

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**KOLKATA BENCH, KOLKATA**

**CP (IB) No.209/KB/2019**

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;  
And

In the Matter of:

Maithan International, a partnership firm, having its office at 9, A.J.C. Bose Road, 6<sup>th</sup> Floor, Kolkata - 700 017.

.....Applicant/Operational Creditor

And

In the Matter of:

Sumangal Ispat Private Limited, registered under the provisions of Companies Act, 1956, having its registered office at Kwaliti Complex, Bhiringhee More, Nachan Road, Durgapur, Bardhaman - 713 213, West Bengal.

..... Corporate Debtor

Date of Hearing 15<sup>th</sup> November 2019

Order Delivered on 19<sup>th</sup> November 2019

For the Operational Creditor : 1. Mr. Ganesh N. Jajodia, Advocate  
2. Ms. Arunima Lala, Advocate

**ORDER**

**Jinan K.R., Member (Judicial)**

Maithan International filed this application under Sec.9 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code) for initiation of corporate insolvency resolution process against the corporate debtor, viz., Sumangal Ispat Private Limited for the reason that the operational creditor has committed default in refunding Rs.7,14,713/- (Seven lakh fourteen thousand seven hundred thirteen) for the short fall of supply of goods inclusive of interest

@18% per annum calculated at the prevailing commercial rate. Despite demand, the corporate debtor failed to pay and accordingly filed this application under Sec.9 of the IB Code.

2. The contentions on the side of the operational creditor, in brief, are that a sum of Rs. 7,14,713/- (Seven lakh fourteen thousand seven hundred thirteen) along with interest of Rs. 1,57,036/- (Rupees One lakh fifty seven thousand thirty six) is due and payable by Corporate Debtor to Operational Creditor, pursuant to the three purchase orders placed by the Operational Creditor on the Corporate Debtor, meant for export of the same by the Operational creditor, between November, 2016 till May, 2017. On the basis of such purchase orders and advance payment made by Operational Creditor, Corporate Debtor had to supply full quantity of material at agreed price/rate in accordance with the terms and conditions. However, Corporate Debtor did not supply full quantity of materials as agreed for which full advance payment was made by the Operational Creditor. Corporate Debtor raised total 16 invoices whereby making delivery of 729.980 MT of material ordered quantity of 750.00 MT. Hence, there was short supply of 20.020 MT whereas the Corporate Creditor had made advance payment for full quantity. Copies of the purchase order and Excise cum Tax Invoices is annexed with the application as Annexure A.

3. The Corporate Debtor has accepted all advance payment made by the Corporate Creditor and the purchase orders issued by them. The Corporate Debtor never objected to purchase Orders and Advance payment and thereby committed default in supply of full quantity of material at agreed price.

4. The Corporate Debtor neither supplied full ordered quantity of material as agreed nor refunded balance advance payment due without assigning any



reasons whatsoever. Both the parties maintained a running and continuous account. The Corporate Debtor has failed and neglected to pay due amount of Rs.5,57,677/- (Five lakh fifty seven thousand six hundred seventy seven) on account of principal in respect of goods ordered and advance payment made thereon. A ledger containing the details of such amount due and payable by corporate debtor is annexed with the application as Annexure B.

5. The Operational Creditor issued demand notice calling upon the Corporate Debtor to pay the dues, failing which, the Operational Creditor would initiate proceedings against the Corporate Debtor. The Corporate Debtor failed and neglected to make any payment. The Operational Creditor issued a demand notice dated 20/9/2018 under Sec.8 of the IB Code, 2016, calling upon the Corporate Debtor to clear off the outstanding dues within 10 days. Copy of demand notice dated 20/9/2018 is annexed with the application as Annexure C.

6. The Corporate Debtor neither replied to the notice nor to the reminder of e-mail dated 22/10/2018 and 20/11/2018 and letter dated 20/09/2018 and 20/11/2018. The Corporate Debtor even not disputed or raised any objection to the demand and also not disputed the same. Corporate Debtor did not raise any claim on the Operational Creditor for its demand. Copies of e-mail dated 22/10/2018 and 20/11/2018 and letter dated 20/09/2018 and 20/11/2018 are annexed with the application as Annexure D.

7. The Operational Creditor is entitled to claim interest on outstanding amount @ 18% p.a. from the date it becomes due and payable on 12/5/2017 till 18/1/2019 and further till the date of receipt of payment in its account. The Operational Creditor is entitled to such interest by reasons of commercial nature of transactions between the parties and considering inter alia the rate of interest charged by the nationalized banks in respect of such overdue

transactions. It appears from the record that the debt fell due on and from 21/5/2017.

8. Notice was served upon the corporate debtor, however, nobody turned up and the corporate debtor was called absent and declared ex parte.

9. Heard the Ld. Counsel appearing on behalf of the operational creditor and perused the records.

10. The operational creditor contends that corporate debtor had supplied materials as per the specification and quantity mentioned in the purchase orders and the corporate debtor accepting the purchase order supplied goods after receiving the consideration for the goods in advance. According to the Ld. Counsel for the operational creditor, the operational creditor issued purchase orders for purchasing and supplying *non alloys steel ingot* of 729.980 Metric Ton (MT) and agreed rate of advance has been paid to the corporate debtor by way of 16 invoices, annexed as **Exhibit - A** along with the application. Corporate debtor delivered 750 Metric Ton. According to the Ld. Counsel there was short supply of 20.020 Metric Ton. Copies of purchase order and Excise cum tax Invoices produced along with the application. Being short fall of quantity of goods, the operational creditor is not entitled to keep the amount with the corporate debtor and there is breach of terms in the purchase order by not supplying the full quantity of the materials ordered to be supplied by the operational creditor. Therefore, the operational creditor has established its right to get the refund of the advance amount evidently paid to the corporate debtor.

11. A demand notice dated 20/9/201 was issued to the Corporate debtor. The demand notice evidently received by the corporate debtor as per Postal Trak Consignment available in the case record at page 42 of the application. It is submitted that there was no reply. Therefore, the contention on the side of the

52



operational creditor that Rs.7,14,713/- is due and payable arising out of delivery of goods comes under the purview of operational debt as defined under Sec.5(21) of the IB Code. That being so, filing of this application under Sec.9 IB Code is practically maintainable. The claim is not barred by limitation.

12. The applicant has complied with all the requirement to be mated out under Sec.9(3)(b) of the IB Code and under Sec.9(3)(c). From the statement of bank account it appears that there is no payment of unpaid operational debt by the corporate debtor. It reveals from the record that the applicant has not proposed any name of Insolvency Professional.

13. In view of what is stated above, this application is liable to be admitted and the application is admitted upon the following:-

**ORDER**

- i. The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Sumangal Ispat Private Limited** is hereby admitted.
- ii. I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) 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;
  - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) 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 (54 of 2002);
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
  - v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
  - vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
  - viii. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an

order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
  - x. Shri Tapan Chakraborty, IP Registration No.IBBI/IPA-003/IP-N000173/2018-2019/12121 email id [tapanchakraborty2611957@gmail.com](mailto:tapanchakraborty2611957@gmail.com) Mob. No.8407004004 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
  - xi. The Operational Creditor to deposit a sum of Rs.2,00,000/- (Two Lacs) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order which can be adjusted after constitution of the CoC.
  - xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
  - xiii. Registry is hereby directed under section 9(5) of the I.B.Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.
14. List the matter on 2/1/2020 for filing of the progress report.



15. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
19/11/19  
(Jinan K.R.)  
Member (J)

Signed on 19<sup>th</sup> November 2019