

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

CP (IB) No.978/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

Rooshay Electricals

...Operational Creditor

v/s.

**Ebrahim Essa Developers Private
Limited**

(CIN U45202MH2010PTC206044)

...Corporate Debtor

Order Delivered on: 11.04.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Sahil Mahajan, Advocate.

For the Respondent:

Mr. Shariq Nachan, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Rooshay Electricals, (through its proprietor Mr. Mohamed Rafi I. Shaikh, ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP)

against Ebrahim Essa Developers Private Limited (CIN U45202MH2010PTC206044), (“Corporate Debtor”).

2. The Corporate Debtor is a company incorporated on 28.07.2010 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 115, Dataawalla Estate, Essa Aziz Compound S.V. Road, Jogeshwari(West), MUMBAI 400102. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority claiming that the Corporate Debtor failed to make payment of a total sum of Rs.42,28,463 /- (Rupees forty-two lakh twenty-eight thousand four hundred sixty-three Only). The date of default is 20.10.2016. (within the 7 days from the date of receipt of invoice)
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is a Proprietorship Firm and Mr. Mohammad Rafi I. Shaikh is a Proprietor of the applicant. The Operational Creditor is carrying the business of the electrical work.
 - b) The Corporate Debtor has appointed the Operational Creditor for carrying the Electrification Work at their Real Estate Project “EE HEIGHTS”. The Corporate Debtor has issued the work orders to the Operational Creditor placed as Exhibit-A on Pg. No 35-52 of the petition.
 - c) The Operational Creditor has carried the electrical work and issued invoices for the same. The said invoices are placed as Exhibit-B on Pg. No 53-72 of the petition which were duly received and

acknowledge by the Corporate Debtor without raising any dispute and objection.

d) The Operational Creditor submits that, out of the total amount of Rs. 1,29,55,033/- the Corporate Debtor has paid the following payments:

I. Rs.58,19,281/- paid directly to the Vendors.

II. Rs. 15,94,948/- paid to the Operational Creditor.

III. Rs. 18,63,879/- paid to Operational Creditor by Estate of Ebrahim Essa & Sons the subsidiary of the Corporate Debtor.

IV. The Corporate Debtor has paid the part amount of the invoices but failed to pay the balance amount of Rs. 42,28,643/-

e) The Operational Creditor submits that, as per General Terms and Conditions of the contract dated 7-07-2011 the bill payment was to be made within 7 days of the bill date.

f) The Operational Creditor submits that, in spite of repeated request and reminders the Corporate Debtor failed to make payment of the outstanding dues.

5. The case of the Corporate Debtor is as under:

i. The Operational Creditor was given work order for carrying out work in the building which was under construction. On completion of the work, the Operational Creditor was to be paid the amount as per the invoice tendered by them.

- ii. On receiving the Demand Notice dated 28.11.2018 from the Operational Creditor, the Corporate Debtor states that the invoice which has been forwarded shows the quantity is in excess of the quantity mentioned in the work order. There is no written consent given by the Corporate Debtor for the said work order given to the Operational Creditor.
- iii. On the Contrary, the Operational Creditor who has received additional amount has to refund the same as the amount is paid in excess to the dues of Operational creditor in view of the duplication of the invoices.
- iv. It is true that, the Corporate Debtor had placed work order for completion of electrical work in the year 2011-2012. The Corporate Debtor has paid the total amount and it is denied that, there was any refusal of payment under the work order.
- v. The Corporate Debtor by letter dated 08.02.2019 has clearly mentioned that, there is no due pending in their books of account. The Corporate Debtor has made the following payment to the Operational Creditor:
 - (a) EEDPL to Rooshay Electricals-Rs.15,94,948.
 - (b) EEDPL to Allied Electricals- Rs.5,83,463.
 - (c) EEDPL to Star Electric-Rs.1,81,424.
 - (d) EEDPL to Azad Electric-Rs.5,23,804.
 - (e) EE & Sons to Rooshay Electricals-Rs. 21,21,635.
 - (f) EE & Sons to Star Electricals-Rs. 26,20,519.
 - (g) EE & Sons to Pratik Electric-Rs. 9,02,403.
 - (h) EE & Sons to Nitin Electric-Rs. 20,56,891.
 - (i) EE & Sons to Azad Electric-Rs. 2,44,464.

- vi. The invoices referred and relied upon in the present petition are disputed and not accepted by the Corporate Debtor as the same do not form part of the work order assigned to the Operational Creditor.
 - vii. The Corporate Debtor has filed additional reply dated 22.01.2020 in which it is stated that as per the contract the material was supplied by the Operational Creditor and the amount was deducted from the bills of the Corporate Debtor. The total value in the contract was Rs.1,13,17,428/-.
 - viii. The Operational Creditor forwarded running bills as per slab wise completion of work from 3.10.2011 to 1.07.2015 amounting to Rs.37,16,583/-. Though certain amount has been received by the Operational Creditor, the bills have not been provided to the Corporate Debtor.
 - ix. The work of Operational Creditor in the said project was completed in the month of December 2015 and the last payment was done on 22.08.2016.
 - x. The Corporate Debtor had made payment of Rs.15,50,000/- to the Operational Creditor dated 4.09.2015 till 22.08.2016. The Operational Creditor has failed to provide any of the bills pertaining to alleged purchase of material nor there is any inspection report.
7. The Operational Creditor issued Demand Notice dated 28-11-2018 on the Corporate Debtor. However, the Corporate Debtor by its letter dated 12-12-2018 replied stating that firstly, as per the terms and conditions in the contract the Operational Creditor has supplied excess quantity of items and Secondly, claimed excess debt amount.
 8. The Operational Creditor replied by its letter dated 14.01.2019 denied the allegations raised by the Corporate Debtor and the same is taken on record.

9. The Corporate Debtor by its letter dated 08.02.2019 denied the allegations raised by the Operational Creditor and the same is taken on record.
10. The Operational Creditor has filed Rejoinder dated 6.02.2020 and the same is taken on record.
11. The Operational Creditor has filed Written Submissions dated 6.1.2022 and the same are taken on record, stating that the as per reply the Corporate Debtor has paid excess amount of Rs. 12,96,687/-. The Operational Creditor has denied the same as there is no documentary evidence produced by Corporate Debtor in respect of excess amount paid to the Operational Creditor.

Findings:

12. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
13. The Last date of invoice is 13.10.2016 and the date of filing of CP is well within the Limitation. This Bench has jurisdiction to deal with this Company Petition. The date of default as per the mode of payment in the last invoice is 20.10.2016.
14. The total debt due and payable to the Operational Creditor is Rs.42,28,463 /- (Rupees forty-two lakh twenty-eight thousand four hundred sixty-three Only).
15. 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 rupees one lakh stipulated under section 4(1) of the IBC. Therefore, the debt and 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.

16. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.
17. Under these circumstances, this Tribunal is of the considered opinion that the above company petition is liable to be admitted by passing the following order.

ORDER

- (a) The Petition bearing CP(IB) 978/MB-IV/2019 by Rooshay Electricals, (through its proprietor Mr. Mohamed Rafi I. Shaikh, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Ebrahim Essa Developers Private Limited (CIN U45202MH2010PTC206044), (“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, -
 - (v) 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;
 - (vi) 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 Tribunal 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. Arvind Kumar Pilla, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P02571/2021-2022/13937, E-mail: caip.arvindpilla@gmail.com, is hereby appointed as Interim Resolution

Professional in connection with the proposed corporate insolvency resolution process of Ebrahim Essa Developers Private Limited.

- (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.5,00,000/- (Rupees five 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/-
Kishore Vemulapalli
Member (Judicial)

11.04.2022

Sd/-
Rajesh Sharma
Member (Technical)