

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**IA No. 4626 of 2023 In**

**CP (IB) NO. 1280 of 2021**

Under Section 9 of the Insolvency and Bankruptcy  
Code, 2016

**IA No. 4626 of 2023**

**In the Application of**

**Prashant Jain**

**Resolution Professional of Superways  
Enterprises Pvt. Ltd.**

**...Resolution Professional of  
Operational Creditor/Applicant**

Versus

**Vinod Jatiya & Ors.**

**...Respondents**

**In the matter of**

**Superways Enterprises Pvt. Ltd.**

Having its Registered Office at –

1, 3rd Floor, 14 A, Sukhia Building, Cawasji Patel  
Road, Horniman Circle, Fort, Mumbai City,  
MUMBAI, Maharashtra, India, 400001

**...Operational  
Creditor/Petitioner**

Versus

**PN Steel Traders Private Limited**

**CIN: U63090MH2013PTC241579**

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Having its Registered Office at –  
Office No.6, 3<sup>rd</sup> Floor, Shahviri Building 37/41.  
R.S. Sapre Marg, Kalbadevi, Mumbai City,  
Mumbai, Maharashtra, India, 400002

**...Corporate**

**Debtor/Respondent**

**Order Delivered On : 11.01.2024**

***Coram:***

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

***Appearances:***

For the Applicant

in IA No. 4626 of 2023 : Ms. Mily Ghoshal, Advocate

For the Respondents in

IA No. 4626 of 2023 : Mr. Zal T. Andhyarujina, Senior  
Advocate

For the Petitioner/

Operational Creditor in

CP(IB) 1280 of 2021 : Counsel Present, but appearance has not  
been marked.

For the Respondent/

Corporate Debtor in

CP(IB) 1280 of 2021 : Ms. Sukanya Bhaumik, Advocate

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This Company Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Superways Enterprises Private Limited ("Operational Creditor/Petitioner")**, seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **PN Steel Traders Private Limited ("Corporate Debtor/ Respondent")**.
2. The Corporate Debtor was incorporated on 01.04.2013 under the Companies Act, 1956. Its Corporate Identity Number ("**CIN**") is **U63090MH2013PTC241579**. Its registered office is at Office No.6, 3<sup>rd</sup> Floor, Shahviri Building 37/41. R.S. Sapre Marg, Kalbadevi, Mumbai City, Mumbai, Maharashtra, India, 400002. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Operational Creditor deals in the trading and supply of steel and allied materials. A claim of Rs. 7,33,68,871/- (Rupees seven Crores, Thirt Three Lakhs, Sixty Eight Thousand, Eight Hundred and Seventy One Only) has been raised by the Operational Creditor on the Corporate Debtor against the material supplied on credit basis. The Particulars of Claim have been placed on record as **Annexure II** of the Petition.
4. Before we deal with the Petition for admission and initiation of CIRP of the Corporate Debtor, it is important to deal with **IA No. 4626 of 2023**, filed by the Resolution Professional of the Operational Creditor, that has been admitted into CIRP by this Tribunal vide Order dated 26.07.2022 in CP(IB) No. 2 of 2021.

**IA No. 4626/2023**

**Submissions advanced by the Ld. Counsel on behalf of the Applicant/  
Resolution Professional of the Operational Creditor**

5. This Application has been filed under Section 65 read with Section 60(5), seeking imposition of penalty against the Respondents for initiating CIRP of the Corporate Debtor fraudulently with malicious intent.
6. The Applicant herein submits that Superways Enterprises Private Limited was admitted into CIRP by this Tribunal vide order dated 26.07.2022 in CP(IB) 2 of 2021. The Applicant submits that the CIRP period, including the one-time extension of 90 days, ended on 17.06.2023.
7. The Applicant submits that this Tribunal, vide Order dated 26.07.2022 had appointed Mr. Hemendra Paliwal as the Interim Resolution Professional (“**IRP**”) for carrying CIRP in case of Applicant company. However, Mr. Hemendra Paliwal withdrew his consent to act as the IRP and therefore, this Tribunal appointed Mr. Devang Subodh Thakar as the IRP vide Order dated 20.09.2022. Thereafter, the IRP constituted the CoC which comprised of Indian Bank having 92.89% voting share and Prarthna Private Limited having 7.11% voting share. The Indian bank, being a member with majority voting shares, decided to replace the IRP and to appoint Mr. Prashant Jain, the Applicant herein, as the RP of the Corporate Debtor. The Tribunal vide Order dated 12.06.2023 approved the appointment of the Applicant herein as the Resolution Professional of the Operational Creditor.
8. The Applicant submits that the Respondents No. 1 & 2 herein are the suspended directors who were running the business of the Operational Creditor prior to initiation of the CIRP and admittedly are the persons

who were responsible for the day-to-day affairs of the Operational Creditor and the Respondents No. 3 & 4 herein are directors of the Corporate Debtor in the main Company Petition.

9. The Applicant submits that during the handover from the erstwhile RP, it was noted that the Transaction Audit of the Operational Creditor for identification of preferential, undervalued, fraudulent and extortionate credit transactions was not carried out. The Applicant submits that on further probe, peculiar facts of this case were noted wherein Multiple CIRPs have been initiated in a circular fashion which has led to a chain of CIRPs.
10. The Applicant submits that Superways Enterprises Private Limited has filed an Application for initiation of CIRP against Zenil Traders Private Limited and PN Steel Traders Private Limited and in both these Companies the Directors are Respondents No. 3 & 4. The Applicant further submits that Zenil Traders Private Limited has filed an application for initiation of CIRP of Makalu Trading Limited where the Respondent No. 1 & 2 are Directors. Makalu Trading Limited has filed an Application for initiation of CIRP of Prarthna Private Limited. Prarthna Private Limited has filed an Application for initiation of CIRP of Superways Enterprises Private Limited, where the Respondent No. 1 and 2 are Directors and Kalundre Metaliks Private Limited, where Respondents 3 & 4 are Directors.
11. The Applicant further submits that the Application for initiation of CIRP against Zenil Traders Private Limited has been admitted and the Operational creditor herein is the only COC Member, however there are no funds with Superways Enterprises Private Limited to run the CIRP of Zenil Traders Private Limited. Furthermore, this Tribunal, vide its order dated 06.10.2022 while admitting the CIRP against Zenil

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Traders Private Limited had directed the Operational Creditor herein to pay Rs. 5,00,000/- (Rupees Five Lakhs Only) towards the initial CIRP Cost. However, the said amount still remains partially unpaid as there are no funds and the Operational Creditor is itself undergoing CIRP.

12. The Applicant has stated that a distinctive factor in all the cases involved is that none of the Corporate Debtors have any major asset and have a major claim from Statutory Department. The various dues of respective Companies are as follows :

<b>Name of Company</b>	<b>Statutory Claims as per IBBI website</b>
Makalu Trading Limited	Rs. 486 Crores
Superways Enterprises Private Limited	Rs. 155 Crores
Prarthna Private Limited	Rs. 45 Crores

The List of Statutory Creditors for each company as available on IBBI has also been placed on record as **Annexure- G** of the IA.

13. The Applicant further states that in the matter of Superways Enterprises Private Limited, the Income Tax Department has filed a Claim for Rs. 155,23,52,740 /- (Rupees One Hundred and Fifty Five Crores Twenty Three Lakhs Fifty Thousand Seven Hundred and Forty Only).
14. The Applicant has also placed on record a Show Cause Notice issued by the Income Tax Department to Superways Enterprises Private Limited which states that pursuant to the search and seizure conducted by the Income Tax Department, they have found that the Vinod Jatia

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Group of companies have been indulging in large scale booking of bogus entries running into crores of rupees by way of bogus sales & bogus purchases through paper/shell companies. On physical verification of the business premises of these paper/shell companies, it was found that these entities have not been doing any genuine activities.

15. The Applicant submits that the petition against the current Corporate Debtor was filed on 24.12.2021 by the Director of the Operational Creditor, however in spite of the admission of the Operational Creditor under CIRP vide order dated 26.07.2022, the same was not apprised to this Tribunal and the said Operational Creditor continued to pursue the matter without the Interim Resolution Professional/Resolution Professional.
16. The Applicant further submits that the present Company Petition was listed for pronouncement of Order on 31.07.2023. However, since the Applicant was still in process of taking handover, the Applicant was never apprised of the present Company Petition. On taking immediate cognizance, the Applicant went through all the orders in the said Company Petition and understood that the Parties had with malicious intention never apprised this Tribunal of the admission of the Company Petition against the Operational Creditor herein. On admission of the Company under CIRP it is a settled position that the Interim Resolution Professional/Resolution Professional appointed shall be in charge of the Corporate Debtor (the Operational Creditor herein). The Applicant immediately through his counsel apprised this Tribunal of the facts of the case, considering which, the Tribunal withheld the pronouncement of Order on the said date.
17. It is the Applicant's case that this chain of CIRPs have been initiated to cleanse fund diversions, eradicate the statutory dues and ongoing

investigations against these Companies and their Directors under CIRP.

**Submissions advanced by the Ld. Counsel on behalf of the Respondent**

**Nos. 1 and 2**

18. The Respondent submits that the Applicant's reliance on the Show Cause Notice issued by the Income Tax Department is unwarranted and misplaced as the said Notice is under challenge in appeal and pending adjudication. The Respondent further submits that there are no adverse orders affecting the rights of Superways Enterprises Private Limited and the Respondent Nos. 1 and 2.
19. The Respondent also submits that the Transaction Audit of the Operational Creditor for identification of preferential, undervalued, fraudulent and extortionate credit transactions is required to be carried out by the Applicant, which the Applicant has failed to do till date.

**Findings**

20. We have heard the submissions and perused the records.
21. Section 65 of the Code reads as under –

*65. (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

*(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

*(3) If any person initiates the pre-packaged insolvency resolution process—*

*(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*

*(b) with the intent to defraud any person,*

*the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

22. Section 65 of the Code provides action in case where the (a) insolvency proceedings are initiated with fraudulently; or (b) with malicious intent for any purpose other than the resolution of insolvency or liquidation.
23. From the documents placed on record, it is found that there is no prima facie evidence of fraudulent or malicious initiation of CIRP proceedings as per Section 65 of the Code. The Show Cause Notice issued by the Income Tax Department has been challenged by the Corporate Debtor and has not been adjudicated yet, therefore the contents of said Show Cause Notice cannot be considered to be evidence of fraud at this stage.
24. Further, the contention of the RP that CIRP has been initiated to cleanse fund diversions, eradicate the statutory dues and ongoing investigations against these Companies and their Directors holds no ground as Section 32A of the Code ensures that the Directors continue to be liable to be prosecuted and punished for an offence committed by the Corporate Debtor prior to the commencement of CIRP, notwithstanding that the Corporate Debtor's liability has ceased. As far as Corporate Debtor is concerned, the claims of the statutory authorities are to be satisfied from the assets of the corporate debtor, if there is one. In case there is no assets, the realisation of the dues from the corporate debtor is bleak even if the Corporate Debtor is not admitted into insolvency process.
25. As regards the statutory dues of the Income Tax Department, it is pertinent to note that their claims have been admitted in the proceedings of the various companies mentioned in the Application and would be dealt with in the respective CIRP Proceedings as per law. In the present case, it is observed from the Balance Sheets of the Corporate Debtor placed on record that the Corporate Debtor does not

possess sufficient funds or assets to pay off the Income Tax dues by itself, at this stage. It is prudent to also note that the Income Tax Department has the recourse of initiating proceedings under Section 179 of the Income Tax Act, 1961 which provides that where any tax due from a private company in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax. Hence, it can not be said that the application is malicious or fraudulent.

26. In light of the above, we find no merit in the Application, and accordingly, IA No. 4626/2023 is **disposed as dismissed**.

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**Submissions advanced by the Ld. Counsel on behalf of the Operational Creditor**

27. The Operational Creditor submits that the total amount of debt due and payable by the Corporate Debtor is Rs.7,33,68,871/- (Rupees seven Crores, Thirt Three Lakhs, Sixty Eight Thousand, Eight Hundred and Seventy One Only).
28. The Operational Creditor deals in the trading and supply of steel and allied materials. A claim of Rs. 7,33,68,871/- (Rupees seven Crores, Thirt Three Lakhs, Sixty Eight Thousand, Eight Hundred and Seventy One Only) has been raised by the Operational Creditor on the Corporate Debtor against the material supplied on credit basis. The Particulars of Claim have been placed on record as **Annexure II** of the Petition.
29. The Petitioner submits that a Purchase Order dated 27.03.2017 was raised on the Operational Creditor by the Corporate Debtor for supply of steel material viz. HR coils for an amount of Rs. 8,17,90,875/-

(Rupees Eight Crores, Seventeen Lakhs, Ninety Thousand, Eight Hundred and Seventy Five Only) inclusive of VAT and the same was to be supplied on credit basis within in a span of 15 days. The Purchase Order has been placed on record as **Annexure IV** of the Petition.

30. Subsequently, in F.Y. 2017-2018, during the period from 06.04.2017 to 08.04.2017, invoices were raised for Rs. 7,69,20,814/- (Rupees Seven Crores, Sixty Nine Lakhs, Twenty Thousand, Eight Hundred and Fourteen Only) by the Operational Creditor for goods supplied to the Corporate Debtor against which an amount of Rs. 7,33,68,871/- (Rupees Seven Crores, Thirty Three Lakhs, Sixty Eight Thousand, Eight Hundred and Seventy One Only) is still outstanding and due to the Operational Creditor from the Corporate Debtor.
31. The Petitioner submits that the Corporate Debtor took delivery of the aforesaid goods, without raising any objection/dispute as to price, quantity, quality, specification or otherwise. The invoices duly acknowledged and signed by the Corporate Debtor gives details of the goods supplied and VAT charged. The said invoices have been placed on record as **Annexure V** of the Petition.
32. The outstanding debt of Rs. 7,33,68,871/- (Rupees Seven Crores, Thirty Three Lakhs, Sixty Eight Thousand, Eight Hundred and Seventy One Only) has been confirmed by the Corporate Debtor on 01.04.2018, 01.04.2019, 01.04.2020 & 01.04.2021 vide Balance Confirmation Certificates. The said Balance Confirmation Certificates have been placed on record as **Annexure VII** of the Petition.
33. The Petitioner submits that part payment of Rs.35,51,943/- (Rupees Thirty Five lakhs, Fifty One Thousand, Nine Hundred and Forty Three Only) has been received till date and the last payment against the goods supplied was received on 11.10.2018.

34. The Operational Creditor has placed on record as **Annexure IX** correspondences exchanged between the parties with regard to the outstanding amount. Even after numerous follow ups and correspondence made by the Operational Creditor, the Corporate Debtor failed to pay the outstanding dues to the Operational Creditor.
35. The Petitioner on realising that Respondent was unable/incapable of paying to the Petitioner, served upon the Respondent Demand Notice dated 22.10.2021 in Form 3 under section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which was duly received by speed post by the Respondent. The Respondent has failed to reply to the Demand Notice.
36. The date of default is taken to be 31.05.2018 as it is the date on which the last payment has been made by the Respondent to the Petitioner.
37. The Petitioner in support of its claim has placed on record the following documents :
- i. Purchase Order
  - ii. Invoices
  - iii. Ledger Account Statement
  - iv. Balance Confirmation Certificates
  - v. Bank Statement showing details of part payment received by the Petitioner
  - vi. Correspondence between Petitioner and Respondent
38. Since no payment has been made by the Corporate Debtor, the Operational Creditor has filed the present Petition.

**Submissions advanced by the Ld. Counsel on behalf of the Respondent/  
Corporate Debtor:**

39. The Respondent admits that an amount of Rs. 7,33,68,871/- (Rupees Seven Crores, Thirty Three Lakhs, Sixty Eight Thousand, Eight Hundred and Seventy One Only) is due & outstanding to the Petitioner.
40. The Respondent submits that the Company has large receivables which have been due for more than 2 years and even after continuous follow up with the debtors, the chances of recovery seem insignificant.
41. The Respondent further submits that the company is undergoing financial distress therefore sufficient revenues cannot be generated and the Pandemic has adversely affected the business of the company, owing to which the company has failed to fulfil its financial commitments.
42. In light of the above, the Respondent has pleaded that the present Petition be admitted as the company has no alternate source of income to repay the outstanding amount due.

**Findings**

43. We have heard the submissions of the Petitioner and perused the records.
44. From the documents placed on record by the Petitioner, it is evident that there was debt due and payable by the respondent, which has also been admitted by the Respondent vide the Balance Confirmation Certificates and the Reply dated 27.01.2022.
45. In the backdrop of above facts and circumstances, we are of the view that the Respondent has defaulted in the payment of the outstanding debt. Further, as envisaged under section 9(3)(b) of the Code, an

affidavit has also been filed by the Petitioner. Also, as per the available record, it is apparent that the Respondent had never raised any dispute with respect to the services of the Petitioner.

46. The application made by the Petitioner is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority **admits** this Petition and orders initiation of CIRP against the Corporate Debtor.
47. The Petition bearing CP (IB) No. 1280 of 2021 filed by **Superways Enterprises Private Limited**, the Operational Creditor, under Section 9 of the IBC read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **PN Steel Traders Private Limited**, the Corporate Debtor, is **admitted**.
48. There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- i. 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;
  - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
49. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of Sub-Section (1) of Section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
50. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, as the case may be.
51. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
52. **Mr. Rakesh Chaturvedi**, having Registration No. IBBI/IPA-001/IP-P00242/2017-18/10471 and Email Id: ip@pareshrakesh.in, is hereby appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be

compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

53. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
54. The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses shall be treated as interim advance to fund the CIRP cost which shall be subject to approval by the Committee of Creditors (CoC). However, it is clarified that this amount shall be treated as interim finance for treatment under CIRP.
55. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
56. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.

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57. Ordered accordingly.

Sd/-

**Prabhat Kumar**  
Member (Technical)

/SP/

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)