

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
C.P. NO. 20/I & BP/NCLT/MAH/2017

**Coram:** B. S.V. Prakash Kumar, Member (Judicial) &  
V. Nallasenapathy, Member (Technical)

In the matter of under Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

Between

M/s. Essar Projects India Ltd. ... Applicant

V/s.

M/s. MCL Global Steel Pvt. Ltd. ... Corporate Debtor

**For Applicants:** Mr. Ankoosh Mehta Adv. a/w Adv. Aviral Sahai i/b, Cyril Amarchand Mangaldas Advocates for the Applicant/Petitioner.

**For Corporate Debtor:** None present.

**ORDER**

*(Heard and pronounced on 06.03.2017)*

The Operational Creditor namely Essar Projects India Ltd (EPIL) has filed this Operational Creditor Petition stating that the Corporate Debtor Company MCL Global Pvt. Ltd (MCL) has defaulted in repaying a sum of ₹9,10,60,788/- and hence this Petition under section 8 & 9 of the I&BP Code r/w Rule 6 of Insolvency and Bankruptcy (Application to adjudicating authority) Rules, 2016 for initiation of Corporate Insolvency Resolution process.

2. The petitioner says that the corporate Debtor (MCL) and the Petitioner (EPIL) entered into a Memorandum of Understanding on 27.6.2013 wherein MCL had appointed EPIL to carry out civil work, structural fabrication and erection of building and sheds and the erection of technological equipment as part of construction of 0.2 MTPA Steel Melt Shop Complex at Pithampur, Dist. Dhar, Madhya Pradesh. EPIL raised

invoices for the works successfully completed by November 30, 2014 which was agreed between the parties and a substantial portion of the invoice raised currently remains outstanding. It is further stated that a sum of ₹6,72,03,097/- is due towards unpaid invoices and a sum of ₹2,38,57,691/- interest at the rate of 18% p.a. as on 30.11.2016 aggregating to ₹9,10,60,788/- The details of invoices and the amount due along with interest is enclosed as Annexure – E to the Petition.

3. The EPIL has sent many letters to MCL asking them to make the repayment, in furtherance of it, EPIL, on 28.12.2016, has issued a statutory notice against MCL under the Bankruptcy Code, 2016 attaching the invoices with a demand for repayment of a sum of ₹9,26,40,255/-. In response to it, MCL on 03.01.2017, replied saying that the contents of the notice are incorrect, misleading, therefore, denied and further added that the remedy under section 8(1) and 9 of I&BP Code, 2016 are not available to EPIL to institute corporate insolvency proceedings for the reason that, MCL seriously disputes the amount, because there is a dispute regarding the quality of construction, the timeline of construction, loss due to delay in construction, work completion certificate is also not issued by MCL, apart from this, outstanding bills have not been verified and satisfied, therefore MCL further says, there are serious disputes about enforceability of the Contract between them and the amount to be recovered is not admitted by MCL as alleged by EPIL, etc. Subsequently, on 30.01.2017, EPIL sent a revised demand notice to MCL demanding a sum of ₹9,10,60,788/- comprising the invoice amount ₹6,72,03,097/- and the interest at the rate of 18% p.a. on the dues upto 30.11.2016 which works out to ₹2,38,57,691/-, in total ₹9,10,60,788/-. The said notice also discloses that the date of invoice, due date, invoice Number, amount outstanding, interest and the total outstanding.

4. The Petition clearly reveals that there is a debt as defined in Section 3(11) of I&B Code 2016, and also there is default in this case within the



meaning of Section 3(12) of I&B Code, 2016. The Operational Creditor, on the occurrence of default, issued notice u/s.8(1) to the Corporate Debtor on 28.12.2016 which was received by it on 29.12.2016. The reply of the Corporate Debtor dated 03.01.2017 has raised the dispute, which was never raised before the issuance of the statutory notice by the Operational Creditor. Here, it is to be noted that the invoices were raised on 04.07.2014, 05.08.2014, 01.10.2014 & 10.01.2015, and that the Corporate Debtor has not raised objection disputing the existence of debt nor filed any civil suit or other proceedings against the Operational Creditor in respect to the default amount mentioned here. However, when the statutory notice u/s.8(1) was issued on 28.12.2016, the Corporate Debtor disputed the liability as mentioned supra.

5. Since the Debtor raised the dispute in the reply to notice u/s 8, let us see the relevant provisions of Sections 5 (6) and 8 of I & B Code:

*Section 5(6) provides that "dispute" includes a suit or arbitration proceedings relating to— (a) the existence of the amount of debt;*

*(b) the quality of goods or service; or*

*(c) the breach of a representation or warranty;*

*8(1). An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operation creditor –*

*(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.*

*(b) the repayment of unpaid operational debt .....*"

6. The Petitioner Counsel submits, to say that dispute is in existence, mere mentioning in the notice that dispute is in existence in relation to impugned debt is not sufficient, the corporate debtor has to prove that the Company already raised such dispute either in court proceeding or Arbitration before receipt of notice u/s 8 of the Code, here no such proceeding being pending before any court of law or in Arbitration proceeding before receipt of the notice supra, the debtor company merely mentioning dispute in the reply to the notice u/s. 8 will not amount to dispute in existence, hence the counsel for the petitioner prays this Bench to admit the petition by construing no dispute is in existence against the debtor as on the date of receipt of notice u/s. 8 of the Code.

7. Since the Corporate Debtor, as stated by the Petitioner, admitted issuing invoices in relation to the amount mentioned, the grievance remained in the reply would be regarding quality of construction, the timeline of construction, loss due to delay in construction etc. Since the same is not disputed before any court of law before receipt of notice issued u/s. 8 of the Code, the dispute raised in the corporate debtor reply to the notice u/s. 8 of the Code cannot be treated as dispute in existence at the time of receipt of the notice u/s 8 for two reasons, one – due to admission of raising invoices and two – due to raising it as dispute in the reply only after notice u/s 8 has been issued.

8. On perusal of definition of dispute u/s 5(6) and on perusal of section 8 (2)(a), it is evident that “dispute in existence” means and includes raising dispute in court of law or Arbitral Tribunal before receipt of notice u/s 8 of the Code.

9. The Corporate Debtor has named CA Hashmukh Bhavanji Dedhia, Level 19, Sunshine Tower, Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013, Mah. Email: hasmukh@kkc.in, Registration No.IBB/IPA-



01/2016-17/64 as Interim Resolution Professional and also obtained his consent and there are no disciplinary proceedings pending against him.

10. As to the Petition filed by the Operational Creditor, this Bench, on perusal of this documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in making payments as mentioned above, the disputes raised by the Corporate Debtor are not sustainable, therefore the petition under sections 8 & 9 are taken as complete, accordingly this Bench hereby admits this petition declaring Moratorium with the directions as mentioned below:

1. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. 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.

3. That 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. That the order of moratorium shall have effect from 6.3.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

5. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

6. That this Bench hereby appoints CA Hashmukh Bhavanji Dedhia, Level 19, Sunshine Tower, Senapati Bapat Marg, Elphinstone Road, Mumbai - 400013, Mah. Email: hasmukh@kkc.in, Registration No.IBB/IPA-01/2016-17/64 as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. Accordingly, this Petition is admitted.

Sd/-

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

Sd/-

**V. NALLASENAPATHY**  
Member (Technical)