

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

CP (IB) 1765/MB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016se

In the matter of

M/s. Raj Infrastructure Development (India)
Private Limited

..... Operational Creditor
(Petitioner / Applicant)

v.

M/s. Lavasa Corporation Limited

..... Corporate Debtor
(Respondent)

Order Pronounced on : 30.08.2018

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :

Mr. S. R. Firodiya – Advocate for the Petitioner / Operational Creditor.

For the Respondent :

Mr. Kaustav Talukdar, Advocate a/w. Mr. Rohit Gupta, Advocate and Mr. Vikash Kumar, Advocate i/b. Lex Legal & Partners.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Petitioner / Applicant viz. Raj Infrastructure Development (India) Private Limited (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of “Operational Creditor” on 15.05.2018 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head “Particulars of Corporate Debtor” the description of the debtor is stated as, ‘M/s. Lavasa Corporation Limited’ (hereinafter as **Debtor**) having registered address at, No. 27 – 30, 11th Floor, 247 Park, Hincon

House, L. B. S. Marg, Vikroli (W), Mumbai, Maharashtra – 400083. It is informed that Debtor has undertaken activities of development of bigger residential township known as Lavasa Project near Pune City of Maharashtra.

3. Further under the Head “Particulars of Operational Debt” the total amount in default is stated as ₹ 2,94,93,147/-.

Background of the Case :

4. The Operational Creditor is a Company incorporated under the provisions of the Companies Act and engaged in the business of construction of road, building and infrastructure development.
5. Pursuant to the nature of business of construction activity, the Debtor after due discussion and deliberations with the Operational Creditor had placed following work orders :
- (a) Construction of NE Bottom Dam in Col-Grout Masonry in Mugaon village vide work order no. 3000632 dated 25.03.2010.
 - (b) Construction of accesses roads, storm water drains, retaining walls, toe walls for Portofino-EFGHI at Lavasa project vide work order dated 3001525 dated 05.05.2012.
 - (c) Grading work for Mugaon residential, Plot No. 121, Bldg. No. 7 & 8 at Lavasa project vide work order No. 3001476 dated 10.12.2012.
 - (d) Grading work for Mugaon residential, Plot No. 121, Bldg. No. 5 & 6 at Lavasa project vide work order No. 3001792 dated 02.01.2013.
 - (e) Grading work for Mugaon residential, Plot No. 121, Bldg. No. 1 & 2 at Lavasa project vide work order No. 3001794 dated 03.01.2013.
 - (f) Grading work for Mugaon residential, Plot No. 121, Bldg. No. 3 & 4 at Lavasa project vide work order No. 3001821 dated 11.01.2013.
 - (g) Production of RMC from 20 cum/Hr Batching Plant inclusive of spares, lubricants, plant, labour, operator etc. at Lavasa project vide work order No. 3001855 dated 31.01.2013.
 - (h) Grading work for Mugaon residential, Plot No. 101, Bldg. No. 15, 16 and 17 at Lavasa project vide work order No. 3001867 dated 02.02.2013.
 - (i) Grading work for Mugaon residential, Plot No. 121, Bldg. No. 9 & 10 at Lavasa project vide work order No. 3001979 dated 26.03.2013.
 - (j) Grading work for Hazardous waste store at Lavasa project vide work order No. 3002011 dated 12.04.2013.

- (k) Grading work for Delfino Apartment at Plot 40 at Lavasa Project vide work order No. 3002030 dated 23.04.2013.
 - (l) Construction of Shell and Core, Finishing, Plumbing and Electrical works for 02 Nos. of SK 4 type Vilas at Lavasa project vide work order No. 3002051 dated 04.05.2013.
 - (m) Providing and laying MS Pipe line works including Strainer, Flanges etc. complete from Mugaon reservoir to water network for Labour colony at Mugaon Village as per Bill of Quantities at Lavasa project vide work order No. 3002068 dated 15.05.2013.
 - (n) Monsoon maintenance works in Bhoini, Mugaon, Dasve, Dasve – Panshet vide work order No. 3002150 dated 24.06.2013.
 - (o) Compaction of dumped materials at Dumping yards at S. No. 43, Sports complex plot at Mugaon vide work order No. 3002196 dated 23.07.2013
 - (p) Supply of River sand vide PO No. 1002572 dated 07.06.2014.
6. The Operational Creditor has carried out the abovementioned works and had raised various Invoices / RA Bills from time to time. A voluminous evidences are on record.
7. Despite of raising the Invoices / RA bills and repeated follow-up by the Operational Creditor the Debtor had not paid any amount towards those Invoices to the Operational Creditor. Consequently, the Operational Creditor has issued a 'Demand Notice' U/s. 8 dated 24.02.2018 of the Code demanding the outstanding amount of debt of ₹ 2,94,93,147/- and annexed the copies of correspondences, Balance confirmation and the copies of the work orders.
8. The said notice was received by the Debtor however, not replied hence the Operational Creditor has preferred this Petition / Application praying for initiation of the CIRP against the Debtor Company.

Submissions of the Operational Creditor :

9. The Learned Advocate for the Operational Creditor has submitted that, pursuant to the work orders the Operational Creditor has provided his services to the Debtor and has also raised Invoices / RA Bills for the same. Copies of the Invoices are annexed with the Petition / Application.
10. It is further stated that all those Invoices / RA Bills are acknowledged by the Debtor but the Debtor had not paid any amount towards these Invoices / RA Bills.

11. It is further stated that the Operational Creditor had time and again requested the Debtor for making the payment however, nothing has come forth except promise to pay.

12. It is also stated that the Debtor Company vide its letter dated 21.07.2016 has confirmed and acknowledged the Debt amount of ₹ 2,85,42,280/- outstanding and payable to the Operational Creditor. The copy of the said letter is annexed with the Petition / Application, relevant portion of the said letter is extracted below :

"TO,
Raj Infrastructure Development (India) Pvt. Ltd.
410, Pride Silicon Plaza,
Senapati Bapat Road,
Next to Chatusringi Temple,
Pune – 411 016.

Sub: Balance Confirmation as on 31st March 2016

Balance of Raj Infrastructure Development (India) Pvt. Ltd. as on 31st March 2016 in our books of accounts is standing as below.

<i>Particulars</i>	<i>Amount</i>	
<i>RA Bills</i>	<i>8,933,414.32</i>	<i>Cr</i>
<i>Balance</i>		
<i>Retention</i>	<i>17,203,399.00</i>	<i>Cr</i>
<i>Deposit</i>		
<i>PBG</i>	<i>3,418,467.00</i>	<i>Cr</i>
<i>Deposit</i>		
<i>Hold</i>	<i>300,000.00</i>	<i>Cr</i>
<i>against</i>		
<i>final bill</i>		
<i>Adhoc</i>	<i>1,313,000.00</i>	<i>Dr</i>
<i>Advance</i>		
<i>Total</i>	<i>28,542,280.32</i>	

(Rupees Two Crore Eighty-Five Lacs Forty-Two Thousand Two Hundred Eighty & Thirty-Two Paise Only)

Please note Retention Deposit, PBG Deposit & Hold will be payable on submission of required documents and approval from project department.

Kindly confirm the same and return duly signed & sealed copy of this letter to us.

Please note that if no reply is received from you within Seven days, it will be assumed that you have accepted the balance shown above."

13. It is vehemently reiterated that since the payment was not forthcoming therefore the Operational Creditor had issued a Demand Notice as per the S. 8 of the Code claiming the outstanding amount of ₹ 2,94,93,147/- dated 24.02.2018. It is also stated that the said notice has been duly served upon the Debtor however there is no reply from the side of the Debtor. The copy of the said notice is duly annexed with the Petition / Application.
14. It is further stated that, since there is neither reply from the side of Debtor nor there is payment of outstanding amount therefore the Operational Creditor is left no other option but to file this Petition / Application before this Bench.
15. It is finally argued that since there is acknowledgement of Debt by the Debtor and there is no contravention or dispute to the Debt amount hence this Petition / Application may be Admitted for the commencement of the CIRP.

Submissions by the Debtor :

16. The Learned Advocate for the Debtor has appeared and stated that the Debtor is incurring losses in the said project therefore in great financial crunches.
17. Further stated that the accepted position is that the Debtor is unable to repay the amount claimed by the Operational Creditor. As the Debtor is in great financial difficulty hence there is nothing much to say particularly when the matter is to be decided under the provisions of the Insolvency Code. It is also stated that there is no dispute pertains to the claim amount.

Findings :

18. I have gone through the submissions of both the parties and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that the services had been rendered by him on the basis of work orders issued by the Debtor and pursuant to the same the various Invoices were raised. However, admittedly there is non-payment of Debt by the Debtor.
19. Considering these facts and circumstances, in my opinion the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
20. I have also perused the notice sent under Section 8 (2) of the Code and it is noticed that, the Debtor has received the same but has neither paid the outstanding amount

nor has disputed the claim. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt.

21. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant it is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.
22. The Operational Creditor has not proposed the name of Interim Resolution Professional. Consequentially, by exercising powers conferred by the NCLT Principal Bench vide letter 25/2/2018 - NCLT dated 03.01.2018 this Bench hereby appoints **Mr. Devendra Prasad (IBBI/IPA-002/IP-N00436/2017-18/11271)** having mail id : **dp195709@gmail.com**, R/at : **Flat 1304, A Wing, Raheja Ridgewood, Near Nesco, Goregaon (E), Mumbai, Maharashtra – 400063** as Interim Resolution Professional to initiate the CIRP.
23. 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.
24. 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.
25. 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.

26. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order. The Registry shall communicate this Order to the appointed Interim Resolution Professional.

27. Ordered Accordingly.

Dated : 30.08.2018

Avinash

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)