

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP(IB) No.1737/MB/C-IV/2019**

Under section 9 of the Insolvency &  
Bankruptcy Code, 2016

*In the matter of*

**Pentax Ferro Incorporate,**  
a proprietary concern represented by its  
proprietor,

**Mr. Rajeev R. Kandhari**

...Operational Creditor

Versus

**Trako Infra (India) Private Limited**  
**[CIN: U74999MH2016PTC283425]**

...Corporate Debtor

**Order Delivered on 12.12.2019**

***Coram:***

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

***Appearances:***

For the Operational Creditor : Adv. Mansha Bhatia  
For the Corporate Debtor : None Present

**ORDER**

***Per: Rajasekhar V.K., Member (Judicial)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Pentax Ferro Incorporate ("the Operational Creditor"), a proprietary concern represented

by its proprietor, Mr. Rajeev R. Kandhari, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Trako Infra (India) Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 09.07.2016 under the Companies Act, 2013, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U74999MH2016PTC283425. Its registered office is at 705/706 Exim Link Commercial Building, Mulund Goregaon Link Road, Nahur (W), Mumbai-400078, as per MCA Company Master Data. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 04.04.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.3,31,580/- (Rupees three lakh thirty-one thousand five hundred and eighty only) as Principal amount plus interest thereon@18%p.a. The date of default is stated to be 14.10.2017.
4. The case of the Operational Creditor is that Operational Creditor is interalia into the business of Manufacturing, Exporting and Supplying of Hot-Dip Galvanised Gratings, Stair Treads, Trench

Covers, Cable Tray, Cable Tray supports and accessories. Further the Operational Creditor supplied the said products to the Corporate Debtor as per the Purchase Order No. TIPL/17-18/Ele/106-R1 dated 31.08.2017 (**Annexure 'II'** to the petition at p.29). The Operational Creditor raised the invoice bearing No.GST/50/17-18 dated 22.09.2017 (**Annexure 'II'** to the petition at p.30) for the amount of Rs.3,31,580/- towards part of the products supplied.

5. The Operational Creditor has submitted that the Corporate Debtor has issued a cheque bearing No.000141 dated 28.09.2017 for Rs.33,158/- (10% of amount due) (**Annexure 'II'** to the petition at p.31) drawn on Kotak Mahindra Bank Ltd. When the same was presented for clearance with the Operational Creditor's bankers, it was returned unpaid for the reason 'Fund Insufficient' vide its memo dated 29.09.2017 (**Annexure 'II'** to the petition at p.32).
6. The Operational Creditor submitted that the Corporate Debtor has issued another cheque bearing No.000138 dated 14.10.2017 for Rs.3,31,580/- (**Annexure 'II'** to the petition at p.33) drawn on Kotak Mahindra Bank Ltd. when presented for clearance with the Operational Creditor's bankers, the same was again returned

unpaid for the reason 'Fund Insufficient' vide its memo dated 25.10.2017 (**Annexure 'II'** to the petition at p.34). The Operational Creditor further submitted that the Corporate Debtor requested to redeposit the cheque dated 14.10.2017 and same was redeposited on 23.11.2017. the cheque was again dishonoured for the same reason.

7. The Operational Creditor stated that the Corporate Debtor failed to make the payments, the Operational Creditor sent a Legal Notice dated 29.11.2017 (**Annexure 'II'** to the petition at pp.37-41) under section 138 of the Negotiable Instruments Act,1881 thereby calling upon the Corporate Debtor to pay the cheque amount of Rs.3,31,580/- within fifteen days. Acknowledged by the Corporate Debtor as per Speed Post proof of Delivery at p.42 of the Petition.
8. Thereafter, the Operational Creditor had served a Demand Notice in Form 3 dated 20.12.2018 to the Corporate Debtor (**Annexure 'I'** to the petition at pp.21-27) in terms of section 8 of the IBC. Proof of service of Demand Notice has been attached (**Annexure 'I'** to the petition at p.28). The Corporate Debtor has not sent a reply to the Demand Notice.

9. The Operational Creditor has filed an affidavit under section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 (**Annexure 'IV'** to the petition at pp.45-47) to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
10. The Copy of the Petition was served on the Corporate Debtor by Speed Post. Court Notice was also served on the Corporate Debtor on 09.09.2019. Necessary affidavits of services in this regard have been placed on record. In spite of this, there was no representation for the Corporate Debtor at any stage of the proceedings.
11. We have heard the Learned Counsel for the Operational Creditor and perused the record.
12. It is noticed from the Petition that there is no pre-existing dispute regarding the unpaid operational debt and the principal amount of Rs.3,31,580/- as principal amount as per invoice dated 22.09.2017 and date of default is 14.10.2017. Thus, the existence of both debt and default is established. There is no provision for interest in the invoice.

13. In our order dated 17.09.2019 we have given further opportunity to the Corporate Debtor to represent before the bench and file the reply. However, despite service of court notice on the Corporate Debtor, no reply has been filed. Therefore, it is held that the Corporate Debtor does not dispute its liability and has defaulted in the payment to the operational creditor.
14. The Operational Creditor has proposed the name of Mr. Rajeev Nandkishore Bhatia, Registration No. IBBI/IPA-001/IP-P01384/2018-19/12158, as Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 dated 12.02.2019 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration (**Annexure 'V'** to the petition at pp.48-50).
15. The Petition 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 of one lakh rupees 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.

16. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB)No.1737/MB/C-IV/2019** filed by **Pentax Ferro Incorporate, a proprietary concern represented by its proprietor, Mr. Rajeev R. Kandhari** 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 **Trako Infra (India) Private Limited [CIN: U74999MH2016PTC283425]**, the Corporate Debtor, is **admitted.**

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
  - (ii) 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;

- (d) 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.
- (e) 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.
- (f) **Mr. Rajeev Nandkishore Bhatia**, Registration No. **IBBI/IPA-001/IP-P01384/2018-19/12158**, having address at 304 Richa Industrial Estate, off Link Road, Andheri (W), Mumbai-400053, Email: [rajeevnbhatia@gmail.com](mailto:rajeevnbhatia@gmail.com), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The fee

payable to IRP or, as the case may be, the RP 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 IBC.

- (g) 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.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one 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).

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- (i) 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.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

**RAVIKUMAR DURAISAMY**

**Member (Technical)**

12.12.2019

Sd/-

**RAJASEKHAR V.K.**

**Member (Judicial)**