

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

CP (IB) No. 685 of 2022

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Prarthna Private Limited,

Office No. 105. 1st Floor, Standard House 83. Maharshi Karve Road, Mumbai — 400 002

Through its Resolution Professional

Ms. Dipti Mehta

..... Operational Creditor

Vs

Kalundre Metaliks Private Limited,

Office No.6, 3rd Floor, Shahviri Building 37/4 1, R.S. Sapre Marg, Kalbadevi, Mumbai City. Mh 400002

..... Corporate Debtor

Order Dated: 04.08.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Operational Creditor: Adv. Dweep Joshi

For the Corporate Debtor: Ex-parte

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by Prarthna Private Limited, (hereinafter called as the **"Petitioner" / "Operational Creditor"**) through its Resolution Professional, Ms. Dipti Mehta, seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Kalundre Metaliks Private Limited (hereinafter referred to as the **"Respondent" / "Corporate Debtor"**) by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called **"Code"**) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a resolution of the Operational Debt of Rs. 43,09,32,250/-.

FACTS OF THE CASE

2. The Operational Creditor is a company dealing in steel products viz., H.R coils and is also involved into trading of steel and its allied products. However, vide order dated 26.11.2021 passed by this Tribunal, the Operational Creditor was admitted into CIRP and Ms. Dipti Mehta was appointed as Interim Resolution Professional of the Operational Creditor. The present petition has been filed through Resolution Professional of the Operational Creditor.

3. The Corporate Debtor is a company registered under the Companies Act, 1956 which is involved in the business of importing shipments of H.R. Coils.
4. The Operational Creditor vide purchase order no. *PPL/O 1/09-2020* dated 25.09.2020 placed an order to the Corporate Debtor for the materials, H.R. coils, amounting to Rs. 45,21,17,000/-. The Operational Creditor has made the full payment of the purchase order well in advance which can be confirmed from the payment letters dated 12.10.2020, 21.12.2020, and 03.05.2021.
5. Subsequently, there was a downward trend in the steel prices after the booking of the materials and, therefore, the Corporate Debtor agreed to refund an amount of Rs. 1,88,15,000/- to the Operational Creditor, as per the new rates of the material on the assurances of not cancelling the purchase order.
6. It has been submitted by the Operational Creditor that the Corporate Debtor failed to supply the materials, despite repeated reminders, to the Corporate Debtor.
7. It has been submitted that notices dated 01.04.2022 and 27.04.2022, were sent to the Corporate Debtor demanding the payment of the outstanding dues of Rs. 43,09,32,250/-. It has further submitted that the Corporate Debtor acknowledged and confirmed the balance outstanding dues but failed to make the payment to the Operational Creditor.
8. The Operational Creditor sent a Demand Notice dated 13.05.2022 under Section 8 of the Code demanding the outstanding due of Rs. 43,09,32,250/-. The Corporate Debtor replied to the demand notice, vide email dated 17.05.2022 and confirmed the outstanding amount and also sought three years' time to repay the amount.
9. The Corporate Debtor failed to repay the outstanding dues of the Operational Creditor, despite confirming the balance dues, which necessitated the filing of the present petition.

10. The Corporate Debtor has not appeared before the Bench neither has filed its reply to controvert the above facts of the case despite notices have been duly served on 06.10.2022. **Therefore, the Corporate Debtor was proceeded ex-parte.**

FINDINGS

11. We have heard the Ld. Counsel appearing for the Petitioner and perused the records.
12. The present Company Petition has been filed by the Operational Creditor for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, where the Operational Creditor placed an order vide purchase order dated 25.09.2020 for the delivery of H.R. coils and paid the entire amount in advance. The Corporate Debtor had not supplied the material to the Operational Creditor and also failed to refund payment made in advance. Therefore, the present petition has been filed claiming an outstanding amount of Rs. 43,09,32,250/- from the Corporate Debtor.
13. The Operational Creditor has argued that the notices dated 01.04.2022 and 27.04.2022 were sent to the Corporate Debtor demanding the payment of the outstanding dues of Rs. 43,09,32,250/-. The Operational Creditor further sent the statutory demand notice dated 13.05.2022 under Section 8 of the Code. In this regard, Counsel for the Operational Creditor has argued that the Corporate Debtor has acknowledge and confirmed its liability vide reply dated 17.05.2022 and sought three years' time to repay the due amount.
14. It has brought to the notice of this bench that that the full payment against supply of HR Coils was made in advance which is evident from the letters dated 12.10.2020, 21.12.2020, and 03.05.2021. The payment to the Corporate Debtor is also proved through the Ledger Account of the Corporate

Debtor in the books of the Operational Creditor showing the closing balance as Rs. 43,09,32,250/-. The Corporate Debtor vide letter dated 01.04.2022 confirmed the accounts of the Operational Creditor.

15. It is pertinent to mention that the Corporate Debtor vide letter dated 17.05.2022 acknowledged its liability and only sought additional time to repay the outstanding amount.
16. It has been noted by the Bench that no reply has been filed by the Corporate Debtor in this case, despite valid notice has been duly served upon it on 06.10.2022. Therefore, without any plea raised on behalf of the Corporate Debtor, question of a pre-existing dispute between the parties also does not arise.
17. From the above discussion, it flows that the Operational Creditor has been able to establish that there has been an operational debt in respect of which the default has been committed by the Corporate Debtor. Even otherwise, the averments made in the petition have not be controverted as the Corporate Debtor has been proceeded against ex-parte and no reply on its behalf has been filed. Accordingly, the above Company Petition is 'admitted' in the following terms:

ORDER

- a. The above Company Petition No. (IB) 685 of 2022 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Kalundre Metaliks Private Limited.**
- b. Since the Operational Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench hereby appoints **Mr. Devang Subodh Thakar**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N01024/2020-21/13288 and having Email Id: cs.devangthakar@gmail.com as the interim resolution professional to

carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. Five Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. This Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order

for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition no. 685 of 2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)