



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH,
PRAYAGRAJ**

CP (IB) No.37/ALD/2021

An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

M/S Seven Star Steels Limited

Having its registered office at:
Surabhi, 5th floor, 8/1/2
Dr. U.N Brahmachari Street,
Kolkata- 700017

...Applicant/Operational Creditor

Versus

M/S Brijbihari Metalics Private Limited

Having its registered office at:
63/2, 316 City Center,
The Mall Kanpur- 208001

...Respondent/Corporate Debtor

Order pronounced on 24.08.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

PRESENT-

Ms. Debaleena Ganguly, Adv. : For the Operational Creditor

Sh. V.K. Shukla : For the Corporate Debtor
(Ex-parte v.o.d. 23.03.2023)



ORDER

1. The instant application is filed on 04.08.2021 by **M/s Sevenstar Steels Ltd.** (hereinafter referred as 'Applicant'/'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "I & B Code, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "the Rules"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') in respect of **M/s Brijbihari Metallics Pvt. Ltd.** (hereinafter referred as 'Respondent'/'Corporate Debtor') due to default in payment of total outstanding amount of Rs.1,07,03,155/- (Rupees One Crore Seven Lakh Three Thousand One Hundred and Fifty Five only).
2. Briefly stated facts of the present case as averred by the Applicant/Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that:-
 - i. The Corporate Debtor had approached the operational creditor around 2019, for supply of sponge iron and billets. The operational creditor has started supplying of Sponge Iron and Billets to the Respondent. As part of their regular



business interactions, the Respondent verbally placed orders with the operational creditor as needed. Consequently, the operational creditor started supplying sponge iron and billets based on these orders and subsequently generated invoices in accordance with the pre-established rates settled between both parties. The operational creditor had issued total 17 invoices from 11.01.2020 to 27.02.2020, all of which were acknowledged and accepted by the operational debtor without expressing any disagreement or hesitation.

ii. Following standard accounting practices, the parties maintained a running and continuous account. The cumulative payments made against these invoices amounted to Rs. 5,82,31,367/-, with the most recent payment made on March 16, 2020. The operational creditor had diligently provided materials as per the specified requirements. Importantly, it should be noted that the corporate debtor had never contested or denied their obligation towards the operational creditor's claim, nor had they raised any concerns about the quality of the services provided by the operational creditor.



iii. Despite numerous verbal appeals, the corporate debtor failed to settle the outstanding dues. Faced with this situation, the operational creditor had no choice but to dispatch a demand notice in accordance with Form 3 of the Code, through their legal representative, on November 18, 2020. The corporate debtor officially received this demand notice on November 27, 2020.

3. The Respondent/Corporate Debtor has submitted its reply dated 22.11.2022 stating that the present Insolvency and Bankruptcy (I.B.) petition has been filed by M/s Seven Star Steels Ltd, falsely representing itself as an Operational Creditor of the Respondent in question. This petition is an abuse of the legal process and is not maintainable. The following contentions have been raised in the reply of the Respondent pleading for the dismissal of this petition:

i. The Respondent i.e. Brijbihari Metallics Pvt. Ltd. acted as an intermediary or agent, facilitating the supply of raw materials for various manufacturing units and businesses. The company earned a commission for providing these services.



- ii. The alleged operational debt of Rs. 1,06,82,270/- is linked to a consignment of raw material procured by Brijbihari Metallics Pvt. Ltd. from Seven Star Steels Ltd., but exclusively for different manufacturers according to their specific requests. The consignment was physically delivered to the production facilities of these manufacturing units. Thus, it is evident that Seven Star Steels Ltd. was well aware of the buyer-consignee relationship.
- iii. It's worth noting that two Letters of Undertaking dated 18.11.2020 and 27.11.2020 were issued by Rajratan Smelters Ltd. to Seven Star Steels Ltd. In these letters, Rajratan Smelters Ltd. acknowledged the buyer-consignee relationship and took responsibility for paying the entire debt of Rs. 1,06,82,270/-, based on their telephonic discussions. Subsequently, another letter dated 27.11.2020 from Rajratan Smelters Ltd. affirmed that the payment responsibility for material worth Rs.1,36,73,407/- purchased from Applicant on their behalf in buyer-consignee basis will be paid by them. It's important to highlight that Rajratan Smelters Ltd. even



issued a cheque (No. 059211) dated 01.12.2020 drawn on Allahabad Bank, Swarup Nagar Branch, Kanpur Nagar, in favor of Seven Star Steels Limited. Furthermore, the letter dated 27.11.2020 was duly sent to Seven Star Steels Ltd. on 03.12.2020, and an email containing the letter as an attachment was also sent to its Director, Nirmal Bathwal, on 01.12.2020. Thus, Rajratan Smelter Ltd. became a guarantor on behalf of Brijbihari Metallics Pvt. Ltd.

iv. Nirmal Bhatwal, the Director of Seven Star Steels Ltd., was aware about the entire situation and engaged in multiple telephonic discussions with Rajratan Smelter Ltd. and Brijbihari Metallics Pvt. Ltd. Moreover, Seven Star Steels Ltd. did not express any disagreement to the established mutual understanding amongst all the parties regarding the buyer-consignee relationship. They neither contested nor rejected this arrangement in any way and their silence in response to the letters and e-mails amounted to tacit acceptance. Their commitment to this understanding was further demonstrated when they collected the cheque from Rajratan Smelter Ltd.'s office and deposited it with their bank. The non-honor of the



cheque issued by Rajratan Smelter Ltd should not be attributed to or held against Brijbihari Metallica Pvt. Ltd.

v. It is also mentioned that Seven Star Steels Ltd. did not take any action or pursued legal measures against Rajratan Smelter Ltd. for the dishonor of the cheque. The present petition is being questioned for its ulterior motives.

vi. As contended by the Corporate Debtor that according to the agreed-upon buyer-consignee relationship and the mutual understanding acknowledged by all involved parties, M/s Rajratan Smelter Ltd. had taken on the obligation and responsibility to settle the claimed debt with M/s Seven Star Steels Ltd. This liability was confirmed in written form by M/s Rajratan Smelter Ltd. and through Seven Star Steels Ltd.'s actions.

4. The operational creditor filed a rejoinder dated 20.01.2023 countering all the contentions raised in the reply filed by the Corporate Debtor and made the following averments:

i. It will be apparent from the invoices, ledger entries and the Form 3 demand notice that the operational creditor regularly issued invoices to the corporate debtor, who in



turn made periodic payments. The last payment was recorded on 11.05.2020, amounting to Rs.8,00,000/-

- ii. The corporate debtor alleged that applicant was well aware of the buyer-consignee relationship between itself and different manufacturers. It did not provide any supporting documentation to substantiate the aforesaid claim. If the corporate debtor acted as a middleman, the operational creditor was unaware of this arrangement. In fact, the operational creditor consistently raised invoices on the corporate debtor, which were accepted and paid without objection. The assertion that Nirmal Bhatwal, the director of Seven Star Steels, was well-informed about the situation and engaged in telephonic conversations with Rajratan Smelter Ltd. and Brijbihari Metallics Pvt. Ltd. is disputed and requires proof from the corporate debtor.
- iii. According to the applicant, the corporate debtor instructed the supply of these billets to various sites. Seven Star Steels Ltd. followed these instructions from Brijbihari Metallics Pvt. Ltd. and generated invoices for the corporate debtor upon completion of these supplies. Except for the outstanding amount for which the case was



- filed, Brijbihari Metallica Pvt. Ltd. made all due payments
- iv. The applicant also states that it served demand notice on 18.11.2020 on the respondent and it received a letter of the same date from Rajratan Smelter Ltd., a third party that might be Respondent's financial debtor aiming to assume its liability.
 - v. Even if we consider the viewpoint of the corporate debtor, wherein they assert that "Rajratan Smelter Ltd. had guaranteed and became liable and responsible to pay the alleged debt to Seven Star Steels Ltd., and this liability has been accepted by Rajratan in writing and by Seven Star Steels Ltd. through its actions," it's important to recognize that the liability of the primary borrower (the corporate debtor) and the guarantor (Rajratan Smelter Ltd.) is of the same extent.
 - vi. Reiterating the previous point, it should be emphasized that the corporate debtor procured goods and issued directives on where these goods should be delivered. Even if we were to consider the corporate debtor's perspective that they were not the source or user of the provided materials, the invoices were consistently issued by the



operational creditor to the corporate debtor, and payments were remitted by the corporate debtor to the operational creditor's bank account, with the exception of the outstanding amount. Subsequently, when the operational creditor issued the Form 3 demand notice, the corporate debtor received it without raising any objections or concerns. The corporate debtor seems to have constructed an implausible and unsupported defense and attempted to substantiate this defense with purported telephone conversations.

5. The Corporate debtor has submitted Written Submissions dated 22.03.2023 wherein it has questioned the maintainability of this application by making the following contentions:-

i. To begin with, the invoices issued by the Operational Creditor are argued to contain erroneous and inaccurate information, particularly under the head of "Date and Time of Supply". These invoices uniformly display the same date of supply as the invoice issuance date, which the Corporate Debtor finds implausible and impractical. This suggests that the Operational Creditor has been employing standardized invoice



templates, the details of which cannot be considered precise or trustworthy for a just resolution of the present matter.

- ii. Additionally, in contradiction to the agreed-upon mutual understanding between the Parties, the Operational Creditor's demand includes an interest charge of 21% per annum from the alleged date of default (18.11.2020), despite the invoices bearing an interest rate of 18% per annum. The Corporate Debtor maintains that they were never subjected to interest charges in their business interactions, rendering the claim for interest at 21% per annum unjustifiable.
- iii. The Corporate Debtor asserts that there was a pre-existing agreement between the Parties for a payment term of 60 days, which they adhered to consistently. Surprisingly, out of the 16 invoices submitted by the Operational Creditor, 9 invoices totaling Rs. 41,64,167/- are dated from 29.01.2020 onwards. This shifts the alleged default date to a point beyond 25.3.2020, thereby invoking Section 10A of the IBC, which prevents the filing of claims under Section 7, 9, and 10 for defaults arising on or after 25.3.2020. The Corporate Debtor contends that the Application under Section 9 is not legally sustainable due to this reason.



- iv. Furthermore, taking into consideration the reasoning above and the application of Section 10A, IBC, the alleged operational debt amount of Rs. 1,07,03,155/- must be adjusted by deducting the amount of Rs. 41,64,167/-, bringing the recoverable debt under the Insolvency and Bankruptcy Code to Rs. 65,38,988/-. This sum is argued to be inadequate to invoke the jurisdiction of the Insolvency and Bankruptcy Code, making the Application under Section 9 untenable.
- v. Lastly, it's noted that the Operational Creditor had recognized Raj Ratan Smelter as its Corporate Debtor under a buyer-consignee arrangement for an amount of Rs. 1,35,00,000/-. This acknowledgment was made through letters and emails dated 18.11.2020, 27.11.2020, and 03.12.2020 respectively, along with the collection and presentation of a cheque issued by Raj Ratan Smelter. Despite this acknowledgment, the Operational Creditor has not included Raj Ratan Smelter as a Corporate Debtor in the proceedings.
6. We have considered entire facts of the case and also taken into account, the pleadings as well as arguments put before us by the Ld. Counsels for the Operational Creditor and the Corporate Debtor. As per the facts stated in the application



under Section 9 and also argued by the Ld. Counsel for the Operational Creditor, the total outstanding debt is of Rs. 1,07,03,155/- due to non-payment of certain invoices raised for supply of some steel items. In this regard, it has been shown that the Operational Creditor had raised 17 invoices for supplying of Sponge Iron and Billets to the Corporate Debtor for a total amount of Rs.6,97,13,637/- out of which payment of Rs.5,82,31,367/- was made till 16.03.2020. Thereafter, another payment of Rs.8 lakh was made on 11.05.2020. Thus, leaving an outstanding amount of Rs.1,06,82,270/-. This outstanding amount is reflected in the account of the Corporate Debtor maintained in the books of Operational Creditor attached at **Annexure 2 Exhibit D** with the application. Though, there is a slight difference in the amount of debt mentioned in Part IV of the application at Rs.1,07,03,155/- and the amount of Rs.1,06,82,270/- shown in the ledger as closing balance, however the fact remains that the outstanding amount for which the default has occurred is more than Rs.1 crore. All the 17 invoices issued by the Operational Creditor to the Corporate Debtor are also attached at **Annexure 2 Exhibit C** with the application. These invoices



are also mentioned in the demand notice dated 08.11.2020 issued by the Operational Creditor to the Corporate Debtor under Section 8 in Form 3.

7. The Corporate Debtor in its reply has not disputed the outstanding amount of invoices mentioned above but a contention has been raised that the alleged operational debt of Rs.1,06,82,270/- is relating to consignment of raw material procured by Corporate Debtor from the Operational Creditor to be used by various manufactures as per their request and directions and the said consignment was even physically delivered at the works and production unit of the said manufacturing units. Therefore, it has been contended by the Corporate Debtor that there was a relationship of buyer-consignee with the Operational Creditor and it was very well within the knowledge of the Operational Creditor. To substantiate this contention, the Corporate Debtor attached two letters of a third party M/s Rajratan Smelters Ltd., one dated 18.11.2020 and another dated 27.11.2020 showing that for the material supplied to M/s Rajratan Smelters Ltd. through the Corporate Debtor, M/s Rajratan Smelters Ltd. has agreed to make the payment and also a cheque of Rs.75 lakh



was issued by M/s Rajratan Smelters Ltd. to the Operational Creditor. This cheque has also been attached with the reply. By producing these documents with the reply, it has been pleaded by the Corporate Debtor that M/s Rajratan Smelters Ltd. became a guarantor who agreed to pay on behalf of the Corporate Debtor for which the Operational Creditor has also given its explicit consent towards the aforementioned mutual understanding over telephonic conversation and the same has also been proved when the Operational Creditor collected the cheque from the office of M/s. Rajratan Smelters Ltd. and presented the same in its bank.

8. It is further contended that the dishonoring of the said cheque issued by M/s Rajratan Smelters Ltd. cannot be attributed or blamed upon the Corporate Debtor. It is also pointed out that on dishonoring of cheque, the Operational Creditor instead of taking any action or initiating any legal action against M/s Rajratan Smelters Ltd., filed the present petition with malafide intention. Thus, it has been tried to be argued by the Corporate Debtor that M/s Rajratan Smelters Ltd. to whom the material was finally supplied for being used by it , is required to be held responsible for not making payment to the



Operational Creditor as this company has guaranteed for making the payment in its letter dated 18.11.2020 and further another letter dated 27.11.2020 written to the Operational Creditor and no action may be taken against the Corporate Debtor as its role is only of a buyer-consignee.

9. The above contention of the Corporate Debtor has been vehemently contested by the Operational Creditor in its rejoinder and also by the counsel of the Operational Creditor during the hearing. In this regard, all the invoices issued to the Corporate Debtor as well as the ledger account and demand notice issued in Form 3 by the Operational Creditor, have been referred to. From the ledger account, it has been shown that for the invoices issued to the Corporate Debtor, it was making payment from time to time and the last payment was made on 11.05.2020 for a sum of Rs.8 lakh. The Ld. Counsel specifically pointed out that the Corporate Debtor did not even reply to the demand notice dated 27.11.2020 issued by the Operational Creditor in Form 3 disputing or denying its liability to pay the outstanding amount of Rs.1,06,82,270/- raising any such contention of being only a buyer-consignee and mentioning that final payment is to be made by the party



to whom material was finally supplied, which now, in the reply as being mentioned to be M/s Rajratan Smelters Ltd. It has also been emphasized by the Operational Creditor that even if the Corporate Debtor was acting as middleman, the Operational Creditor had no knowledge of the same and it had all along raised invoices upon the Corporate Debtor who has accepted the same, and made payment on it without any objection or demur. Any knowledge of the Corporate Debtor being a middleman or buyer-consignee has been vehemently denied by the Operational Creditor. The Operational Creditor accepted that it had received the letter dated 18.11.2020 from one M/s Rajratan Smelters Ltd., third party which might be a debtor of M/s Brijbihari Metallica Pvt. Ltd. i.e. Corporate Debtor, to discharge the liability of the Corporate Debtor, however, it is contested that just by accepting this letter or taking cheque from a third party acting on behalf of the Corporate Debtor, doesn't mean that the liability of the Corporate debtor is discharged till the payment of entire outstanding amount is made. As regards the argument of the Corporate Debtor that M/s Rajratan Smelters Ltd. has become a guarantor who agreed to pay on behalf of M/s Brijbihari



Metallics Pvt. Ltd. i.e. the Corporate Debtor, it has been argued by the Operational Creditor that even if the version of the Corporate Debtor as M/s Rajratan Smelters Ltd. being a guarantor due to the said liability having been taken by M/s Rajratan Smelters Ltd. in writing and it was in its knowledge, is accepted, and the guarantor became liable and responsible to pay the debt to the Operational Creditor , it is pointed out that the liability of the principal borrower and the guarantor is co-extensive. It is further argued that under the I & B Act, 2016, an Operational Creditor can take action either against the principal borrower or against the guarantor. Ld Counsel for the Operational Creditor by raising the above arguments, contended that as the material was directly purchased by the Corporate Debtor by accepting all the bills in its name and also making payments from time to time, the action of the Operational Creditor of filing an application u/s 9 of I & B Act, 2016 against the Corporate Debtor for outstanding dues on account of these bills, is very much legally justified and hence, it has been prayed that the instant case under Section 9 of the Code be admitted and necessary order for initiating CIRP against the Corporate Debtor may be passed.



10. The Ld. Counsel for the Corporate Debtor during argument, has reiterated its position of the liability of the payment of outstanding dues being on M/s Rajratan Smelters Lt. in view of its letter dated 18.11.2020 and 27.11.2020 and hence, no debt is outstanding for payment from the Corporate Debtor. Subsequently, a written submission has also been filed by the Ld. Counsel for the Corporate Debtor. In the written submission, a fresh argument has been taken as regards the certain invoices being covered by the period of default falling under Section 10A of the I & B Act, 2016 and if the amount of these invoices are taken out, the default amount will fall below the threshold limit of Rs. 1 crore and therefore, the present application u/s 9 is not maintainable. In this regard, it has been stated in the written submission that as per the mutual understanding between the parties, the Corporate Debtor had been allowed by the Operational Creditor to make payment within 60 days time period which according to him, can be seen from the ledger statement filed by the Operational Creditor. It has also been mentioned that the Operational Creditor has claim interest at the rate of 21% per annum calculated from the alleged date of default i.e. 18.11.2020 but



in the invoices issued by the Corporate Debtor contained an interest rate of 18% per annum. As the default amount itself is above Rs.1 crore even on the basis of the principal amount mentioned in the invoices, the argument as regard the interest has not been considered by us.

As regards the plea first time taken in the written submission about 60 days time period claimed to be allowed for making the payment as mutually agreed upon between the Operational Creditor and Corporate Debtor to maintain a good financial discipline, it has been pointed out that out of the 16 invoices filed by the Operational Creditor, 9 invoices totaling to an amount of Rs.41,64,167/- are dated 29.01.2020 and beyond, thus rendering the date of alleged payment or default to be beyond 25.03.2020 and bringing it within the purview of Section 10A of the I & B Code, 2016. Therefore, it is further stated that in accordance with the provision of Section 10A, no action under Section 7, 9 or 10 can be taken for any default arising on or after 25.03.2020 rendering the application under Section 9 to be not maintainable. By referring the provision of Section 10A and taking into account the payment period of 60 days, it has been argued in the



written submission that the application under Section 9 of the Operational Creditor cannot be maintained for the alleged sum of Rs.1,07,03,155/- since the aforementioned sum of Rs.41,64,167/- will have to be deducted from the same, which will reduce the recoverable and alleged operational debt under the I & B Code, 2016 to Rs.65,38,988/- which is not enough to invoke the pecuniary jurisdiction of the I & B Code, 2016, rendering the application under Section 9 to be not maintainable.

11. The plea regarding non-maintainability of the petition under Section 9 as raised in the written submission by the Corporate Debtor by invoking the provision of Section 10A of the I & B Code, 2016, though was not raised during the pleadings, we have considered the details as stated in the written submission and verified it from the record to ascertain about its correctness in order to arrive at a correct decision as per the provisions contained in the I & B Code, 2016 in this regard. From the 17 invoices attached to the petition, we do not find any time period of 60 days provide for making the payment. From the ledger accounts attach with the application, we find that it is a running account in which



payments are being credited from time to time and hence, it cannot be said as to which payment is made for which bill, however it is seen that after raising of every bill, payment is being credited, though not fully but in part and therefore, it cannot be definitely said that any definite period of 60 days was allowed by the Operational Creditor to the Corporate Debtor for making the payment as per any such mutual understanding between the Corporate Debtor and Operational Creditor as claimed in the written submission. This plea of providing a payment period of 60 days was also not taken in the pleadings and hence, the same cannot be accepted at the stage of filing of written submission. Therefore, this new argument even not supported by any supporting evidence, cannot be allowed after completion of the pleadings. Therefore, the argument taken by the Corporate Debtor as regards the non-maintainability of the petition under Section 9 raised for the first time in the written submission, is rejected by us.

12. The only issue before us is whether the Corporate Debtor is liable to pay the outstanding amount of the invoices raised by the Operational Creditor to the Corporate Debtor or not. In this regard, even if the argument of the Corporate Debtor is



accepted that M/s Rajratan Smelters Ltd. has given the guarantee for making the payment to the Operational Creditor is accepted, we are inclined to accept the argument of the Operational Creditor that the liability of the principal borrower and guarantor is co-extensive. In the present case, the Corporate Debtor is the principal party who has directly purchased material from the Operational Creditor as the bills have been raised to it and material has been supplied as per its instruction. There is no evidence of the Corporate Debtor being only a commission agent as there is no such agreement between the Corporate Debtor and the parties to whom material was supplied to the effect that the Corporate Debtor was acting as an agent of those parties to whom material was supplied. Therefore the Corporate Debtor being a party to whom bill was raised, is principally liable to make the payment despite the fact that M/s Rajratan Smelters Ltd. has guaranteed to make the payment To the Operational Creditor vide its letter dated 18.11.2020 and 27.11.2020. Despite giving the guarantee to make the payment to the Operational Creditor, as M/s Rajratan Smelters Ltd. has failed to make the payment, the Corporate Debtor become liable to make the



payment being a principal party and therefore, we find that the Corporate Debtor is clearly under default in making the payment of outstanding amount of Rs.1,06,82,270/- as per the ledger account and the same being above the threshold limit, the condition given in Section 9(5)(i) has been found to be satisfied for admission of application under Section 9.

13. Taking into account the provisions of Section 9 of the I & B Code, 2016, we find that the application made under sub-section (1) of Section 9 along with documents and fees as mentioned in its sub-section (2) is complete, no payment of the unpaid operational debt of Rs.1,07,03,155/- (or *Rs.1,06,82,270/- as found from the ledger account*) has been made which is well above the threshold limit of Rs.1 crore. Further, no notice of dispute has been given by the Corporate Debtor to the Operational Creditor. The date of default as per the last date of payment shown in ledger being 11.05.2020 and petition u/s 9 is filed on 04.08.2021 and hence, petition is found to be filed well within the limitation period. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, has been fulfilled and the Ld.



Counsel of the Corporate Debtor has failed to demonstrate before us anything about the Corporate Debtor not being liable for payment of outstanding debt or the instant application having any defect as being not maintainable, we find this application fit for admitting under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor.

14. The Operational Creditor has not proposed the name of any IRP in the present application. Hence, this adjudicating Authority considered appointment of Mr. Sarvesh Kashyap as the IRP in the present case. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Aditi Kharbanda, and it is found that there is no proceeding pending against the proposed IRP. Hence, we hereby appoint Mr. Sarvesh Kashyap, having Registration No IBBI/IPA-002/IP-N00127/2017-2018/10296, R/o of Kashyap & Associates, 101, Nipun Plaza, (Near Max Hospital), Sector-1, Vaishali, Ghaziabad, Uttar Pradesh, 201010, Email: sarvesh_dam@yahoo.com as the IRP.
15. Accordingly, this application is admitted u/s 9(5) of I & B Code, 2016 under the following terms and conditions.



- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/s Brijbihari Metallics Pvt. Ltd. is hereby admitted.
- ii) We hereby declare a moratorium u/s 14 and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) This Adjudicating Authority hereby appoints Mr. Sarvesh Kashyap, having Registration No IBBI/IPA-002/IP-N00127/2017-2018/10296, R/o of Kashyap & Associates, 101, Nipun Plaza, (Near Max Hospital), Sector-1, Vaishali, Ghaziabad, Uttar Pradesh, 201010, Email: sarvesh_dam@yahoo.com to act as the IRP under Section 13(1)(c) of the Code. The Law Research Associate of this Tribunal, Aditi Kharbanda, has checked the credentials of Mr. Sarvesh Kashyap and there is nothing adverse against him.
- iv) The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution



Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v) 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 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;

b) 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);

- c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- vi) The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

- vii) The provisions of sub-section (1) of Section 14 of I & B Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- viii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.

- ix) 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. 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 in accordance with I & B Code, 2016 read with the relevant rules & regulation framed thereunder.

- x) The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- (One Lakh Only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.
- xi) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.



- xii)** List the matter on 10th October, 2023 for filing of the progress report.
- xiii)** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Ordered accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Priya Agarwal
(Stenographer)