



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-(Court-I)
KOLKATA**

CP (IB) No. 13/KB/2024

An application 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:

Gouri Iron & Steel Private Limited
[CIN: U27101WB2002PTC094371]

...Operational Creditor

Versus

Chaitanya Alloys Private Limited
[CIN: U27310WB1995PTC071299]

...Corporate Debtor

Date of Hearing: 05/07/2024

Date of pronouncing the order: 02/08/2024

Appearances (through hybrid mode):

For the Operational Creditor : Ms. Pallavi Ray, Advocate

For the Corporate Debtor : None

Coram:

Bidisha Banerjee : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

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Brief facts of the case:

2. This is a Company Petition filed 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 by Gouri Iron & Steel Private Limited (in Liquidation) (***“Operational Creditor”***), seeking to initiate Corporate Insolvency Resolution Process (***“CIRP”***) against Chaitanya Alloys Private Limited (***“Corporate Debtor”***).
3. It is submitted in Part-II of the Petition that the nominal share capital of the Corporate Debtor is Rs.25,00,000 (Rupees Twenty Five Lakh Only) with paid up capital as Rs.21,02,200 (Rupees Twenty One Lakh Two Thousand Two Hundred Only).
4. Part-IV of the Petition the details of operational debt for an amount of Rs.200,59,10,177/- (Rupees Two Hundred Crore Fifty-Nine Lakh Ten Thousand One Hundred Seventy-Seven only).
5. The Corporate Debtor was incorporated on 1 May 1995, having CIN: U27310WB1995PTC071299, under the Companies Act, 1956. Its registered office is at 1, British Indian Street, 7th Floor, Kolkata-700069, West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 7 December 2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.200,59,10,177/- (Rupees Two Hundred Crore Fifty Nine Lakh Ten Thousand One Hundred Seventy Seven only). The date on which the debt fell due is on 14.01.2022.

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7. The Operational Creditor had issued a Demand Notice under Section 8 of IBC, 2016 on 08.09.2023¹. The Corporate Debtor had received the notice but there is no reply to the same.

Brief facts of the case:

8. The Operational Creditor placed a purchase order on 01.09.2011 to the Corporate Debtor for purchasing 80000 metric tons of TMT bars. The same was accepted by the Corporate Debtor and it assured that there would be timely supply of goods as per the mutual understanding between the parties.
9. Pursuant to the above, the Operational Creditor made an advance payment of Rs.212,14,44,252/- (Two Hundred Twelve Crore Fourteen Lakh Forty Four Thousand Two Hundred Fifty Two Only) which was a 50% advance for supply of materials. The above amount was paid in several tranches from 27.08.2011 to 06.02.2012.
10. The Corporate Debtor failed to supply such goods after receiving the advance, therefore, the Operational Creditor issued a letter dated 05.10.2012 for supplying the goods to which the Corporate Debtor replied vide a letter dated 18.10.2012 whereby it acknowledged the advance sum paid and informed that due to bad market condition it has been unable to supply the goods.
11. Subsequently on 12.04.2013, the Operational Creditor once again issued a letter stating to either supply the goods or refund the advance amount paid. The Corporate Debtor replied to the same on 20.05.2013 and asked for time to supply the materials but once again failed to do the same. Following the same, the Operational Creditor cancelled the purchase

¹ Annexure R at pages 79-93 of the Petition

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order and asked the Corporate Debtor to refund the advance amount vide a letter dated 19.12.2013.

12. The Corporate Debtor requested for a moratorium for repaying the amount but the Operational Creditor disagreed to the same and asked for a refund vide a letter dated 19.06.2014. Thereafter, the Corporate Debtor supplied materials amounting to Rs.3,10,36,640/- (Rupees Three Crore Ten Lakh Thirty Six Thousand Six Hundred Forty only) and assured to supply the remaining within a reasonable time.
13. The Operational Creditor after deducting the amount of goods supplied, again on 07.09.2015 requested to pay the remaining amount to which the Corporate Debtor replied vide a letter dated 16.11.2015 and asked for six month time for repaying the same, however it failed to repay the same.
14. The Operational Creditor, once again issued a reminder letter dated 02.04.2016 demanding the outstanding amount to which the Corporate Debtor replied vide letter dated 17.04.2016 and stated that due to bad market condition it is unable to pay the dues and proposed to repay the same in 24 monthly instalments. Thereafter, an amount of Rs.8,32,74,799/- was paid from the period 18.04.2016 to 06.03.2018 and by letter dated 15.03.2018, the Corporate Debtor assured to make the remaining payment if some more time was given to him. The Operational Creditor agreed to amend the monthly payment schedule subject to payment of Rs.10 crores.
15. The Corporate Debtor again on 29.12.2018 agreed to pay Rs. 11,93,636/- and assured to pay the remaining amount. The Operational Creditor again demanded to pay Rs.200,59,39,177/-. The Corporate Debtor vide a letter dated 13.08.2020 stated that it paid an amount of Rs.29,000/- and shall pay the remaining outstanding at the earliest. The Corporate Debtor despite his assurances, failed to repay the outstanding dues and a debt of Rs.200,59,10,177/- remain unpaid.

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16. On 25.11.2021, the Operational Creditor was admitted into CIRP and Mr. Netai Basak was appointed as the IRP. The IRP issued a letter dated 14.01.2022 for paying Rs.200,59,39,177/- but the Corporate Debtor did not respond to it or took steps to pay the debt. Subsequently, the Operational Creditor went into liquidation on 24.11.2022 and Mr. Uttam Kumar Tekriwal was appointed as the liquidator.
17. The applicant had filed an application under Section 33(5) of the IBC, 2016 and had obtained the leave of this Adjudicating Authority for initiating proceedings under Section 8 and 9 of the Code and the same was granted vide an order dated 02.08.2023.
18. Thereafter on 07.09.2023, the liquidator issued a demand notice under Section 8 of the IBC which was received by hand by the Corporate Debtor on 08.09.2023², but despite receiving the same, the Corporate Debtor neither replied to it nor made any further payment.
19. Further, there are several acknowledgements by the Corporate Debtor since 2011 to 2020 regarding the outstanding dues payable by the Corporate Debtor and therefore this petition under Section 9 of IBC, 2016 shall be admitted.

Analysis and Findings

20. We have heard the Learned Counsel appearing for the Operational Creditor. None appeared for the Corporate Debtor on 19.03.2024 and 14.05.2024 neither any reply affidavit was filed by them, therefore it was finally set *ex parte* vide an order dated 14.05.2024.
21. Upon perusal of the documents annexed to the petition we find that there is no pre-existing dispute between the parties and that there are acknowledgements galore of the debt which the Corporate Debtor had

² Pg. 79 of the petition

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defaulted to repay. The petition is filed within limitation and therefore the petition is complete and is liable to be admitted.

22. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 13/KB/2024** filed by Gouri Iron & Steel Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Chaitanya Alloys Private Limited., the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. 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.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. The Operational Creditor has proposed the name of the Interim Resolution Professional therefore, **Mr. Rakesh Dugar**, registration number IBBI/IPA-001/IP-P01654/2019-2020/12892, email: card190376@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid

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Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. 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

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expenses are subject to approval by the Committee of Creditors (CoC).

- j. In terms of section 9(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means 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.

23. **CP (IB) No. 13/KB/2024** to come up on **02-09-2024** for filing the periodical report.

24. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

This order is pronounced on 2nd day of August, 2024.

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