

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCP No. 1206/IBC/NCLT/MB/MAH/2017

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

In the matter of

M/s ISMT Limited

..... Operational Creditor
(Petitioner)

V.

M/s Fieldspares Sales & Services Pvt. Ltd.

..... Corporate Debtor
(Respondent)

Order delivered on: 13.09.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

1. Adv. Aviraj , For Petitioner

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. The Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in the capacity of "Operational Creditor" on 17th July, 2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code.
2. In the requisite Form, under the Head "Particulars of Operational Debt" the total Principal amount in default is stated to be ₹

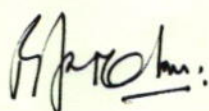


2,10,00,000/- and alongwith the interest @ 21% p.a. as claimed at Rs. 2,53,65,699/.

3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. Fieldspares Sales & Services Pvt. Ltd. having Registered office at, Bhaskar near MLA Hostel, civil lines Nagpur, Maharashtra 440001.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the Operational creditor needed supply of thermal coal from the debtor.
5. The Petitioner issued a Work Order dated 7th January, 2012, upon Debtor to supply 10,000 Metric Tons of coal to ISMT. This Work Order was based on the Offer to Supply coal to ISMT, bearing no. 006/FSS/OFC-2011 dated 7th January, 2011, raised by Fieldspares Sales & Services Pvt. Ltd. to ISMT informing that Fieldspares was prepared to enter into a contract to supply coal of required Specifications to ISMT.
6. The Petitioners say that as per the terms of the said Work Order, ISMT had to pay 50% advance amount of Work order and therefore, ISMT discharged its contractual obligations by advancing 50% of the contract price i.e. Rs. 2,60,00,000/- (Rs. Two Crores Sixty Lakhs Only) for supply of the materials.
7. The said advance amount was secured by Fieldspares by providing Post Dated Cheque of Rs. 1,25,00,000/- as additional security and Bank Guarantees of Rs. 50,00,000/- as collateral security. In spite of advance payment made by ISMT, Fieldspares did not supply the coal to ISMT, and refrained to reinstate the expired securities of PDCs and Bank guarantees, thereby breached the Work Order.
8. It was submitted that, the Petitioner made several reminders to supply the coal and called for refund of the advance amount but Corporate debtor failed and unable to pay debt to the Operational creditor.

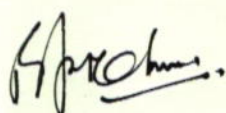
Approved:

9. The Director of Fieldspares Sales & Services Pvt. Ltd. by email dated 29th April, 2014 and 17th May, 2014 and also by letter dated 9th March, 2015 have admitted the liability to refund the advance amount into ISMT's bank account.
10. The last payment of Rs. 30,00,000/- (Rs. Thirty Lakhs Only) was paid by the Corporate debtor to the Operational Creditor on 24th January, 2014.
11. Hence, on account of non-payment of the balance amount, the Petitioner has issued a Demand Notices under Insolvency and Bankruptcy Code, 2016 dated 4th May, 2017 by Speed Post to the Registered Address, Corporate Office Address of Corporate Debtor. The tracking report of the Speed Post to this effect, is attached to the Application/Petition.
12. It was submitted that, the Corporate Debtor has not raised any dispute/objection to the Demand Notice of the Operational Creditor after filing of this Application under I&B Code, 2016.
13. The statement of bank account of the Operational Creditor showing that, in the account of the Operational Creditor no payment has been made by the Corporate Debtor after 24th January, 2014 till date.
14. The non-appearance or non-communication of the Corporate Debtor has thus established that it has nothing to say in defence in respect of the impugned outstanding amount.
15. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the goods to be supplied and invoices were raised to claim the amount



but there was non-payment of Debt on the part of the Corporate Debtor.

16. We have perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and if the Respondent 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.
17. 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 Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner we are of the conscientious view that this Petition deserves '**Admission**'. Hence, **Admitted**.
18. The Operational Creditor has not proposed the name of Insolvency Professional. This Bench hereby directs the Registry to refer this matter alongwith this order to Insolvency and Bankruptcy Board of India to appoint the IRP considering the debt amount claimed by the Operational Creditor.
19. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order 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.
20. 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.



21. That the Interim Resolution Professional shall perform the duties as assigned 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.
22. The IRP so appointed shall also comply the other provisions of the Code including section 15 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.
23. The Petition is "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 13.09.2017

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