

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCP No. 908/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. Mahavir Express Logistic

..... Petitioner/Operational Creditor

V.

M/s. Hitech Engineering Corporation India Pvt.
Ltd.

..... Respondent/Corporate Debtor

Order delivered on: 17.01.2018

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner:

Mr. Haresh Shivdasani, Advocate, Authorised Representative for Petitioner.

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

ORDER

1. This is a transferred Petition from the Hon'ble High Court. The Petitioner had earlier moved before the Hon'ble High Court for "Winding Up" under the old provisions Section 433, 434 of Companies Act 1956. On transfer the creditor has filed this Petition on 4th September, 2017 on Form no. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Financial Creditor.
2. In the requisite Form, under the Head "Particulars of Operational Debt" the total amount in default is stated as Rs. 1,52,73,242/- (Rupees One Crore Fifty-Two Lakh Seventy-Three Thousand Two Hundred Forty-Two only).
3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. Hitech Engineering Corporation India Pvt. Ltd. having Registered office at, G-17, MIDC, Baramati - 413133, Dist. Pune, Maharashtra.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the operational creditor/Petitioner providing the service of delivery of vehicles/trailers as per Respondent's transportation needs.
5. The Petitioner had satisfactorily performed the agreed contract for delivery of vehicles/trailers as per Respondent's transportation needs duly approved by later's purchase department and said undertaking of services is within personal knowledge of Mr. Shrikant Deshmukh (Director).

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6. Further there is Bank statement annexed, according to which in respect of the services provided, the debtor had made the payments in the past.
7. On 12th March, 2015 the ledger account of the Petitioner has duly recorded, accounted, disclosed and declared an outstanding of Rs. 1,41,69,781/- towards the Respondent on account of the transport bills raised during the relevant period 01.04.2014 to 25.02.2015 after adjusting the payment received in the bank accounts and in cash too.
8. After that, in Email communication alongwith the Reconciliation a request had been sent to the Respondent pursuant to the receipt of Credit statement dated 12th March, 2015 which was upto period ending February, 2015 wherein some of the bills of the Petitioner were 'not reflected'. The said mistake was also brought to the knowledge of the Respondent. The impact of such non-settlement of account adversely affected Petitioner's financial position. This communication was sent to the audit team as well as to said Mr. Shrikant Deshmukh (Director).
9. Respondent's audit team sent the 'Statement of Account' to the Petitioner through an email dated 17th April, 2015 wherein having 'incorrectly' reflected the debit balances for the projects namely Fabtech Sugar and Ruampol which fact too was brought to the attention of said Mr. Shrikant Deshmukh on 20th April, 2015 through an email sent by the Petitioner with a copy to the audit team. The total outstanding balance Rs. 1,59,25,750/- was duly informed.
10. It is submitted that, the Corporate Debtor has admitted the liability by an email dated 5th May, 2015 stating that, "As discussed with you we here with confirm you that we will release payment on or before 13th May, positively."
11. Pursuant to the above confirmation the Respondent issued cheque no. 039434 of HDFC Bank dated 18th May, 2015 for an amount of Rs. 10,00,000/- in partial discharge of its admitted liability. However, the cheque got dishonoured due to 'insufficient funds'.
12. Hence, on account of non-payment of balance amount i.e. Rs. 1,59,25,750/- (Rupees One Crore Fifty-Nine Lakh Twenty-Five Thousand Seven Hundred Fifty only), the Petitioner has issued a Demand Notice under section 8 on prescribed Form No. 3 on 5th April, 2016 by post to Respondent Company on the Registered Address of Debtor. The acknowledgement to this effect, is attached to the Application/Petition. No dispute/objection has been raised from the side of the debtor to the Demand Notice of the Operational Creditor.
13. The statement of bank account of the Operational Creditor affirmed that, in the account of the Operational Creditor no payment has been received after 15th May, 2015 from the Corporate Debtor till date.
14. **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.

15. 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.
 16. 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**'.
 17. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Laxman Digambar Pawar, having address at, Flat No. 16, First Floor, Bhakti Complex, Behind Dr. Ambedkar Statue, Pimpri, Pune – 411018, Maharashtra having Registration no. IBBI/IPA-003/IP-N00015/2017-18/10104 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
 18. In Form No. 2 dated 2nd September, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept his appointment in the above case. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.
 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. In Form 5, the total amount in default stated as Rs. 1,52,73,242/-. But, in the Petition the said amount stated as Rs. 1,59,25,750/-. The Tribunal directed to IRP to call for the correct position of the Debt due and after reconciliation commence the Corporate Insolvency Resolution Process as prescribed under The Code.
 23. 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.
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24. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

Bhaskara Pantula Mohan
Member (J)

Sd/-

M. K. Shrawat
Member (J)

Dated : 17th January, 2018

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