

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP(IB) No.1739/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Ingenia FZE
[Registration No.DAFZ/1214]

...Operational Creditor

Versus

Infra Industries Limited
[CIN: L25200MH1989PLC054503]

...Corporate Debtor

Order Delivered on 12.12.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr. Shyam Kapadia a/w Mr. Jay
Zaveri i/b Crawford Bayley and
Co.(Advocates)
For the Corporate Debtor : None Present

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by Ingenia FZE ("the

Operational Creditor"), a company registered in Dubai and represented by the Authorised Manager, Mr. Dipak Pujari, on the basis of Power of Attorney dated 27.02.2019 (attached to the petition at pp.191-199) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Infra Industries Limited ("the Corporate Debtor").

2. The Corporate Debtor is a listed public company limited by shares and incorporated on 05.12.1989 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is L25200MH1989PLC054503. Its registered office is at 4, B-1, 4th floor, Plot 15A, Court Chambers, Vitthaldas Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400020. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 16.04.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of USD 42,358/- (USD forty-two thousand three hundred and fifty-eight only) [Rs.29,17,619/- as per the conversion rate of Rs.68.88 on

11.04.2019] as Principal amount inclusive of interest upto 11.04.2019. The date of default is stated to be 23.10.2017.

4. The case of the Operational Creditor is that the Operational Creditor supplied Petrochemical and Polymer products to the Polymer Producers and Plastic Manufactures across Asia, Africa, Middle East and Australia. The Operational Creditor supplied the said products to the Corporate Debtor as per the Purchase Order No. Arav/RM/2017-18/0013 dated 28.06.2017 for the sum of USD 35,700/- (**Annexure '1'** to the petition at p.16). The Operational Creditor raised the invoice dated 12.07.2017 (**Annexure '2'** to the petition at pp.17-18) which was payable within ninety days from the date of bill of lading. The Ocean Bill of Lading dated 26.07.2017 has been placed on record (**Annexure '3'** to the petition at p.20). The Operational Creditor further stated that the as agreed between the parties if the Corporate Debtor failed to make the payment within ninety days then interest would be charged @ 1% per month (12.7% p.a.) (**Annexure '2'** to the petition at p.19).
5. The Operational Creditor stated that the Operational Creditor sent an email dated 04.10.2017 to the Corporate Debtor

reminding the maturity date of the said invoice and requested to make an arrangement for payment (**Annexure '4'** to the petition at p.22). The Operational Creditor further stated that the Operational Creditor sent several emails from 24.10.2017 to 06.11.2017, requesting to pay due amount and update on remittance (**Annexure '5-10'** to the petition at pp.23-28).

6. The Operational Creditor has submitted that the Corporate Debtor has sent an email dated 06.11.2017 regarding payment invoice dated 12.07.2017, raised by Operational Creditor and stated as "we will be making the remittance on or before 18.11.2017" (**Annexure '11'** to the petition at p.29). The Operational Creditor further stated that again Corporate Debtor sent an email dated 17.11.2017 stating as "payment will be made in next week" (**Annexure '13'** to the petition at p.31). Again, Corporate Debtor sent an email dated 01.12.2017 and 15.01.2018 stating as "payment will be made on or before 15.12.2017" (**Annexure '16'** to the petition at p.34) and on 15.01.2018 to the effect that "we will be making the payment by end of January." (**Annexure '19'** to the petition at p.37).

7. The Operational Creditor stated that after repeated requests and reminders the Corporate Debtor not paid amount due and stated that the Corporate Debtor failed to make the payments.
8. Thereafter, the Operational Creditor had served a Demand Notice in Form 3 dated 30.11.2018 to the Corporate Debtor (**Annexure '33'** to the petition at pp.51-93) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply to the Demand Notice dated 26.12.2018 stating inter alia that "we confirm that we will make the payment. However, we need time until June 2019. We also request you to kindly issue a confirmation letter confirming that the payment can be made in instalments till June 2019. This confirmation is required to be submitted to the Reserve Bank of India for the purpose of processing the foreign Exchange Remittance for payment being made outside India.
9. The Operational Creditor sent one more letter to the Corporate Debtor dated 04.02.2019 to intimate that the Operational Creditor was going to take necessary steps and file the claim Application before this bench (**Annexure '36'** to the petition at pp.100-101).

10. In response to the said letter of 04.02.2019, the Operational Creditor stated that the Corporate Debtor sent one more letter dated 19.02.2019 stating that Corporate Debtor wants to maintain the Business Relationship with Operational Creditor and undertake to make payment of said amount by June 2019 (**Annexure '37'** to the petition at pp.102-104). The Operational Creditor sent a reply to said letter of Corporate Debtor on 01.03.2019 and stated that no further extension granted with regard to existing debt amount (**Annexure '38'** to the petition at pp.105-106).
11. There has been no further response from the Corporate Debtor.
12. The Copy of the Petition was served on the Corporate Debtor on 21.05.2019. Court Notice dated 14.06.2019 was also served on the Corporate Debtor. Necessary affidavits of service in this regard have been placed on record. On various dates when the matter was taken up for hearing, Mr. Jay Bhatia, advocate appeared on behalf of the Corporate Debtor. On 20.08.2019, counsel for the Corporate Debtor submitted that the Corporate Debtor intends to settle the matter. Time was granted. On

06.09.2019, 11.09.2019 and 26.09.2019 time was extended for reporting settlement.

13. The Operational Creditor has filed an affidavit under section 9(3)(b) of the IBC to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Further the Operational Creditor states that there is no dispute with respect to operational debt (attached to the petition at pp.110-111).
14. The Operational Creditor submitted the bank statement of HSBC bank stating that no credit of amount due from the Corporate Debtor is deposited into the account of the Operational Creditor during the period 01.07.2017 to 31.12.2018.
15. We have heard the Learned Counsel for the Operational Creditor and perused the record.
16. It is noticed from the Petition that there is no pre-existing dispute regarding the unpaid operational debt and the principal amount of USD 42,358/- as principal amount as per invoice dated 12.07.2017 including interest @12.7% p.a and date of

default is 23.10.2017. Thus, the existence of both debt and default is established.

17. On 14.10.2019 CS Vijay Tiwari authorized representative appeared on Behalf of Corporate Debtor as proxy and stated that he was instructed to carry a demand draft for Rs.3,00,000/- showing bonafide to the Operational Creditor which has not been accepted by the Operational Creditor. Therefore, it is held that the Corporate Debtor does not dispute its liability and has defaulted in the payment to the operational creditor.
18. The Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
19. The Operational Creditor has proposed the name of Mr. Rajan Deshraj Agarwal, Registration No. IBBI/IPA-001/IP-

P01069/2017-18/11760, as Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 dated 05.04.2019 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration (attached to the petition at pp.112-113).

20. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB)No.1739/MB/C-IV/2019** filed by **Ingenia FZE**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Infra Industries Limited [CIN: L25200MH1989PLC054503]**, the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be

terminated or suspended or interrupted during the moratorium period;

- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Rajan Deshraj Agarwal, Registration No. IBBI/IPA-001/IP-P01069/2017-18/11760,** having

address at Office No. 404, Laxmi Mall, Laxmi Industrial Estate, New Link Road, Andheri (W), Mumbai-400053, Email: adv.ca.rahjan@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than **two days** from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

12.12.2019

Sd/-

RAJASEKHAR V.K.
Member (Judicial)