IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - II

CP (IB) 108/NCLT/AHM/2021

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Suresh Kumar Khandelwal ... **Applicant/**
(Sole Proprietor of G.S. Alloys & Steels) **Operational Creditor**

Versus

Ajay Protech Private Limited ... **Respondent/**
Corporate Debtor

Order Pronounced on: 01/06/2022

Coram:

Dr. Deepti Mukesh, Hon'ble Member(Judicial)
Ajai Das Mehrotra, Hon'ble Member (Technical)

MEMO OF PARTIES

Suresh Kumar Khandelwal
(Sole Proprietor of G.S. Alloys & Steels)
B-7, Shiv Marg, Banipark
Jaipur – 302 016
Rajasthan ... **Applicant/Operational Creditor**

Versus

Ajay Protech Private Limited.
59, Pratap Chamber, 1st Floor
Nr. ST & Railway Crossing
Unjha 384 170
Gujarat State ... **Respondent/Corporate Debtor**

Appearance:

For the Applicant : Mr. Masoom Shah, Advocate
For the Respondent : None

ORDER

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Suresh Kumar Khandelwal, Sole Proprietor of **G.S. Alloys & Steels**, (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against **Ajay Protech Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant is a sole proprietorship concern of Mr. Suresh Kumar Khandelwal, having GST Registration No. 08ACWPK9243K1ZR and having its office at B-7, Shiv Marg, Banipark, Jaipur, Rajasthan engaged in the business of trading of iron and steel.

3. The corporate debtor is a Private Limited Company, incorporated under the provisions of The Companies Act, 1956 on 19.04.2011, duly registered with Registrar of Companies, Gujarat, Ahmedabad with CIN: U45200GJ2011PTC065024 and having registered office at 59, Pratap Chamber, Near ST & Railway Crossing, Unjha, Gujarat State. The Authorized share capital of the Respondent is Rs. 5,00,00,000/- and Paid up share capital of the company is Rs. 5,00,00,000/-. The corporate debtor is engaged in civil construction.

4. It is submitted that the applicant is an authorised dealer of steel under Steel Authority of India Limited. Against the advance payment amount of Rs. 8,00,000/- received on 28.10.2016, during the period from 17.05.2017 to 09.05.2018, from its unit situated at VKI Area of Jaipur, the applicant had sold and supplied goods worth Rs. 9,42,50,267/- to the corporate debtor. Against the said supply, the corporate debtor had made total payment of Rs. 8,48,07,675/- during the period

from 28.10.2016 to 09.05.2018. An amount of Rs. 94,42,592/- is due and payable by the corporate debtor towards the supplies made from its unit situated at VKI Area of Jaipur.

5. The applicant further states that during the period from 28.07.2017 to 24.10.2017, goods worth Rs. 2,54,49,347/- was sold and supplied to the corporate debtor from its Churu unit against which no payment was made by the corporate debtor.

6. The applicant also states that during the period from 22.04.2019 to 09.06.2020 goods worth Rs. 85,98,848/- was supplied to the corporate debtor and raised invoices and a debit note of Rs. 5,204/-, against which corporate debtor made total payment of Rs. 86,10,112/- from 01.05.2019 to 13.08.2020. Thus, from all the above referred transactions made between the applicant and corporate debtor during the period from 28.10.2016 to 13.08.2020, principal amount of Rs. 3,48,85,879/- remained due and unpaid by the corporate debtor till the date of issuance of demand notice under Section 8 of the IB Code.

7. The applicant further states that despite assurances, no payment was released by the corporate debtor and the applicant issued demand notice in Form 3 dated 30.12.2020

under the provisions of the IB Code. Service of the demand notice to the corporate debtor was made through Registered A.D. post on 06.01.2021 at its registered office and through email at its registered email ID via email dated 15.01.2021. Original postal receipt along with tracking report and copy of email dated 15.01.2021 are annexed to the application. The corporate debtor neither paid any dues nor raised any dispute by sending a reply to the notice sent by applicant under Section of Code.

8. The applicant thereafter filed present application under Section 9 of the Code seeking initiation of CIRP of Corporate debtor.

9. During the course of hearing on 30.03.2022, the leaned counsel for the applicant was directed to file affidavit along with copy of the order of the Hon’ble Supreme Court with respect to extension of limitation during the COVID pandemic period granted from 24th March, 2020 onwards. In compliance of said order, the applicant filed affidavit inter alia stating that:

- The very first invoice due and payable by the corporate debtor relates to invoice dated 28.07.2017 and the limitation period of which would have been completed on 27.07.2020. Prior to completion of the limitation period of the aforesaid and subsequent invoices, the Hon'ble Supreme Court took *suo moto* cognizance due to the outbreak of Covid 19 pandemic and passed order dated 23.03.2020 directing extension of period of limitation in all the proceedings before Courts/Tribunals w.e.f. 15.03.2020 and vide order dated 08.03.2021 the earlier order dated 23.03.2020 was brought to an end permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021 making it clear that the period of limitation would start from 15.03.2020. Thereafter, the Hon'ble Supreme Court vide its order dated 10.01.2022, directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Therefore, the applicant affirms that the dues owed by the corporate debtor is covered well within the period of limitation.

- In compliance of order dated 30.03.2022, the applicant filed copies of the orders of Hon'ble Supreme Court dated 23.03.2020, 10.01.2022 and 30.03.2022 with respect to extension of limitation during the COVID pandemic period granted from 24.03.2020 onwards.

10. The applicant has filed copies of ledger account of the corporate debtor in the books of the applicant for the period from

01.04.2016 to 31.12.2020 and statement of Bank accounts with YES Bank and State Bank of India where deposits/credits are normally received by the corporate debtor, during the period from 01.10.2016 till the date of filing the application.

11. As per part IV form 5 an amount of 3,48,85,879/- (Rupees three crore forty-eight lacs eighty-five thousand eight hundred seventy-nine only) is due and payable by the corporate debtor. The applicant has filed affidavit of service proving the service of Section 9 application on the corporate debtor as per the address in the Master Data.

12. The registered office of the corporate debtor is situated in Unjha, Gujarat State and therefore this Tribunal has jurisdiction to entertain and try this application.

13. Considering the last date of payment 13.08.2020, the application filed on 03.06.2021 is well within limitation and not barred by Law.

14. In compliance of Section 9 (3) (b) of the IB Code an affidavit is filed by the applicant stating that neither payment was made nor notice of dispute was raised by the corporate debtor.

15. As recorded in the orders, the corporate debtor despite several opportunities given, neither appeared nor filed any reply. Therefore, on 07.02.2022, corporate debtor was proceeded ex-parte. The present application is complete and the applicant is entitled to claim its dues. On perusal of the record it is found that the applicant has brought on record sufficient documents to substantiate its claim.

16. Heard submissions and perused the documents on records. It is seen that the corporate debtor has not raised any dispute even after receiving the notice sent under Section 8 of the Code. It is further noted that even after Section 9 application was served, none appeared for corporate debtor neither any reply was filed. The corporate debtor has not come forward to contest or rebut the claim of the applicant which therefore amounts to admission of the claim.

17. In light of the above discussion, we are of the considered view that the debt is due and payable and default has occurred. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

18. The applicant has proposed the name of the Interim Resolution Professional (IRP) to be appointed, namely, Mr. Prashant Agrawal who is hereby appointed as IRP of corporate debtor having address at F-106, first floor, Sumer Complex, Gautam Marg, Behind Bagadia Bhawan, C-Scheme, Jaipur 302 001, with registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 and having email ID ippagrawal@gmail.com, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and certificate of registration with IBBI is filed which is on record.

19. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Prashant Agrawal to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by

Interim Resolution Professional, and shall be paid back to the Operational Creditor.

20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

21. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
Ajai Das Mehrotra
Member (Technical)

Sd/-
Dr. Deepti Mukesh
Member (Judicial)

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