

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 211/Chd/Pb/2021

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

**Fortune Metals Limited
(through its Director-Sh. Bhagwan Dass Bansal)
Ferozepur Road
Opposite Circuit House
Ludhiana- Punjab 141001
CIN No.U27100PB2004PLC027603**

...Applicant-Operational Creditor

Vs.

**Tung Builders Private Limited
(Through its Director/Authorized Representative)
Kahnuwan Chowk,
Near Sita Ram Petrol Pump, Batala Road, Gurdaspur
CIN No.U45209PB2014PTC039094**

...Respondent-Corporate Debtor

Judgment delivered on: 04.11.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Arun Kumar, Advocate

For the respondent-Corporate Debtor : Respondent *ex parte* vide
Order dated 21.12.2021.

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Fortune Metals Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its Director, Mr. Bhagwan Das Bansal with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Tung Builders Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, Tung Builders Private Limited, is a Company incorporated on 08.12.2014 under the provisions of Companies Act, 2013 with CIN No.U45209PB2014PTC039094 with its registered office at Kahnuwan Chowk, Near Sita Ram Petrol Pump, Batala Road, Gurdaspur Punjab-143521. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-2.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was supplying TMT to the corporate debtor on running account basis vide invoices number 2018-19/14352, 2018-2019/14479 & 2018-2019/14491. The corporate debtor made the last payment of Rs.12,68,765/- (Rupees Twelve Lakhs Sixty Eight Thousand Seven Hundred Sixty Five Only) to the operational creditor on a running account basis. Thereafter, the corporate debtor stopped making further payments. Therefore, their payment became due. The operational creditor issued a demand notice for a total amount of Rs.1,01,12,899/- (Rupees One Crore One Lakh Twelve Thousand Eight Hundred Ninety Nine only) on 23.11.2020 and no reply was received.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.1,01,12,899/- (Rupees One Crore One Lakh Twelve Thousand Eight Hundred Ninety Nine only) the date of default is 23.04.2019 as per last transaction (attached as Annexure-6).

5. A demand notice in Form 3 dated 23.11.2020 is stated to be issued to the operational creditor by speed post. Copy of postal receipt along with tracking report is attached as Annexure-7 of the petition. It is stated that the corporate debtor did not reply to the demand notice sent by the applicant to the corporate debtor.

6. The notice of this petition was issued to corporate debtor vide order dated 25.10.2021 to show cause as to why this petition be not admitted. Affidavit of service had been filed vide Diary No.00968/01 dated 03.12.2021. None appeared on behalf of the respondents nor any reply was filed. Respondents were proceeded ex-parte vide order dated 21.12.2021 of this bench. Written submissions were filed by petitioner-operational creditor vide Diary No. 00968/2 dated 26.07.2022.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 dated 23.11.2020 was properly served. The petitioner has placed a tracking report, whereunder it was stated that the speed post was delivered to the corporate debtor and no reply to that has been duly received.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of the corporate debtor and had been set ex parte vide order dated

21.12.2021. Moreover, the petitioner has appended an affidavit u/s 9(3)(b) of Insolvency and Bankruptcy Code, 2016 stating that the operational creditor served Demand Notice dated 23.11.2020 to the Corporate Debtor as per the provisions of Section 9 of IBC, 2016. There was no notice given by the Corporate Debtor relating to the dispute of unpaid Operational Debt.

10. The other issue for consideration is whether this application is filed within limitation. This application was filed on 12.08.2021 vide Diary No.00968. Whereas the date of default is 23.04.2019 as per last transaction, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 1,01,12,899/- (Rupees One Crore One Lakh Twelve Thousand Eight Hundred Ninety Nine only). The operational creditor was supplying TMT to the corporate debtor on a running account basis and raised invoices attached as Annexure A-5. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

12. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

13. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Tung Builders Private Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below.

- 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;
- 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 Operational Assets and Enforcement of Security Interest Act, 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.

14. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

15. The order of moratorium shall have effect from the date of this order till 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.

16. In Part-III of Form No. 5, Mr. Vikas Rai Berry, Registration No. IBBI/IPA-002/IP-N00558/2017-2018/11694 was proposed as Interim Resolution Professional (IRP) by the petitioner. Form No. 2 dated 18.06.2021 was submitted by the proposed IRP along with a certificate of registration (Annexure-4 of the petition). The Law Research Associate of this Tribunal has checked the credentials of Mr. Vikas Rai Berry and it is found that his AFA Certification has expired on 18.02.2022. Thus, a new IRP is required to be appointed as per the panel list supplied by IBBI which is valid upto 31.12.2022. In view of the above, we appoint Mr. Harish

Malhotra, Registration No. IBBI/IPA-001/IP-P00728/2017-2018/11223,
E-mail:ca.harish@gmail.com, Mobile No. 98765-03199 as the Interim
Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Harish Malhotra shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent within 7 days of the order;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. The petitioner is directed to deposit an amount of Rs.80,000/- (Rupees Eighty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

November 04 , 2022

SD/TB