IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,
KOLKATA

C.P (IB) No.1334/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

ASL Enterprises Limited,(**CIN: U27104WB1987PLC042626**), having its registered office at 7B, Kiran Shankar Roy Road, Kolkata-700001.

… Operational Creditor

Versus

In the matter of:

Capricorn Ispat Udyog Limited, (CIN: U27109WB2004PTC100085), having its Registered office at Nidhirampur, PO- Durlovpur, PS- Gangalalghanti, Bankura, PIN-722133, West Bengal.

…Corporate Debtor

Date of hearing :07 /02/2022

Order Pronounced on :17 /02/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Amritam Mandal , Adv.] For Operational Creditor

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition under section 9 of the IBC has been filed by ASL Enterprise Limited, a corporate entity, having its registered office at 7B, Kiran Shankar Roy Road, Kolkata-700001,(hereinafter referred as the Operational Creditor),through its constituted Attorney namely Mr. Ashish Lodha, authorised vide Board Resolution dated 13.08.2018 (Annexure-C) seeking initiation of corporate insolvency resolution process in respect of **Capricorn Ispat Udyog Limited, (CIN: U27109WB2004PTC100085),** having its Registered office at Nidhirampur, PO- Durlovpur, PS- Gangalalghanti, Bankura, PIN-722133, West Bengal (hereinafter referred as the Corporate Debtor).

3. It is submitted in the petition that the Operational Creditor is engaged in the business of trading and dealing in TMT (cutting), rods, Miss Roll and other allied products and had long term business relationship with the Corporate Debtor. The Corporate Debtor had issued various Purchase Orders from time to time to supply the aforesaid goods and various other products/quantity and specifications at the agreed rates. It is submitted that the Operational Creditor has supplied those ordered products through different transporters/contractors to various destinations as specified by the Corporate Debtor, in terms of different purchase orders. Copies of various Retail/ Tax cum Excise Tax Invoices have been annexed with the petition as petition as Annexure-E.

4. It is submitted that the Operational Creditor had also issued Tax Invoice/ Challan in favour of the Corporate Debtor (Annexure-F). The Corporate Debtor had duly accepted all such goods without raising any objection or protest in relation to quantity or quality of the products. The Operational Creditor had raised their value bills upon the Corporate Debtor which the Corporate Debtor duly accepted without any dispute or demur and promised to pay the same by maintaining a running and current accounts thereof by and between the parties. It is submitted that as on 30.06.2013,

there was an outstanding dues of Rs.64,74,087/- which the Operational Creditor was entitled to receive from the Corporate Debtor and the said amount is reflected in the Ledger account of the Operational Creditor dated 1st June, 2013 to 30th June, 2013 (Annexure-G). It is further submitted that the said amount is due and payable by the Corporate Debtor but in spite of repeated requests by the Operational Creditor, the Corporate Debtor has avoided and neglected to clear the dues on one pretext or the other. Therefore, the Operational Creditor was compelled to send an Advocate's notice under section 434 of the Companies Act,1956 on 14th June, 2016 (Annexure-H).It is further submitted that after receiving the said letter, the Corporate Debtor made several payments amounting to Rs.22,00,000/- by RTGS, last being made on 13th October,2016 for an amount of Rs.5,00,000/- and since then the Operational Creditor did not receive any payment from the Corporate Debtor, the Operational Creditor was constrained to file another Advocate notice dated 31st July,2018, demanding the remaining payment (Copy of the Advocate notice dated 31st July, 2018 is annexed as Annexure-J).

5. It is stated that the Chartered Accountant of the Operational Creditor, after inspecting the books of account and relevant documents made a chart showing several debtors of the Operational Creditor wherein it shows the Corporate Debtor has an outstanding due as on 31st March, 2018 which is marked as letter-K.

6. It is submitted that the Corporate Debtor is unable to pay the debt within the meaning of the provisions of I & B Code, 2016. Therefore, the Ld. Advocate for the Operational Creditor sent a statutory notice under the I&B Code, 2016 on 31st August, 2018, at the registered office of the Corporate Debtor demanding a sum of Rs.43,74,087/- along with interest @ 24% thereon. The said notice was duly received by the Corporate Debtor at its registered office and the copy whereof is marked as Annexure- L.

7. It is submitted that the Corporate Debtor has no defence to the bona fide claim of the Operational Creditor and despite having raised, the statutory

notice, till date the Corporate Debtor has not received any dispute with regard to the bona fide claim of the Operational Creditor nor has given any reply to the statutory notice.

8. The Operational Creditor has placed on record various documents to prove its operational debt on the part of the Corporate Debtor.

i. A company Master Data, as down loaded format the Web site of the Registrar of Companies, Department of Corporate Affairs, Government of India of Operational Creditor.

ii. A company Master Data, as down loaded from the Web Site of the Registrar of Companies, Department of Corporate Affairs, Government of India of Corporate Debtor.

iii. A copy of the Board Resolution of Operational creditor;

iv. Work sheet.

v. Retail/ Tax cum Excise Tax Invoices as raised by the Operational Creditor.

vi. Tax Invoice/Challan as raised by the Operational Creditor

vii. The Ledger account of the Operational dated 1st June, 2013 to 30th June, 2013;

viii. Notice under Section 434 of the Companies Act, 1956 dated 14th June,2016;

ix. Ledger Account as maintained by the Operational Creditor;

x. The Advocate's Notice dated 31st July, 2018;

xi. The list made by the Chartered Accountant;

xii. Statutory notice in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with postal registration receipt;

xiii. Affidavits attached under section 9 (3)(b)& (c) of the Code separately.

9. The Operational Creditor has also filed an affidavit under section 9(3)(b)

and 9(3)(c) of the Code separately .

10. This petition was listed before the Adjudicating Authority, notice was issued to the Corporate Debtor but in spite of notice having been received, the Corporate Debtor did not choose either to appear or to file its reply affidavit in its defence. The matter was therefore, directed to be proceeded ex-parte against the Corporate Debtor.

11. We have heard the case on its merit and after going through all the averments in the petition, documents annexed therewith, we find that Operational Creditor has been able to prove its case and since there is no reply either to the notice under section 8 of the Code which would have placed before the bench, the defence of the Corporate Debtor if any or its stand as regards any pre-existing disputes between the parties, and also in view of the fact that the Corporate Debtor has opted not to participate in the proceedings either through a counsel or any authorized representative and has also not filed any reply to the petition, we take it as an acknowledgement of the operational debt on the part of the Corporate Debtor, we are, therefore, satisfied that the petition of the Operational Creditor deserves to be admitted, we, therefore, pass the following orders:-

O R D E R S

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency

Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Nitesh Kumar More, IRP** having Reg. No. **IBBI/IPA-001/IP-P01087/2017-2018/11785,** email nmore2091@gmail.com to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.

x) **Mr. Nitesh Kumar More,IRP,** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xii) The Operational Creditor/Applicant is directed to deposit **Rs.3,00,000/- (Rupees Three Lac only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

12. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

13. List the matter on **29/04/2022** for filing of **Progress Report**.

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)	**(Rohit Kapoor)**
Member (Technical)	**Member (Judicial)**

Order signed on the 17th day of February, 2022

PJ.