

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 1591/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of
Skyway RMC Plants Pvt. Ltd.
.... Petitioner

v/s.

Trans Tech Turnkey Pvt. Ltd.
.... Respondent

Order delivered on: 29.01.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Amol Doisode, Advocate
For the Respondent : None

Per V. Nallasenapathy, Member (Technical)

ORDER

This Company Petition is filed by Skyway RMC Plants Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Trans Tech Turnkey Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that Corporate Debtor failed to make payment to the extent of Rs.87,06,493, the principal being Rs.48,01,278 and the interest being Rs.39,05,215 as on 31.08.2017. The Petitioner further stated that it is entitled for further interest @ 24% p.a. on Rs.48,01,278 from 01.09.2017 onwards, by invoking the provisions of Sections 8 and 9 of I & B Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Demand Notice issued by the Petitioner on 12.09.2017 in Form 3, at serial no.2 discloses as below:

"2.	<p>Amount claimed to be in default and the date on which the default occurred (attach the working for computation of default in tabular form).</p> <p>Rs.87,06,493/- (Rupees Eighty Seven Lakhs Six Thousand Four Hundred Ninety Three Only) due along with future interest @ 24% p.a. on Rs.48,01,278/- (Rupees Forty Eighty Lakhs One Thousand Two Hundred Seventy Eight Only) from 1st September, 2017 payment or realization as per particulars of claim at Exhibit 'E' hereto".</p>
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The Exhibit 'E' as stated in the Demand Notice at column 2 is given as below:

Particulars of Claim

(a)	<p>Being the amount due and payable by the Company to the Petitioner towards the goods supplied by the Petitioner between 24th June, 2013 and 13th February, 2014, after adjusting a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) received by the Petitioner by RTGS on 12th April, 2014.</p>	₹48,01,278.00	
(b)	<p>Being the interest payable at the rate of 24% p.a. on Rs.48,01,278/- from 13th April, 2014 till 31st August, 2017.</p> <p style="text-align: right;">Total</p> <p>Future interest @24% p.a. on Rs.48,01,278/- from 1st September, 2017 till payment or realization.</p>	<p>₹39,05,215.00</p>	<p>₹87,06,493.00</p>

The particulars given in the Demand Notice as depicted above does not indicate the date of default. Hence, the Demand Notice issued by the Petitioner is not as prescribed in Section 8(1) read with Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016.

3. The statement of account produced by the Petitioner in Exhibit – B reveals that the Invoices were raised between 24.6.2013 to 13.02.2014, the last payment was received by the Operational Creditor on 12.4.2014, this Petition is filed on 13.11.2017, and hence hit by the Law of Limitation in view of the fact that the Petition was filed after three years from the last payment which was on 12.4.2014. However, the Petitioner to overcome the issue of Limitation filed a letter dated 27.10.2015 addressed by the Corporate Debtor to its Debtor saying that a sum of ₹48,01,278/- is payable by the Corporate Debtor to the Operational Creditor and requested its Debtor namely, Project Manager, Power supply to BKC receiving station, Mumbai, to pay directly to the Operational Creditor and debit the same in the account of the Corporate Debtor. However, not even a copy of the said letter is addressed to the Operational Creditor herein, but the operational creditor says that the letter is received by it from the corporate debtor. In this circumstances, unless otherwise oral evidence is adduced the said letter cannot be taken as a document in support of acknowledgment of liability by the corporate debtor. Hence, the claim is barred by limitation.

4. In the light of the above discussions, this Petition is dismissed without costs.



Sd/-

V. NALLASENAPATHY
Member (Technical)



Sd/-

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