

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH

C.P. (IB) No. 2361/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016
In the matter of:

Agarwal Coal Corporation India Pvt. Ltd.
2, Matra Kripa, Chameli Park,
Near Goyal Nagar, Indore – 452016

... Petitioner

V/s

Shri Tradco Deesan Private Limited
6, Anantwadi, 4th Floor, Bhuleshwar,
Mumbai 400002

...Corporate Debtor

Order Dated: 16.07.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Petitioner: Mr. V.N. Dubey a/w Adv. Tejal Chavan

For the Respondent: Adv. Piyush Raheja a/w Adv. Rajeev Carval
a/w Adv. Tejas Agarwal a/w Adv. Ankeeta
Choradia i/b IC Legal.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Petition is filed by Agarwal Coal Corporation India Pvt. Ltd. ("Petitioner") against Shri Tradco Deesan Private Limited ("Corporate

Debtor”) for initiating Corporate Insolvency Resolution Process (“CIRP”) as provided under section 9 of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with rule 6 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 (“Rules”) alleging that the Corporate debtor defaulted in making payment to the extent of Rs. 21,82,821 /-.

2. Petition reveals that the petitioner supplied coal to the Corporate debtor and raised invoice No. STC/01/18/4042 dated 22/10/2018 for Rs. 17,74,070/- and invoice No. STC 01/18/4135 dated 31.01.2018 for Rs. 20,88,174/- and after adjustment of the on account payment received from the Corporate Debtor to the extent of Rs. 16,79,423/- , there is an outstanding of Rs. 21,82,821/-. The petitioner issued a demand notice in Form 3 enclosing the above said invoices and demanded the said amount from the Corporate Debtor. The petitioner filed an affidavit under Section 9 (3) (b) of the Code stating that the Corporate Debtor has not raised any dispute of the unpaid operational debt.

3. The Corporate Debtor filed reply to the petition and raised the following contentions:-

a. No amount is payable by the Corporate Debtor to the petitioner. On the contrary the petitioner is liable to pay a sum of Rs. 95,70,000/- for loss and damages suffered by the Corporate Debtor on account of short supply of coal by the petitioner as expressly the petitioner has not supplied the agreed quantity.

b. There are pre existing disputes between the parties relating to short supply of coal which lead to reduction in production

capacity and resultantly the Corporate Debtor suffered losses and damages.

- c. The petitioner malafiedly suppressed its admitted failures under various purchase orders and admitted his defects and defaults.
- d. The invoices as demanded in the demand notice were never been provided/issued to the Corporate Debtor and the Corporate Debtor came to know about these invoices only at the time of receipt of the demand notice from the petitioner and coal referred in the invoices were not received by the Corporate Debtor and the invoices are fraudulent invoices.
- e. Even a perusal of GSTIN portal maintained by the central/state government under the Goods and Services Tax Act, 2017 bore no detail or mention of any such invoice raised by the petitioner on the Corporate Debtor.
- f. The perusal of the Ledger account of the petitioner shows that there were credit / debit entries in respect of another entity of the petitioner group namely Agarwal Transport Corporation Private Limited (ATCPL) but the Corporate Debtor is unaware of the dealings between the petitioner and Agarwal Transport Corporation Private Limited (ATCPL).
- g. On 29/06/2017 the petitioner debited the account of the Corporate Debtor with Rs. 12,32,816/- which is reflected in the statement of account enclosed to the amended Form 5 filed by the petitioner. However, previously the petitioner sent an Email on 30/06/2017 enclosing the statement of account of the Corporate Debtor in the books of the petitioner

wherein the said debit entry was missing and the said Email is enclosed to the reply as Exhibit "L" at page 44. It is submitted that this shows the fraud played by the petitioner on the Corporate Debtor.

- h. Since there are pre-existing disputes in respect of the quality & quantity of the goods supplied, the nature of transaction between the parties does not fall within the definition of operational debt as defined under the Code. The petitioner has not supplied the full quantity of coal as ordered in the purchase orders and due to this the Corporate Debtor, who is engaged in the continuous manufacturing process, faced production loss.
- i. On 30/10/2017 the petitioner addressed an Email to the Corporate Debtor admitting that around 450 Metric Tons balance quantity is yet to be supplied and requested the respondent to short close the purchase order No. 2. It is submitted that the Corporate Debtor did not accept the said request, since the petitioner accepted a purchase order (PO 3) just one day before the intimation of short supply and this has been done by the petitioner in view of the fact that the previous purchase orders were over rated as compared to the purchase order No. 3.
- j. Again the Corporate Debtor failed to complete the supply of coal in purchase order No. 1,2 & 3 which lead to huge loss to the extent of Rs. 95,70,000/-. The Corporate Debtor has made payment to the petitioner to the tune of Rs. 3,57,13,225/- against purchase orders No. 1,2,3,4 & 5,

despite the fact that the Corporate Debtor failed and neglected to supply required quantity of coal as referred in the purchase orders.

4. Heard the counsel on either side. This Bench has gone through the pleadings of both sides. The following are the observations of this Bench:-

- a. The claim in this petition arises out of supply of goods by the petitioner to the corporate debtor and hence debt claimed in this petition is an operational debt as defined under section 5(21) of the Code.
- b. The contention of the Corporate debtor that the loss suffered by them to the extent of Rs. 95,70,000/- on account of short supply of goods has to be taken into account while deciding this petition and in such a eventuality the Petition has to be dismissed is a far fetching argument considering the fact that the proceedings under the Code is of summary nature.
- c. Even though the Corporate Debtor submits that there are pre existing disputes, no record/material has been produced by the Corporate Debtor in support of his contention and hence the submission in this aspect cannot be accepted and the same is rejected.
- d. Mere short supply of goods will not fall within the definition of dispute as provided under section 5 (6) of the Code which reads as below:

*'dispute' includes a suit or arbitration proceedings
relating to-*

- a. *The existence of the amount of debt;*
 - b. *The quality of goods or services; or*
 - c. *The breach of a representation or warranty;*
- e. The petitioner explained that the debiting of account to the extent of Rs. 12,32,816/- on 29/06/2017 was on account of some debit notes raised by the petitioner for certain payments made by a sister concern of the petitioner, namely Agarwal Transport Corporation Private Limited, cannot be accepted as the said amount is not agreed by the Corporate Debtor, which was also missing in the statement of account sent by the petitioner to the Corporate Debtor previously and hence the said amount has to be deducted from the amount claimed of Rs. 21,82,821/- and after this adjustment the claim has to be scaled down to Rs. 9,50,005/-.
- f. The submission of the Corporate Debtor that the abovesaid debit entry to extent of Rs. 12,32,816/- made on 29/06/2017 by the petitioner should be a credit entry instead of debit, is wholly baseless and is rejected.
- g. The submission of the Corporate Debtor that the two invoices claimed in the demand notice / petition were not received by them is unacceptable for the following reasons:
- The petitioner's explanation that the GSTIN portal of the central/state government, as shown in exhibit J of the reply filed by the corporate debtor, that the split invoices for serial number 254 to 267 relates to the consolidated invoice dated 22.01.2018 bearing

number STC/01-18/4042 and the split invoices for serial number 268 to 284 relates to the consolidated invoice dated 31.01.2018 bearing number STC/01-18/4135, is quite convincing and the same is accepted.

- Further the Corporate Debtor has made payments to the petitioner to the extent of Rs. 1,90,69,826/- (Rs. 25 Lakhs on 23/1/2018, Rs. 25 lakhs on 6/3/2018, Rs. 25 lakhs on 5/4/2018, Rs. 26,17,272/- on 5/5/2018, Rs. 19,28,400/- on 24/5/2018, Rs. 40,24,154/- on 18/6/2018, Rs. 10,00,000/- on 19/7/2018, Rs. 10,00,000/- on 21/1/2018, Rs. 10,00,000/- on 21/9/2018.), as reflected in the ledger account, after the raising the abovesaid two invoices. If the contention of the Corporate Debtor that the two invoices are not really there, it will lead to a situation where the Corporate Debtor has made substantial excess payment to the petitioner over and above the balance due. Hence on this count also, the contention of the corporate debtor that two invoices were not issued, fails.

5. The above discussion clearly shows that the Corporate Debtor is liable to pay sum of Rs. 9,50,005/- to the petitioner in view of the fact that the amount debited to the extent of Rs. 12,32,816/- has to be excluded from the claimed amount of Rs. 21,82,821/-. The corporate debtor defaulted in making payment to the petitioner.

6. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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.

(b) 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.

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) that the order of moratorium shall have effect from 16.07.2020 till the completion of the CIRP 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.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr. Fanendra Harakchand Munot, 6th Floor, Mafatlal House Building, H T Parekh Marg, Backbay Reclamation, Mumbai-400020, having Registration No. IBBI/IPA-001/IP-P00515/2017-2018/10916 as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

7. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

- SD-

V. Nallasenapathy
Member (Technical)

- SD/-

Suchitra Kanuparthi
Member (Judicial)