

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

C.P. (I.B) No.343/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.12.2019**

Name of the Company: SMC Industries Pvt. Ltd.
V/s.
Shaifali Steels Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

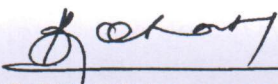
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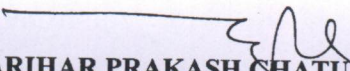
ORDER

None appears for the Parties.

The Present Petition is admitted.

The detail order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (T)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (J)

Dated this the 17th day of November, 2019.



**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 343/9/NCLT/AHM/2018

In the matter of:

SMC INDUSTRIES PRIVATE LIMITED

Having its address at:

1, Popatkaka Estate,
Opp. Aarko Transport,
Piplej-Pirana Road, Narol,
Ahmedabad - 382405

..... Petitioner/ Operational Creditor

Versus

SHAIFALI STEELS LIMITED

Having its Regd. Office at :

Block No.1563, Sola Kalol Road,
Village - Santej, Kalol,
Gandhinagar - 382 721

..... Respondent/ Corporate Debtor

Order delivered on 17th December, 2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
And
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Hiten Parikh, PCA for the Petitioner/Operational Creditor
Mr. Kunal P. Vaishnav, Advocate for the Respondent

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]



1. The present petition has been preferred by the Operational Creditor, SMC Industries Private Limited under Section 9 of the Insolvency and Bankruptcy Code,

2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, Shaifali Steels Limited.

2. The Petitioner/ Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) - U28910GJ2013PTC077156. The Petitioner is a provider of job-work services. The registered office of the Petitioner is situated at 1, Popatkaka Estate, Opp. Aarko Transport, Piplej-Pirana Road, Narol, Ahmedabad - 382405. The present Petition is filed through Shri Yogiraj H. Khire, Director of the Petitioner/Operational Creditor, as per the meeting of Board of Directors held on 13.04.2018 to initiate Corporate Insolvency Resolution process with respect to the Corporate Debtor.

3. The Respondent/ Corporate Debtor, namely Shaifali Steels Limited was incorporated on 23.12.1994 with CIN: U27109GJ1994PLC023962. The authorised capital of the company is Rs.10,80,00,000/- and the paid-up capital is Rs.8,55,00,700/-. The registered office of the Corporate Debtor Company is situated at: Block No.1563, Sola Kalol Road, Village - Santej, Kalol, Gandhinagar - 382 721.



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11. The Operational Creditor has suggested the name of Interim Resolution Professional, **Mr.Parag Sheth, having Insolvency Professional Registration No.IBBI/IPA-002/IP-N00142/2017-18/10381, Email ID: pksheth@hotmail.com, Address: 404, Sachet 2, Opp. GLS University, Maradia Plaza, C.G.Road, Ahmedabad-380006 (Gujarat) India as an Interim-Resolution Professional.**
12. The case was taken up first by this Adjudicating Authority on 25.07.2018. On the request of the Petitioner's Counsel, matter was adjourned to 28.09.2018. Further, the matter was adjourned to 22.11.2018, at the request of Learned Counsels for both the parties. Thereafter, the matter was repeatedly adjourned to various dates i.e. 28.09.2018, 04.12.2018, 21.01.2019, 06.03.2019, 25.04.2019 & 08.07.2019. On 26.08.2019, the Learned Counsel on behalf of the Respondent company filed objections.
13. In response to the present I.B. Petition filed by the Petitioner, **the Respondent has filed its objections through its Authorised Signatory, Shri Kuldipsinh B. Rathod on 26.08.2019**, who is authorised to represent the Corporate Debtor.

12.1 It is submitted that the allegations and averments made in the application filed under



Section 9 of the Insolvency and Bankruptcy Code, 2016 are categorically denied.

12.2 It is submitted that the Operational Creditor was supplying the pulverising of coal to the Corporate Debtor and its other group companies from March-April' 2017, against which the Operational Creditor has raised various invoices for a total amount of Rs.6,78,000/-. It is further submitted that the Respondent had tried to settle the matter and have shown willingness to pay the said outstanding amount, but it is prayed that **atleast one-year time is needed to initiate** payment, as due to competition in the Steel Industry and low cost Chinese products available in the Indian market which has resulted in temporary financial crunch and disrupted the operation of the Corporate Debtor temporarily.

12.3 Lastly it is submitted that the Corporate Debtor requires about 12-14 months' time to clear the debt, to revive the entire unit and also to pay other creditors as well.

14. It is observed that -

14.1 The Application has been filed on 10.07.2018 for operational debt defaulted and dues of Rs.6,78,000.00 (Rupees Six Lakhs Seventy Eight



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Thousand Only) as per the respective Invoices as on 02.05.2017 onwards;

14.2 Date of invoice is 02.04.2017, 22.04.2017, 08.05.2017 & 15.05.2017;

14.3 Date of first default is 02.05.2017;

14.4 Application has been filed on 10.07.2018, which is within the limitation period.

14.5 In this matter, Respondent Corporate Debtor appeared through learned Counsel and reported objections for the initiation of Insolvency Resolution Process. However, they have admitted the supply of pulverised coal and failed to pay the outstanding amount due to the Applicant, Operational Creditor.

14.6 A perusal of the Application and objections filed by the Respondent clearly goes to show that operational debt is due to the Operational Creditor from the Corporate Debtor. Operational Creditor issued notice under Section 8 read with Rule 5 of the Adjudication Rules to the Corporate Debtor and the same was served on the Corporate Debtor. Corporate Debtor did not raise any dispute regarding the amount of debt or quality of goods supplied. Further, perusal of the Invoices, details of transactions, Statement of Account of the Petitioner Company and the Section 9 (c) Certificate issued by the Bank



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clearly establish that the amount of Rs.6,78,000/- is due from the Respondent Company to the Operational Creditor towards the supply of pulverised coal. Therefore, the debt due from the Respondent to the Applicant is an operational debt and the debt is due and defaulted.

14.7 No pre-existing dispute before the filing of this application is observed.

ORDER

15. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. 14, 14.1, 14.2, 14.3, 14.4, 14.5, 14.6 & 14.7, this Adjudicating Authority is **satisfied that,**

- a) Existence of debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on 02.05.2017;
- d) Petition has been filed within the limitation period;
- e) In spite of giving Demand Notice in Form No.3 as required by Section 8 of the IB Code read with Rule 5 of the IB Rules, Respondent did not give any reply to that Demand Notice.
- f) The materials placed on record clearly establish that Respondent/Corporate Debtor committed default in repayment of operational debt due to



the Applicant Company. Respondent Company also did not raise any dispute regarding the existence of operational debt, quality of goods supplied etc.

- g) The application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Therefore, the **present IB petition is admitted on 17.12.2019 with the following directions:**

16. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority declares moratorium for prohibiting all of the following, namely: -

I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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



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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.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to*
(a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*
17. The Petitioner/Corporate Debtor has suggested the name of Mr.Parag Sheth, Insolvency Professional to be appointed, if this petition is allowed.
18. Hence, this Adjudicating Authority hereby appoints **Mr.Parag Sheth**, having Insolvency Professional Registration No.**IBBI/IPA-002/IP-N00142/2017-18/10381**, Email ID: **pksheth@hotmail.com**, Address: **404, Sachet 2, Opp. GLS University, Maradia Plaza, C.G.Road, Ahmedabad-380006 (Gujarat) India** as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of




Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

19. An authentic copy of this order to be communicated by this Registry to the Operational Creditor/Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.
20. Hence, this CP(IB) No.343/9/NCLT/AHM/2018 is admitted with the **above observations and directions as to no costs.**


(Prasanta Kumar Mohanty),
Adjudicating Authority
Member(T)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member(J)



Certified to be True Copy of the Original

Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad