BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-690/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s Shera Metal Private Limited,
Having registered address at
F-269(B), Road No.13,
Vishwakarma Industrial Area,
Jaipur-302013 ...Operational Creditor/Applicant

Versus

M/s Unilec Engineers Limited
Regd. Office:
II/114, Sadar Bazar, Delhi Cantt,
New Delhi-110010

...Corporate Debtor/Respondent

Delivered on 17.05.2022

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Appearances:

Operational Creditor : Adv Susshil Daga and CS Akshita Koolwal

Corporate Debtor:

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-690/ND/2019 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s Shera Metal Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of the Corporate Debtor viz., M/s Unilec Engineers Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

   a. It is the case of the Operational Creditor that the operational creditor is engaged in business of manufacturing of non-ferrous metal and its alloy products. The operational creditor continuously supplied goods to the corporate debtor and the corporate debtor has been making payments intermittently, hence, maintaining continuous account.

b. It is submitted that payment fell due as per the respective invoices, however, the Corporate Debtor preferred to make payment on account basis and not on the basis of respective invoices. The Corporate Debtor deposited amount without any instructions as to how and in relation to which invoice the said amount needs to be adjusted and therefore the applicant operational creditor as per practice used to apply such amount in discharge of the debts in order of time.

c. It is further submitted that the corporate debtor promised to discharge its debt and in furtherance to the same issued five cheques to the operational creditor, which were presented in the bank on 19/03/2018, against the goods supplied by the operational creditor which got dishonored as on 20/03/2018. The Default has occurred in respect of payment mentioned hereinabove. The incidence of default had occurred on 18.03.2018 and continuing. Thereafter in respect of the continuous default and as per the statutory compliance, the Applicant sent a Demand Notice dated 29.09.2018 in respect of unpaid operational debt, which was unclaimed, hence, undelivered to the Corporate Debtor on 04.10.2018. The said demand notice was however e-mailed to the Corporate Debtor at its email address as obtained from the website of The Ministry of Corporate Affairs as well as on the email id where the Operational Creditor used to communicate.

d. It is stated that the corporate debtor has defaulted in payment of principal amount of Rs.30,46,260/- and 18% interest per annum, hence, the present petition has been filed to initiate the Corporate Insolvency Process of corporate Debtor.

3. The Corporate Debtor has filed its reply and raised the question regarding maintainability on the basis of lack authorization to institute the insolvency proceeding on behalf of operational creditor, demand notice is not delivered to the corporate debtor as per section 8 of IBC, 2016 nor demand notice has been signed by authorized signatory. It is stated that no default has been occurred as per the definition of default u/s 3(12) of IBC, 2016. It is further submitted that invoices relied upon by the operational creditor do not bear any acknowledgement, receipt or signature evidencing acceptance by the corporate debtor. It is further submitted that the operational creditor delayed deliveries of the components which resulted in creating money liability for the corporate debtor with respect to its clients/contractors. Hence, prayed that the above petition may be rejected in view of the above facts and circumstances.

4. The Operational Creditor during arguments reiterated all the facts and further submitted that the corporate debtor has issued cheques to discharge its liability and same got bounced on presentation, hence, there is default in payment, therefore, the petition may be admitted.

5. We have perused the Pleadings and arguments advanced by Operational Creditor. It is clear from the pleadings that the Operational Creditor has supplied the goods to the Corporate Debtor as evident from invoices annexed. Furthermore, there is no evidence placed by the corporate debtor on record to show that there is pre-existing dispute before issuing statutory notice u/s 8 of IBC, 2016. The Corporate Debtor also issued cheques to discharge its liability as is evident from the ledger account, which amounts to acknowledgement of debt and same got dishonored on presentation. Therefore, default in payment of outstanding principal amount is evident from the bank statement annexed with petition. It is also pertinent to mention that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affair on 24th March, 2020 and the amount defaulted by the Corporate Debtor and filing of the petition was much before that, since any notification issued by the Government are generally Prospective in nature unless specifically expressed, hence the notification is not

applicable to the present case. Since, all the conditions are satisfied by the operational creditor, hence, this authority is inclined to initiate the CIR Process of Corporate Debtor, therefore, the captioned petition is **admitted**.

6. The Applicant has also proposed the insolvency resolution professional. Therefore, this Adjudicating Authority, hereby, appoints Insolvency Professional namely, **Mr. Tara Chand Sharma** having registration no. IBBI/IPA-002/IP-N00218/2017-18/10670 (Email ID- cstarachand@gmail.com) as Interim Resolution Professional as proposed by Operational Creditor. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

7. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
    a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any

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judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent 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 respondent.

8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.

9. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under

section 19 for discharging his functions under section 20 of the IBC, 2016.

10. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.

11. The Registry is directed to serve a copy of this order on Registrar of Companies, Delhi & Haryana for appropriately updating the status of Corporate Debtor on M/O Corporate Affairs website for information of general public. The RoC as aforesaid shall then file a compliance report in this regard with this Adjudicating Authority.

12. The order is pronounced by this Adjudicating Authority in virtual Hearing.

-Sd-

(Bachu Venkat Balaram Das)
Member (Judicial)

-Sd-

(Narender Kumar Bhola)
Member (Technical)