

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

CP 2334/IBC/NCLT/MB/MAH/2018

In the matter of 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

Sandeep Steels

..... Operational Creditor
v.

Terrafirma Superstruct LLP

..... Corporate Debtor

CORAM: M.K. Shrawat, Member (Judicial)

For the Applicants:

Advocate Angad Singh i/b Law Chamber of Siddharth Murarka.

CORRIGENDUM ORDER

1. This is an order for the correction of Order dated 31.01.2019 in the matter of initiation of CIRP of Terrafirma Superstruct LLP.
2. The Order dated 31.01.2019 inadvertently contains point No. 18 which says:
“Registry is directed to close the file by consigning the petition to records”
3. The Point No. 18 is hereby deleted. It is not to be read as a part of the order.
4. The Order stands corrected accordingly.

Dated : 31.01.2019

**Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)**

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCP No. 2334/IBC/NCLT/MB/MAH/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
Sandeep Steels

..... Operational Creditor
(Petitioner/Applicant)

v.

Terrafirma Superstruct LLP

..... Corporate Debtor
(Respondent)

Heard on : 29.01.2019

Order delivered on : 31.01.2019

Coram :

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

For the Petitioner :

Advocate Angad Singh i/b Law Chamber of Siddharth Murarka.

For the Respondent :

None Present.

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

ORDER

1. This is a Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on 18.06.2018 by the Petitioner 'Sandeep Steels' in the capacity of "Operational Creditor", against Terrafirma Superstruct LLP (hereinafter as 'Corporate debtor') having registered address at Office No. 404, 4th Floor, The Capital, Bldg A Survey No. 5/1a, Baner Pashan Link Road, Pune-411045.
2. The Petitioner has submitted Form-5 as prescribed under the rules. In the requisite Form, under the Head "Particulars of Operational Debt" the total amount in default is

stated as ₹7,59,670/-, as on 20.11.2017 (inclusive of principal amounting to ₹7,13,683/- and interest ₹45,987/- till 26.02.2018).

Background of the Case :

3. The Corporate Debtor is a Limited Liability Partnership duly registered under the Limited Liability Partnership Act, 2008. The operational Creditor sold, supplied and delivered to the Respondent various goods and raised invoices. The Corporate Debtor initially failed to make payment. Hence, this petition.

Submissions by the Operational Creditor:

4. The operational Creditor submits that the goods have been sold, supplied and duly delivered to the Corporate Debtor and the same is evident by the Purchase Orders, Invoices and Delivery Challans produced on record.
5. The invoices prescribe 24% rate of interest in case of payment after the due date. The Operational Creditor is maintaining running Ledger Account of the Corporate Debtor. The ledger account confirms the debit closing balance as claimed by the Operational Creditor. However, after receiving various reminders from the Operational Creditor, the Corporate Debtor issued a cheque being Cheque No. 001380 dated 02.12.2017 of ₹7,11,068/- in favour of Operational Creditor which was dishonoured with remarks "Payment stopped by Drawer". This is evident by and in corroboration of the Citi Bank Account Statement, Copy of Cheque and Bank Return Memo as placed on record.
6. Thereafter, the Operational Creditor issued a Demand Notice dated 27.02.2018, under Rule 5 of IBC and called upon the Corporate Debtor to pay the outstanding amount with interest. The Demand Notice was duly posted but the Corporate Debtor returned the same.
7. It is finally argued that since the Debtor is not making the payment and all the procedural formalities have been complied with, this Petition/Application may be Admitted for the initiation of the CIRP.

No Submissions by the Corporate Debtor:

8. The Learned Advocate for the Corporate Debtor has never appeared before this Bench. Moreover, it can be safely presumed that the Corporate Debtor has admitted its liability by not filing a reply to the Demand Notice u/s 8 as well as to the Petition. The Corporate Debtor has been served with the notice for intimation of date of hearings before this Bench. However, nothing fructified. It can be said that there is nothing to say in defence to this petition.

Findings:

9. I have gone through the submissions and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that the Corporate Debtor is under an obligation to pay for pending Operational Dues aggregating to ₹7,59,670/,

along with interest @ 24% p.a. The said amount is due and a default has also occurred. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.

10. The conduct of the Corporate Debtor, despite being served with the notice for intimation of hearings, is evident of the fact that he has admitted its liability. This court had given number of opportunities on 23.10.2018, 18.12.2018, and 29.01.2019 but the Corporate Debtor or its representative have not attended the hearings. Various notices were sent by the Operational Creditor calling up the Corporate Debtor to repay its dues but the Corporate Debtor neither replied to the notices nor paid the dues. Moreover, the cheque which was dishonoured, (discussed supra), given by the corporate Debtor towards the repayment of its dues is a further affirmation towards acceptance of liability of the Corporate Debtor.
11. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that the Debtor has received the same but has not paid the amount of unpaid dues. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt. Instead, debtor never appeared before the Bench during the entire proceedings in this matter.
12. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor has not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Operational Creditor. It is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.
13. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Bhaskar Gopal Shetty**, having registration no. as IBBI/IPA-001/IP-P01285/2018-19/12003, having address at C-77, Shanti Shopping Centre, Mira Road East, Maharashtra-401107, as Interim Resolution Professional for initiation of CIRP.
14. Having admitted the Petition/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 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.

15. 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.
16. 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. A liberty is granted to intimate even at an early date, if need be.
17. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.
18. Registry is directed to close the file by consigning the Petition to records.

Date: 31.01.2019

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