



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP(IB) No. 86/Chd/Hry/2023
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

**M/s MTC Ispat Private Limited
(Through its Director Mr. Purshottam Lal. Gupta)**

Having Its registered office at:
B-271, Nehru Ground,
NIT, Faridabad,
Haryana-121001

...Petitioner-Operational Creditor

Vs.

M/s Steel Feather Industries Private Limited

Having Its registered office at:
House No.333,
Sector-16, Faridabad-121002
CIN No. 29299HR2021PTC096732

...Respondent-Corporate Debtor

Judgement delivered on: 19.10.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. Subash Saini, PCS.

For the Respondent-
Corporate Debtor : Proceeded *ex parte*
vide order dated 06.09.2023

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by M/s MTC Ispat



Private Limited (Through its Director Mr. Purshottam Lal. Gupta) (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Steel Feather Industries Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**. A copy of the master data of the corporate debtor is attached with the main petition and attached as Annexure A-4.

2. The Corporate Debtor, namely, M/s Steel Feather Industries Private Limited is a Company incorporated on 02.08.2021 under the provisions of the Companies Act, 1956 with CIN No. 29299HR2021PTC096732 with its registered office at having Its registered office at: House No.333, Sector-16, Faridabad-121002. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor is engaged in the business of trading & supplier of HR Coil, Channel, Round, MS Bar, Flats, etc. The Operational Creditor supplied goods HR COIL, Channel, Round, MS Bar, Flats, etc. to the Corporate Debtor from April, 2022 and issued various Invoices and the corporate debtor started defaulting from 16 May, 2022. The amount outstanding was Rs. 1,19,67,931/- (Rupees One Crore Nineteen Lacs Sixty- Seven Thousand Nine Hundred Thirty-One only). As per the above, the default amount of Rs.1,22,25,920/- (Rupees One- Crore Twenty-Two Lacs Twenty-Five Thousand Nine Hundred Twenty only) includes an amount of Rs. 1,19,67,931/-towards supply of material and interest of Rs.2,57,989/- is still remains outstanding. The Total Amount comes to Rs.1,22,25,920/- (Rupees One Crore Twenty-Two Lacs Twenty- Five Thousand Nine Hundred Twenty



only). It is also submitted that the corporate debtor issued a Cheque no 000007 dated 28.07.2022 for Rs. 1,19,67,931/-of Axis Bank in discharge of its full debt due to the petitioner. But on presentation in clearing the said cheque was bounced. The corporate Debtor has failed to pay the claimed amount despite various requests by the Operational Creditor.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.1,22,25,920/- (Rupees One Crore Twenty-Two Lacs Twenty-Five Thousand Nine Hundred Twenty Rupees Only) (Invoice amount Rs.1,19,67,931/- + interest thereon of Rs.2,57,989/- till 31.08.2022). The default occurred on 13.07.2022 i.e. when the payment of last invoice bearing No.22-23/733 was also not made by the corporate debtor. Copy of Computation of amount and dates of default along with Copy of GSTR-1 (Annexure A-7), Bank Statement (Annexure A-8), outstanding invoices (Annexure A-9), Ledger Account (Annexure A-10), e-way bills relating to outstanding invoices (Annexure-A-11), Cheque Bearing No.000007 dated 28.07.2022 (Annexure-A-12), and Bouncing of Cheque No.000007 (Annexure-A-13 are attached with the main petition.

5. A demand notice dated 01.09.2022 in Form 3 and 4 is stated to be issued by the operational creditor. In the demand notice dated 01.09.2022, the petitioner has made a demand for the unpaid operational debt. The corporate debtor gave a reply dated 01.09.2022 to the demand notice wherein it is stated that the goods supplied were not up to the standard and were of low quality and this fact was conveyed verbally by the corporate debtor verbally many a times in the past. Because of the



poor quality of the goods supplied by the petitioner to the corporate debtor has suffered a substantial loss in its business.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of Service was filed vide Diary No. 00877/3 dated 25.05.2023 but none appeared on behalf of the respondent/corporate debtor. On 13.06.2023, it was made clear that if none appears on behalf of the respondent-Corporate debtor on the next date of hearing then ex parte proceedings will be taken up. On 06.09.2023 none appeared on behalf of the respondent/Corporate debtor despite service through e-mail and publication in two daily newspapers. Therefore, the respondent-corporate debtor proceeded against ex parte on 06.09.2023.

7. The short written submissions were filed by the petitioner vide Diary No. 00877/5 dated 10.10.2023.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 and 4 dated 01.09.2022 was properly served. The corporate debtor gave a reply dated 01.09.2022 to the demand notice. Therefore, it can be safely said that the demand notice was duly served upon the corporate debtor.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit under Section 9(3)(b) by the operational creditor that there is no dispute communicated by the corporate debtor for the unpaid debt and no payment



had been received during this period. Although, in its reply to the demand notice dated 01.09.2022, it is submitted by the respondent/corporate debtor that the goods supplied were of low quality and this fact was brought to the notice of the petitioner verbally by the respondent/corporate debtor. Although, the respondent/corporate debtor has tried to raise this dispute yet there is no substantial evidence present on the record that the goods were of low/inferior quality, and before the issuance of the demand notice, this fact was brought to the notice of the petitioner. Moreover, the respondent/corporate debtor did not choose to contest the present petition despite notice, thus, the claim has remained un rebutted. In these circumstances, it can be safely concluded that there is no pre-existing dispute between the parties at all with regard to the unpaid operational debt. An affidavit to that effect has been filed under Section 9(3)(b) by the petitioner. Hence, the operational debt was not disputed by the corporate debtor and the total debt of Rs.1,22,25,920/- is above the threshold limit of rupees one crore is still due.

11. The other issue for consideration is whether this application is filed within the period of three years limitation. The default occurred on 13.07.2022 i.e. when the payment of last invoice bearing No.22-23/733 was also not made by the corporate debtor. Therefore, the period of limitation would begin w.e.f. 13.07.2022. The present petition has been filed on 17.03.2023 vide Diary No. 00877, therefore, this Adjudicating Authority finds that the petition is filed within three years of the prescribed period of limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a



total unpaid operational debt (in default) of Rs.1,22,25,920/- (Rupees One Crore Twenty-Two Lacs Twenty-Five Thousand Nine Hundred Twenty Rupees Only) (Invoice amount Rs.1,19,67,931/- + interest thereon of Rs.2,57,989/- till 31.08.2022) is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

13. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner has proved the debt and the default, which is above the threshold limit.

14. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Jammu and Kashmir Cements Limited, and also direct moratorium to take effect and appoint Interim Resolution Professional as below :-

15. In Part-III of Form No. 5, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sunil Kumar Agrawal and there is nothing adverse against him. Form No.B dated 20.12.2022 is



attached at Annexure-A-6 of the petition. In view of the above, we appoint Mr. Sunil Kumar Agrawal, Registration No. IBBI/ IPA-002/IP -N00081/2017-18/10222, E-mail:aggarwalsk21@yahoo.com, Mobile No. 9811347648, the Interim Resolution Professional with the following directions:-

- i) The term of appointment of Mr. Sunil Kumar Agrawal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;



iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is



to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”

As per the Standard of Auditor (SA-230)

“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report, or, if later, the date of the group auditor's report.”

In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.


vii) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are



directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

viii) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

ix) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first



meeting of the Committee within seven days of filing the report of constitution of the Committee; and

x) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of



Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

19. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is admitted accordingly.

sd/-

(Subrata Kumar Dash)
Member (Technical)

sd/-

(Harnam Singh Thakur)
Member (Judicial)

October 19, 2023

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