

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 02/9/JPR/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:

MR. PAWAN GARG, PROP. OF M/S V.R. TRADING CO.

...Applicant/Operational Creditor

Versus

M/S SEWA STEELS PRIVATE LIMITED & ORS.

...Respondent/Corporate Debtor

MEMO OF PARTIES

Mr. Pawan Garg, Prop. of M/s V.R. Trading Co.

GSTIN: 07ABHPK0475H1ZP

W-65, Phase-2, Mayapuri Industrial Area,

New Delhi- 110064

...Operational Creditor/ Applicant

VERSUS**M/s Sewa Steels Pvt. Ltd.**

CIN: U27107RJ1990PTC005389

E-90 (C), RIICO Ind. Area,

Bhiwadi, Distt. Alwar- 301019 (Rajasthan)

Also At:

K-5A/12, DLF Phase-II,

Gurugram- 122002 (Haryana)

...Corporate Debtor/ Respondent No. 1**Mrs. Pinki Aggarwal Director of****M/s Sewa Steels Pvt. Ltd.**

E-90 (C), RIICO Ind. Area,

Bhiwadi, Distt. Alwar- 301019 (Rajasthan)

Also At:

K-5A/12, DLF Phase-II,

Gurugram- 122002 (Haryana)

...Corporate Debtor/ Respondent No. 2

For the Operational Creditor : A. K. Babbar, Adv.

For the Corporate Debtor : Surendra Kumar, Adv.

Order Pronounced On: 25.05.2022**ORDER****Per: Shri Raghu Nayyar, Hon'ble Technical Member**

1. This Application has been filed by Mr. Pawan Garg, proprietor of M/s V.R. Trading Company ('Operational Creditor' / 'Applicant') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

(‘Rules 2016’), with a prayer for initiation of Corporate Insolvency Resolution Process (‘CIRP’) against M/s Sewa Steels Pvt. Ltd. (‘Corporate Debtor’ / ‘Respondent’).

2. The Applicant has its registered office at W-65, Phase 2, Mayapuri Industrial Area, New Delhi – 110064. The Application has been filed in Form 5 as prescribed in Rules, 2016 for the alleged default on the part of the Respondent for the non-payment of operational dues amounting to Rs. 1,18,85,081/- (Rs. One Crore Eighteen Lakh Eighty-Five Thousand Eighty-One Only) which is inclusive of interest at 21% per annum.

3. The Respondent, M/s Sewa Steel Pvt. Ltd., is a Private Limited Company incorporated under the Companies Act, 1956 on 17.04.1990, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U27107RJ1990PTC005389. The Registered Office of the Respondent is at E-90(C), RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan – 302013. The company’s nominal share capital is Rs. 2,00,00,000/- (Rupees Two Crores Only), and paid-up share capital is Rs. 1,66,40,500/- (Rupees One Crore Sixty-six Lakhs Forty Thousand Five Hundred Only). As the registered office of the Corporate Debtor is in district Alwar, Rajasthan, this Adjudicating Authority has jurisdiction to decide this instant Application of the Operational Creditor.

4. The Applicant sold iron scrap to the Corporate Debtor through various invoices on a running account basis whereby a principal amount of Rs. 42,67,140/- (Rs. Forty-Two Lakh Sixty-Seven Thousand One Hundred Forty Only) is due. The goods were sent to the aforementioned Corporate Debtor’s

registered office. Copy of the sale invoices raised on the Corporate Debtor is annexed in Annexure – P3 (Colly) of the Application.

5. As the Corporate Debtor did not pay the amount, the Applicant issued a Demand Notice dated 08.11.2021 under Section 8 of the Code on 19.11.2021 for the payment of money alongside interest, with interest calculated at the rate of 21% per annum, as an outstanding amount, which is enumerated in Part IV of the Form - 5 filed with the Application:

PART IV

Particulars of Operational Debt	
The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<p><u>Amount of Debt Due:</u> Rs. 1,18,85,081/-</p> <p>Total Outstanding Principal Amount: Rs. 42,67,140/-</p> <p>Total Compound Interest: Rs. 76,08,941/-</p>
Amount claimed to be in default and the date on which the default occurred	<p>The total amount to be in the default is Rs. 1,18,85,081/-</p> <p>The default is a continuous default which started on 04.03.2019.</p>

6. The Applicant submits that the sales of goods was made to the Corporate Debtor as per Corporate Debtor's instructions and following the law prescribed under CGST / SGST Act. Further, the written clause of payment of interest contains that if the payment is not made within due date, i.e., immediately on raising of invoice, the debtor would have to pay interest @ 21% per annum on the principal amount. The aforesaid demand notice stood served on 19.11.2021

through the email as well as through the post to the addresses of the Corporate Debtor and director. Postal receipts along with Postal Tracking slips are annexed at Annexure – P5 of the Application.

7. Applicant further submits that he had neither received any complaint regarding the quality or quantity of the goods sold to the corporate debtor nor any proceedings are initiated or pending before any court of law or adjudicating forum regarding the goods supplied.

8. Notices were issued in the aforesaid Application, and Mrs. Pinki Aggarwal, in the capacity of lone director of Corporate Debtor, Respondent No. 2, filed a reply *vide* Diary No. 558/2022 dated 28.02.2022 and submitted that due to the death of her husband and director of the company, Sh. Virendra Kumar, because of Covid-19 on 03.05.2021 at Delhi, the company's business is suspended, and the factory premises are lying idle. The electric connection is also disconnected; there is no business activity going on at present; and no employees working on the company's payroll except a security guard.

9. She further submitted that the business conducted by the company is of running the furnace and melting iron scrap into ingots, and the entire enterprise was under the care of its late director, Sh. Virendra Kumar, including the control and supervision. Hence, Respondent No. 2 does not know the business activity or the financial transactions undertaken by the Corporate Debtor. Given the aforementioned reasons, she is in no position to file a detailed reply to the company petition.

10. It has been shown that the Corporate Debtor has failed to make payment of

the aforesaid amount due to date as mentioned in the statutory notice. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under IBC, 2016.

11. Under sub-section (4) of Section 9 of the Code, the Operational Creditor proposed the name of Mr. Arun Chadha to be appointed as Interim Resolution Professional ('IRP'), bearing Registration No. IBBI/IPA-001/IP-P00165/2017-18/10334 with the e-mail address chadharun@yahoo.com and phone number +91-9810286133, in the present matter. The said IRP has filed the written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record.

12. In this matter, the Interim Resolution Professional appointed herein, Mr. Arun Chadha, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.

13. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

14. Consequences of commencement of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Arun

Chadha, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code, calling for claims from the creditors of the Corporate Debtor and collation of the same shall be done.

- (ii) Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
- (iii) The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the bank account of IRP within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed on the Applicant upon the formation of Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand

suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

15. Copy of this order be supplied to the parties. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Interim Resolution Professional by all modes for information.

16. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the IRP nominated on his e-mail id.

Accordingly, CP No. (IB)- 02/9/JPR/2022 is admitted.

DEEP
CHANDRA
JOSHI

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAGHU NAYYAR,
TECHNICAL MEMBER**