

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 1241/KB/2018

In the matter of:

An application u/s. 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:

Tata Steel Processing and Distribution Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Tata Centre, 43, Chowringhee Road, Kolkata, West Bengal – 700 071, within the jurisdiction of this Learned Tribunal;

... **Operational Creditor**

-Versus-

M/s Famica Press Industries Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Singh Colony, Rahargora, P.S. – Parsudih Jamshedpur, Jharkhand – 831 016, within the jurisdiction of this Learned Tribunal.

... **Corporate Debtor**

Coram: Shri K.R. Jinan, Hon'ble Member (Judicial) & Shri Harish Chander Suri, Hon'ble Member (Technical).

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Counsels appeared:

1. Ankita Mukherjee, Advocate

] For the Operational Creditor

Date of Pronouncement of Order: 18th June, 2019

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial).

1. This is an application filed by **Tata Steel Processing and Distribution Ltd.** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (In short, I & B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short, CIRP) against the Corporate Debtor, **M/s Famica Press Industries Pvt. Ltd.** claiming that a principal sum of **Rs. 20,74,789.10/- (Rupees Twenty Lakhs Seventy Four Thousand Seven Hundred Eighty Nine and Paise Ten only)** is the unpaid operational debt due from the Corporate Debtor and that despite demand, the Corporate Debtor did not pay the amount and hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.
2. The facts, in brief, as stated by the Operational Creditor, are as follows:-





- i) The Operational Creditor, a Company incorporated on 17.04.1997 under the Companies Act, 1956, with CIN: U27109WB1997PLC084005 in its course of business came to be associated with the Corporate Debtor since the Corporate Debtor had purchased certain goods from the Operational Creditor and as a result of the business between them, the Operational Creditor is entitled to Rs. 20,74,789.10/- from the Corporate Debtor on account of outstanding invoices under Purchase Order Dated MAIL – 04.06.2015 and 29.06.2015 for following invoice nos. namely, Invoice No. 0000001979 dated 07.07.2015, Invoice No. 0000001980 dated 07.07.2015, Invoice No. 0000001981 dated 07.07.2015, Invoice No. 0000001705 dated 24.06.2015, and Invoice No. 654 dated 03.07.2015. The outstanding amount due to the Operational Creditor is based on a total of five (5) invoices which amounted to a sum of Rs. 22,24,789.10/- which the Corporate Debtor duly accepted. The last payment made towards the same was on 09.06.2017 for Rs. 1,50,000/- leaving an outstanding amount of Rs. 20,74,789.10/- which is the principal amount due from the Corporate Debtor as on 09.06.2017. Copies of the unpaid invoices and delivery challans with respect to the same are annexed with the application and marked from “Annexure – C” to “Annexure – K”.

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- ii) The Operational Creditor then issued a legal notice dated 08.01.2018 to the Corporate Debtor to clear the outstanding dues of the Operational Creditor, a copy of which is annexed as **"Annexure – L"** in the application, to which the Corporate Debtor issued a reply disputing the amount claimed and thereafter, the Operational Creditor further sent statutory demand notice dated 30.04.2018 under Form 3 as per the I & B Code, a copy of which is annexed and marked as **"Annexure – O"** to the application. However, the Operational Creditor did not receive any reply from the Corporate Debtor against the said demand notice within a period of 10 days as per the requisite rules, and as no amount has been paid by the Corporate Debtor towards the unpaid operational debt despite repeated requests and demands made by the Operational Creditor, therefore, the Operational Creditor has filed this application.

3. In support of the claim of unpaid operational debt, the Operational Creditor has submitted the following documents:-

- i) Copies of the Invoices raised pertaining to the transactions are annexed and marked from **"Annexure – C"** to **"Annexure – G"** to the application.





- ii) Copies of the Delivery Challans pertaining to the invoices are annexed and marked from **“Annexure – H”** to **“Annexure – K”** to the application.

- iii) Copy of the Legal Notice dated 08.01.2018 issued to the Corporate Debtor, annexed and marked as **“Annexure – L”**.

- iv) Copy of the Demand notice dated 30.04.2018 issued to the Corporate Debtor, referred to in the application as **“Annexure – O”**.

- v) Copy of the Statement of Accounts maintained by the Operational Creditor, annexed and marked in the application as **“Annexure – Q”**.

- vi) Certificate by Financial Institute giving bank details of Operational Creditor, marked and annexed as **“Annexure – R”**.

- vii) Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of unpaid operational debt, annexed with an additional affidavit dated 05.09.2018 filed in support of the application.

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4. The Corporate Debtor has failed and neglected to make payment of Rs. 20,74,789.10/- (Rupees Twenty Lakhs Seventy Four Thousand Seven Hundred Eighty Nine and Paise Ten only) to the Operational Creditor towards principal amount, in spite of notices and reminders. Subsequently, the Operational Creditor issued a demand notice, despite receipt of which the Corporate Debtor failed to make payments towards the unpaid operational debt and so the Operational Creditor filed the instant application under Section 9 of the I & B Code for initiating Corporate Insolvency Resolution Process as against the Respondent.

5. The Respondent/Corporate Debtor did not enter appearance, despite satisfactory service of notice. As the Corporate Debtor did not turn up to contest, he was called absent and declared *ex parte* vide order dated 21/12/2018.

6. This is an application filed under Section 9 of the I & B Code, 2016 for initiating CIRP as against the Corporate Debtor alleging that the Corporate Debtor, who was in receipt of certain goods, provided by the Operational Creditor, had failed to make payments for the said goods received, despite demand and had committed default in payment of the unpaid operational debt to the extent of Rs. 20,74,789.10/- payable by the Corporate Debtor to the Operational Creditor, claiming that the amount is due on the basis of invoices raised, copies of which were produced along with the application, marked as "Annexure – C" to "Annexure – G". The Operational

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Creditor has supplied goods to the Corporate Debtor on account of Purchase Order Dated MAIL 04.06.2015 and 29.06.2015 and has duly raised invoices totaling five (5) against the goods supplied. The last payment made by the Corporate Debtor to the Operational Creditor against the said invoices was on 09.06.2017. Thereafter, a principal sum of Rs. 20,74,789.10/- is due to the Operational Creditor which has yet not been paid by the Corporate Debtor in spite of several reminders, as reflected from the Statement of Account maintained by the Operational Creditor in respect of the Corporate Debtor. A copy of the Statement of Account of the Operational Creditor with the Corporate Debtor is annexed with the application and referred to as “Annexure – Q”.

7. According to the Ld. Counsel for the Operational Creditor, the requirement to be meted out to file an application of this nature by the applicant has been complied with. She has submitted that since the Corporate Debtor did not pay the operational debt due to the Operational Creditor, this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and prays for passing an order of admission.

8. A legal notice dated 08.01.2018 was sent to the Corporate Debtor by the Operational Creditor demanding to pay the outstanding amount of Rs. 20,74,789.10/-. The Corporate Debtor replied to the notice via letter dated 02.02.2018 disputing the amount claimed to be

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in default. Copies of the legal notice and the said reply are annexed with the application and marked as “**Annexure – L**” and “**Annexure – M**”. Subsequently, a Demand Notice as per Section 8(1) of the I & B Code was issued by the Operational Creditor to the Corporate Debtor, a copy of which is annexed with the application and marked as “**Annexure – O**”. However, no reply to the Demand Notice is seen given by the Corporate Debtor and no payment was made towards the unpaid operational debt.

9. To fulfill all requirements under Section 9(3), the Operational Creditor has furnished along with the application, (i) copies of the invoices demanding payment and the demand notice delivered by the operational creditor to the corporate debtor as required under Section 9(3)(a); (ii) an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt as required under Section 9(3)(b); (iii) statement of bank account showing details of part payments made to the Operational Creditor by the Corporate Debtor towards the operational debt as required under Section 9(3)(c).

10. Therefore, the Operational Creditor succeeds in proving that the application is complete, that there is no payment of the unpaid operational debt, also that the demand notice has been delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The applicant, here in this case, succeeds

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in proving that it has complied with all the requirements to be meted out for filing an application under Section 9(3) of the I & B Code, 2016 and further proves failure on the side of the Corporate Debtor in clearing the debt due to the Operational Creditor, even after receiving the demand notice under Section 8(1) of the Code. Therefore, the application is liable to be allowed.

11. In view of the above-said discussion, this application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders:-

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, **M/s Famica Press Industries Pvt. Ltd.** 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

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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 judgement, 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.

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- 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 the 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) Since no Interim Resolution Professional is proposed by the Operational Creditor, **Sri Sunil Mohan Acharya**, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India having **Registration No. IBBI/IPA-003/IP-N000174/2018-2019/12120**, **Telephone No. 8583832645** **E-mail: sunilmohanacharya58@gmail.com** is thereby appointed as Interim





Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.

xii) 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.

12. List the matter on **22nd July, 2019** for the filing of the progress report.

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

(Harish Chander Suri)

Member (T)

(Jinan K.R.)

Member (J)

Signed on this, the 18th day of June, 2019.

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