. Paul, Advocate. No written reply was filed despite opportunity granted. However, during the course of arguments, the prayer made by the Operational Creditor has been resisted on the grounds that the LCs were presented beyond the period of that tenure. The delay in negotiating them is placed at the door steps of the Corporate Debtor who asked them to negotiate the LCs from HDFC to SBI which turned down the request.

4. After hearing the arguments of both the parties, this Bench does not find any merit in the arguments advanced by the Respondents. Though the LCs expired due to technicalities of presenting them for clearance from one bank to another which was done at the request of the Corporate Debtor, there is no explanation as to why no steps were taken to liquidate the liability towards the goods accepted by them. The ground taken by the Respondent is bereft of any cogent explanation and cannot be construed as a dispute. Subsequent to the conclusion of the arguments, Mr. Deva Shekhar, Advocate appeared purporting that the settlement was in the offing, but the same was denied by the Ld. Counsel appearing for the petitioner.

5. Under such circumstances, the Operational Creditor is entitled to the prayer made in the present petition. The petition is therefore Admitted. A moratorium in terms of Section 14 of the Code is declared forthwith. In terms thereof, it is directed that the following acts are prohibited:-

- (1). (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitisation 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.*

(2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*


(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;*


Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

6. The Operational Creditor has not named any Interim Insolvency Professional. A reference is therefore be made to the IBBI for proposing the name of an IRP who shall take the steps as required under Sections 15, 17, and 18 of the Code.

To come up on 27.12.2017.

Order be communicated to both the parties.


(S. K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)