

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

CP (IB) 16/MB/2018

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

M/s. Shree Sai Industries Private Limited
..... Operational Creditor
(Petitioner / Applicant)

v.

M/s. Dharam Paul Metal Private Limited
..... Corporate Debtor
(Respondent)

Order Pronounced on : 15.10.2018

Coram :

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

For the Petitioner :

Mr. Ishwar Ahuja, Advocate i/b. Thakordas & Madgavkar – Advocates for the Petitioner / Applicant.

For the Respondent :

None Present.

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

ORDER

1. The Petitioner / Applicant viz. 'M/s. Shree Sai Industries Private Limited' (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 04.01.2018 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. Dharam Paul Metal Private Limited'

(hereinafter as **Debtor**) having registered address at, 35, Latif House Iron Market, Mumbai, Maharashtra – 400009.

3. Further under the Head “Particulars of Operational Debt” the total amount in default is stated as ₹ 28,68,695/- which includes the Principal Amount of ₹ 17,83,771/- and further delayed Interest amount of ₹ 10,84,924/- @ 24% p.a.

4. Background of the Case :

- 4.1. The Operational Creditor had supplied various steel and allied materials to the Debtor from time to time, on the request of the Debtor.
- 4.2. For the said supply the Operational Creditor has raised the Invoice dated 20.10.2014 and the said Invoice has been received by the Debtor however, the Debtor had not made the payment.
- 4.3. As per the Operational Creditor, despite of the number of requests the Debtor has neglected in making the payment and therefore the Operational Creditor has issued a ‘Demand Notice’ U/s. 8 of the Code demanding outstanding amount.
- 4.4. The said notice has been duly received by the Debtor however, the Debtor neither had replied to the notice not paid the outstanding amount. Hence, the Operational Creditor has filed this Petition / Application before this Bench for due adjudication.

5. Submissions by the Creditor :

- 5.1. The Learned Advocate for the Operational Creditor has submitted that on request of the Debtor the Operational Creditor had supplied the H R Steel Plate to the Debtor.
- 5.2. The Learned Advocate has drawn attention of this Bench to the fact that the Debtor has issued a ‘Form of Declaration’ i.e. Form – C of Central Sales Tax dated 24.11.2014 for the purchase of goods amounting to ₹ 17,83,771/-, to the Operational Creditor. The Copy of the said Form is annexed with the Petition / Application.
- 5.3. It is further submitted that the Operational Creditor, on 20.10.2014, has issued a Tax Invoice bearing no. 001550 for the supply of goods amounting to ₹ 17,83,771/-.

- 5.4. It is also stated that the Audited Ledger Account of the Debtor in the books of Operational Creditor for the F. Y. 2014-15 to F. Y. 2016-17 shows the claimed amount as receivable from the Debtor. It is also stated that the copy of the Ledger Account is forwarded to the Debtor and he has not raised any dispute with regard to the same. The copy of the Ledger Account is annexed with the Petition / Application.
- 5.5. It is further submitted that the Operational Creditor has time and again requested for the payment to the Debtor however the Debtor has neglected in making the payment.
- 5.6. It is further stated that since the payment was not forthcoming the Operational Creditor has constrained to issue a 'Demand Notice' U/s. 8 of the Code on 27.10.2017. The Copy of the said notice is annexed with the Petition / Application.
- 5.7. It is further stated that the said notice has been received by the Debtor on 03.11.2017. The tracking record of the India Speed Post is also annexed with the Petition / Application.
- 5.8. It is further submitted that despite the receipt of the Demand Notice the Debtor neither has replied nor has paid the outstanding amount and therefore the Operational Creditor has filed this Petition / Application U/s. 9 of the Code for the commencement of the CIRP over Debtor.
- 5.9. It is also submitted that after the Petition / Application came up for hearing the Operational Creditor has issued a Notice, intimating the date of hearing, to the Debtor. However, the said notice has been returned to the Operational Creditor with remark as "Left". To this effect an 'Affidavit of Service' is placed on record.
- 5.10. In light of above submissions the Learned Advocate has vehemently pleaded that since there is non-payment of outstanding amount and there is no 'dispute' with regard to the same this Petition / Application may be Admitted for the commencement of the CIRP

6. Findings :

- 6.1. I have 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, ordered by the Debtor, and raised valid Invoice for the same.

- 6.3. It is further noticed that the Form – C issued by the Debtor to the Operational Creditor, which is a Form of Declaration of the Central Sales Tax, is for the same amount which has been claimed by the Operational Creditor as Principal Amount in default.
- 6.4. It is further noticed that the ‘Demand Notice’ has been duly received by the Debtor but the Debtor has not replied to the same with the notice of dispute within the stipulated time of 10 days as prescribed by the Code. That means the Debtor does not want to dispute the claimed amount.
- 6.5. The Bench has also gone through the Affidavit of Service furnished by the Operational Creditor and noticed that, though the notice of hearing has been returned marked as ‘Left’, it is a sufficient service in eyes of the Law. It is worth to place on record that this matter was first time came-up for hearing on 12.03.2018 and thereafter number of opportunities were granted to the Debtor but no one has appeared on behalf of the Debtor.
- 6.6. Moreover it is 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 he 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.
- 6.9. As a consequence, after the expiry of the period prescribed and keeping the admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been duly completed by the Petitioner / Applicant and hence, it is my conscientious view this Petition deserves ‘**Admission**’ even-though the Debtor had not represented his case.

6.10. The Operational Creditor has proposed the name of Interim Resolution Professional. The Bench has gone through the consent form of the proposed Insolvency Professional and noticed that, there is no disciplinary proceeding is pending against the proposed IP. Consequently, this Bench hereby appoints, **Ms. Dipti Mehta**, O/at. **201-206, Shiv Smriti Chambers, 2nd Floor, Above Corporation Bank, Worli, Mumbai, Maharashtra – 400018**, Mb.: **09820292415**, E-mail : **dipti@mehta-mehta.com**, as Interim Resolution Professional to initiate the Corporate Insolvency Resolution Process upon the Debtor.

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. The Petition is hereby “Admitted”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

7. Ordered Accordingly.

Dated : 15.10.2018

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

Avinash