

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) 4668/MB/C-I/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Gupta Coal India Private Limited

[CIN: U51909MH1989PTC051640]

Gupta Towers, 4th Floor, Temple Road, Civil Lines,
Nagpur- 440010

...Operational Creditor

Versus

Nyles Sales & Infraprojects Private Limited

[CIN: U45100PN2014PTC177317]

Plot No. 23/2, G-Block, Bhagawan Market, Sambhaji
Nagar, Chinchwad, Pune- 411019.

... Corporate Debtor

Order Delivered on 02.12.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : CS Prashant Thakre

For the Corporate Debtor : None

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The present Company Petition is filed by Mr. Abhay Manudhane, the Liquidator of Gupta Coal India Private Limited, on behalf of Gupta

Coal India Private Limited (hereinafter referred to as the “**Operational Creditor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against **Nyles Sales & Infraprojects Private Limited** (hereinafter referred to as the “Corporate Debtor”).

2. The Corporate Debtor is company incorporated under the Companies Act, 2013 and has its registered office at Plot No. 23/2, G-Block, Bhagawan Market, Sambhaji Nagar, Chinchwad, Pune- 411019. Its Company Identification Number (CIN) is **U45100PN2014PTC177317**. Therefore, this Bench has the jurisdiction to entertain this Petition.
3. The **total amount of debt** claimed is **Rs.30,98,28,851/-** (Rupees Thirty Crores Ninety Eight Lakh Twenty Eight Thousand Eight Hundred and Fifty One Only) and the **date of default is 04.02.2016**.

Submissions made by the Ld. Counsel of the Operational Creditor by the way of Petition:

4. The Operational Creditor filed a Company Petition No. 31/IBC/MB/2017 under section 10 of the I & B Code 2016 along with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 for initiation of Corporate Insolvency Resolution Process. The said Company Petition was admitted vide order dated 09.03.2017 by the NCLT Mumbai, wherein Mr. Devandra Singlu was appointed as an Interim Resolution Professional. Subsequently, Mr. Abhay Manudhane was appointed as a Resolution Professional by the NCLT Mumbai. Thereafter, vide Order dated 01.01.2018 the NCLT

Mumbai continued the Resolution Professional Mr. Abhay Manudhane as a Liquidator. The copy of the said order dated 18.01.2018 is annexed and marked as Exhibit "A" to the Petition.

5. Thereafter, Mr. Abhay Manudhane filed a fresh Miscellaneous Application No. 212 of 2018 and prayed for inter alia directions to initiate legal proceedings on behalf of the Corporate Debtor against the list of debtors of the Corporate Debtor attached with the Miscellaneous Application No. 212 of 2018. The NCLT, Mumbai vide order dated 07.05.2018 partially allowed the Miscellaneous Application No. 212 of 2018 amongst the other prayer to initiate legal proceedings as against the debtors of the Corporate Debtor and kept the said Miscellaneous Application pending with respect to the other prayers. The copy of the said order dated 07.05.2018 is annexed and marked as Exhibit "B" to the Petition.
6. The Corporate Debtor is a private company incorporated in the year 2014 and registered under the Companies Act, 2013 and has been engaged in the business of Coal & Coal related operations in India.
7. The Operational Creditor has supplied Imported & Domestic Coal (Indigenous Coal) to the Corporate Debtor and from time to time raised several invoices aggregating to Rs. 20,25,28,991/-. Particulars and details of the invoices raised by the Operational Creditor along with the due dates of the payment; total number of days delayed; per day interest post due date in the payments of the Invoices are annexed at Annexure I of Exhibit "C" to the Petition.
8. The Operational Creditor proceeded to raise the 28 (Twenty Eight) Invoices along with the appropriate documentary details towards the Indigenous Coal ("Goods") provided by the Operational Creditor to the

Corporate Debtor upon confirmation of satisfaction of the goods provided by the Operational Creditor. The Operational Creditor craves leave to refer to and reply upon various correspondences towards the satisfactory use of the goods provided. Copy of the Invoices issued by the Corporate Debtor to the Operational Creditor is annexed and marked as Annexure II of Exhibit "C" to the Petition.

9. It is further stated that as specified in the Invoices, the Corporate Debtor was required to make the payment of invoices raised by the Operational Creditor for the supply of the goods provided within 30 days from the date of the invoices and in the event of failure to pay the outstanding amounts within the stipulated time, the Corporate Debtor would be liable to pay late charges at the rate of 24% per annum on the unpaid outstanding amount.
10. The Corporate Debtor have from time to time utilized all the goods as provided without any demur or protest. In addition, the Corporate Debtor has also never raised any dispute on the invoiced amount upon receipt of the invoices raised from time to time. Thus, the Corporate Debtor has duly approved all the invoices raised monthly.
11. The Operational Creditor submits that considering the total Invoices raised and the interest thereon at the rate of 24% calculated upto the date of demand notice, an amount of Rs.30,98,28,851/- (Rupees Thirty Crores Ninety Eight Lakhs Twenty Eight Thousand Eight Hundred and Fifty One Only) as on 27.11.2018 i.e. the date of demand notice is due and outstanding from the Corporate Debtor. The particulars of claim being the details of the outstanding amount are annexed and marked as Annexure I of Exhibit "C" to the Petition and the Ledger Account of the Operational Creditor showing the outstanding amount payable by the

Corporate Debtor in the books of account of the Operational Creditor is herewith annexed and marked as Annexure III of Exhibit "C" to the Petition.

12. Post the goods provided by the Operational Creditor various Invoices were raised by the Operational Creditor for realization which however remains unpaid and outstanding and the Corporate Debtor has never denied the making of payment and never raised any issues related to the quality of goods.
13. Copy of the Demand Notice dated 27.11.2018 pursuant to the Order passed by NCLT Mumbai Bench in Miscellaneous Application No. 212/2018 is annexed at Exhibit "C" to the Petition along with Proof of sending demand notice by email to the registered e-mail id at Exhibit "E" and also by Speed Post at Exhibit "F" to the Petition.
14. It is respectfully submitted that Corporate Debtor has not responded to the demand notice sent by e-mail to its registered e-mail id as available on MCA Website. Master data of the Corporate Debtor is annexed as Exhibit "H".
15. The present case is fit and proper for initiation of Corporate Insolvency Resolution process against the Corporate Debtor herein under Section 9 of the Insolvency and Bankruptcy Code, 2016.
16. It is observed that the Corporate Debtor was given multiple opportunities to appear and argue the case. However, the Corporate Debtor chose not to appear and hence was proceeded ex-parte vide an order dated 22.02.2022. We note that there is no reply filed by Corporate Debtor on record.

Findings:

17. We have heard the Counsel for Operational Creditor and perused the records.
18. We find that there exists a well established debt, there is no pre-existing dispute and there is a default of the debt.
19. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor 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. 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.
20. The petition bearing **CP (IB) 4668/MB/C-I/2018** filed by **Gupta Coal India 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 **Nyles Sales & Infraprojects Private Limited**, the Corporate Debtor, is **admitted**.
21. There shall be a moratorium under section 14 of the IBC, in regard to 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 (SARFAESI) Act, 2002;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
22. Notwithstanding the above, during the period of moratorium: -
- a. 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;
 - b. 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;
23. 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.

24. 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.
25. **Mr. Sandeep Bishan Swaroop Goel**, Registration No. IBBI/IPA-001/IP-P01363/2018-2019/12172, Email Id: goelsandeep60@yahoo.com, Mob No. 9821186339, is hereby appointed as 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.
26. 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.
27. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
28. 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.

29. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, 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.
30. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

02.12.2022

DSB

Sd/-

JUSTICE P.N. DESHMUKH
Member (Judicial)