

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) 1422/MB/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

Mr. Keval Khetan

Sole Proprietor of M/s. Sphere Steel

..... Operational Creditor
(Petitioner)

v.

M/s. Anushka Moulds & Dies Private Limited

..... Corporate Debtor
(Respondent)

Order Pronounced on : 16.11.2018

Coram :

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

For the Petitioner :

Mr. Rushikesh Chindarkar, Advocate i/b. Mr. Amit Tungare, Advocate – Advocate for the Petitioner / Operational Creditor.

For the Respondent :

None Present.

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

1. The Petitioner viz. 'Mr. Keval Khetan, Sole Proprietor of M/s. Sphere Steel' (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of 'Operational Creditor' on 19.09.2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, 'M/s. Anushka Moulds & Dies Private Limited' (hereinafter as **Debtor**) having registered address at, Gurukrupa Ind. Complex, Bldg.

No. 1, Ground Floor, Survey No. 36, Hissa No. 12, Opp. Jivadhani Ind. Estate No. 2, Dhumal Nagar, Village Waliv, Vasai (E), Thane, Maharashtra – 4012018.

3. Further under the Head “Particulars of Operational Debt” the total amount in default is stated as ₹ 6,54,220/- which includes the Principal Amount of ₹ 5,45,184/- and further delayed Interest amount of ₹ 1,09,036/-.

4. **Background of the Case :**

- 4.1. The Operational Creditor is a sole proprietor of the proprietorship concern ‘Sphere Steel’ which is engaged in the business of supplying steel bars. The Debtor is an incorporated company engaged in the business of manufacture of Dies and moulding of Steel Parts.
- 4.2. In course of business, the Debtor, during 16.09.2014 to 27.10.2016, has placed orders upon the Operational Creditor for supply of steel bars.
- 4.3. Pursuant to the same the Operational Creditor has supplied the ordered material as per the requirement of the Debtor.
- 4.4. The Operational Creditor has duly raised Invoices, from time to time, for the said supply of Steel Bars. The Debtor has the running account with the Operational Creditor in the books of the Operational Creditor.
- 4.5. It is the case of the Operational Creditor that the Debtor, on 21.04.2017, had made the last payment towards the total amount raised through the Invoices.
- 4.6. Since, the Debtor has defaulted in making the payment the Operational Creditor has preferred this Petition U/s. 9 of the Code after issuance of the Demand Notice U/s. 8 of the Code.

5. **Submissions by the Creditor :**

- 5.1. The Learned Advocate for the Operational Creditor has submitted that the Operational Creditor has supplied the material as per the orders placed by the Debtor and raised Invoices for the said supply.
- 5.2. It is also stated that the Debtor has duly received the supplied material without any dispute about the quality and quantity.
- 5.3. It is also stated that the Debtor has time and again defaulted in making the payment. To corroborate this statement the Learned Advocate has drawn the attention of this Bench towards the fact that the Debtor had issued one cheque,

favouring the Operational Creditor, dated 25.10.2016, drawn on Bassein Catholic Co-Op. Bank Ltd, bearing no. 100399 has been returned with a remark as 'Insufficient Funds', when produced for payment by the Operational Creditor. It is also stated that another cheque, amounting to ₹ 50,000/-, drawn on Bharat Bank, dated 10.09.2016, bearing no. 870016, also has not been honoured. The copies of cheques, along with remarks, have been annexed with the Petition.

- 5.4. It further stated that the Operational Creditor, thereafter, pursued with the Debtor for the outstanding payment however, the Debtor has neglected to make the payment. Pursuant to the repeated follow-up the Debtor had made the part payment of ₹ 30,000/- on 21.04.2017 to the Operational Creditor. Thereafter no payment has been received by the Operational Creditor.
- 5.5. Further that, since, the payment was not forthcoming the Operational Creditor has issued a Demand Notice U/s. 8 of the Code on 02.09.2017. The said notice has been duly delivered, by private Courier Service, to the Debtor on 06.09.2017. To this effect the tracking record of the Courier Service is placed on record.
- 5.6. It is further stated that the Debtor has neither raised any dispute after receipt of Demand Notice nor made the payment to the Operational Creditor. Hence, the Operational Creditor, after lapse of stipulated time as prescribed under the Code, has preferred this Petition U/s. 9 of the Code, praying for the commencement of the CIRP over the Debtor.
- 5.7. It is also stated that the Petition has also been duly served upon the Debtor. It is also stated that the notices intimating the date of hearing are also been served upon the Debtor till date. To that effect an **Affidavit of Service** along with track record has been placed on record.
- 5.8. The Learned Advocate has further submitted that the Debtor has approached the Operational Creditor for the settlement of dues, after filing of this Petition. It has also been brought to the notice that both the sides had entered into consent terms for settling their dues. It is also been stated that the Debtor had made the payment of ₹ 1,15,000/- to the Operational Creditor on 15.01.2018 vide Cheque no. 101142. However, thereafter the Debtor has not made any further payment.
- 5.9. In light of these submissions it is vehemently argued that the Debtor has not only defaulted initial payments but has also defaulted the Consent Terms entered between parties. Therefore, as the Debtor is not in a position to make the payment the CIRP may be commenced over the Debtor.

6. Findings :

- 6.1. The Bench has gone through the submissions made by the Learned Advocate for the Operational Creditor and also through the pleadings on record.
- 6.2. By going through the pleadings it is noticed that the Operational Creditor has duly supplied the goods / material, as ordered by the Debtor, and raised valid Invoices for the same.
- 6.3. It is also noticed that, admittedly, the Debtor had made the part-payment towards the total amount which was raised. And also it is admitted position that the Cheques which were issued by the Debtor got dishonoured.
- 6.4. It is also an admitted fact that the Operational Creditor and the Debtor had entered into the Consent Terms and pursuant to those Terms the Debtor had made the payment of ₹ 1,15,000/-. But thereafter the Debtor has failed to make further payment.
- 6.5. It is also noticed that the Debtor has duly received the Demand Notice issued by the Operational Creditor and also this Petition has been duly received by the Debtor. However, the Debtor has not filed any reply, neither to the Demand Notice nor to the Petition, raising the question of 'Dispute'. It is also noticed that the Debtor, since first date of hearing, has never represented this case before this Tribunal however, the Debtor was negotiating with the Operational Creditor outside the Tribunal.
- 6.6. Moreover it is also worth to place on record that the information about the case is duly available on the Tribunal's official website and it is well within the public domain. Therefore it can be concluded that the Debtor, if wanted to represent his case, could have appeared before this Bench by going through the data related to the case available at official website. Hence, in my opinion the Debtor does not want to represent his case and admittedly there is no 'dispute' with regard to the claimed amount.
- 6.7. By going through the facts and submissions of the case it is noticed that the Operational Creditor has established that the nature of Debt is an "Operational Debt" as defined under section 5 (21) of the Definitions under The Code.
- 6.8. Further, it has also been established that there is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor. The dishonouring of

Cheques and default in Consent Terms, both, themselves proving the Default of the Debtor.

- 6.9. As a consequence, after the expiry of the period prescribed to Reply and keeping the admitted facts in mind and as the formalities as prescribed under The Code have been duly completed by the Operational Creditor hence, it is conscientious view of this Bench that this Petition deserves '**Admission**' even-though the Debtor had not represented his case.
- 6.10. The Operational Creditor has not proposed the name of Interim Resolution Professional. Consequentially, by exercising powers conferred by the NCLT Principal Bench, vide letter 25/2/2018 - NCLT dated 03.01.2018, this Bench hereby appoints **Mr. Laxman Digambar Pawar**, having Registration no. as **IBBI/IPA-003/IP-N00015/2017-18/10104**, E-mail Id : **cmapawar@gmail.com**, Contact : **09921516368** as Interim Resolution Professional to initiate the CIRP.
- 6.11. 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 appointment of IRP and the same 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.
- 6.12. 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.
- 6.13. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 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. Liberty is granted to intimate the same even at an early date, if need be.
- 6.14. Beside the aforesaid directions it is needless to mention that the appointed IRP shall take into consideration the fact that the Operational Creditor has received an amount of ₹ 1,15,000/- after filing of this Petition pursuant to the Consent Terms.

The total amount of the Debt of the Operational Creditor shall be adjusted against the received amount.

6.15. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of receipt of certified copy of the Order.

7. Ordered Accordingly.

Dated : 16.11.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash