

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.63
(MP) CP(IB) 46 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Naresh Proprietor of Numax Steels
V/s
Laxmi Engineering Industries (Bhopal) Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..04/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

Sweta

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

CP(IB)/46[MP]2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

IN THE MATTER OF:

Naresh

Proprietor, Numax Steels

Registered Office:

29, Radha Krishna Temple Build,
1stFloor, Office No.10, 4thKumbharwada,
Lane, Mumbai

Applicant

Versus

**M/s Laxmi Engineering Industries
(Bhopal) Pvt. Ltd.**

Registered Office:

72- A, Sector- 1,
Govindpura Industrial Area,
Bhopal, MP-462023,

Respondent

Order Reserved on: 18/02/2022

Order Pronounced on: 04/03/2022

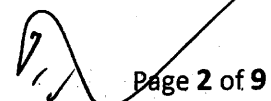
**Coram: Madan B. Gosavi, Member (Judicial)
Ajai Das Mehrotra, Member (Technical)**

Appearance:

Ld.Counsel Mr. Ravi B Shah appeared for the Applicant.

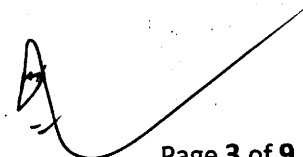
ORDER**[Per Bench]**

1. This application has been filed by Naresh Proprietor NUMAX, the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) on 31.01.2020 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor viz. M/s Laxmi Engineering Industries. The amount of claimed debt in default is Rs.9,77,012/- (Rupees Nine Lacs Seventy Seven Thousand Twelve Only) including interest and the date of default is 23.11.2018.
2. The Operational Creditor is in the business of Stainless steel sheets, plates, pipes, tubes, flates, rounds and pipe fittings etc.
3. It is the case of the operational creditor that it was supplying steel items to the Corporate Debtor on regular basis. The Operational Creditor after making the due supplies to the Corporate Debtor raised the respective invoices which the Corporate Debtor failed to honor. A copy of the outstanding Invoice bearing No. 704 dated 23.11.2018 due & payable by the Corporate Debtor to the Operational Creditor was annexed with the application. Several requests were made by


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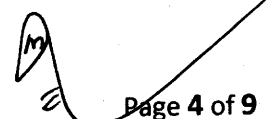
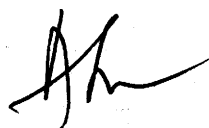
the Operational Creditor to the Corporate Debtor, to clear the outstanding dues. Thereafter, the Corporate Debtor issued a Cheque bearing No. 939604 dated 08.02.2019 of a sum of Rs.8,90,900/- which got dishonored upon its presentation vide Bank Returning Memo dated 06.05.2019 with the remarks of "FUNDS INSUFFICIENT".

4. The Operational Creditor sent a Demand Notice dated 15.06.2019 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 in the requisite FORM 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding an amount of Rs. 9,77,012/- (Rupees Nine Lakhs Seventy Seven. Thousand Twelve only) including the due & payable Operational Debt outstanding of Rs. 8,90,900/- (Rupees Eight Lakhs Ninety Thousand Nine Hundred only) along with an Interest amount of Rs. 86,112/ (Rupees Eighty Six Thousand One Hundred and Twelve).
5. The Corporate Debtor in the Reply dated 25.06.2019 to the Demand Notice, admitted the Operational Debt and further explained about its financial distress and incapacity to clear the debts. A copy of the Reply dated 25.06.2019 sent by the



Corporate Debtor to the Operational Creditor is annexed with the application.

6. It is stated that the Corporate Debtor has committed default and is not willing to pay the admitted outstanding Operational Debt and thus is liable to go under the Corporate Resolution Process Insolvency (CIRP) under the provisions of the Insolvency and Bankruptcy Code 2016. Thus, the instant application was filed under section 9 of the code.
7. The Operational Creditor as per the order passed by the Tribunal on 20.08.2020, informed the Corporate Debtor by way of RPAD dated 31.08.2020 and also informed through email dated 25.08.2020 about the next date of hearing of the matter as the Corporate Debtor has failed to appear and file reply. The Adjudicating Authority vide order dated 12.11.2020 had decided to proceed with the matter Ex-parte against the Corporate Debtor.
8. A copy of the Ledger Statement maintained by the Operational Creditor for the transactions with the Corporate Debtor is annexed with the application.
9. In view of the above facts, it is clear that Corporate Debtor has defaulted in the payment of its debts. The registered



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office of the Corporate Debtor is located in Bhopal. Therefore this Adjudicating Authority has jurisdiction to entertain the application. The date of default as mentioned in application is 23.11.2018. The application is filed on 31.01.2020. Thus, as per the provisions of the Limitation Act, 1963, the application is well within Limitation. On the basis of the facts the application is otherwise defect free & on record. Since the admitted debt is more than the threshold limit for admitting the claim under section 9, we admit this application and order as under:

ORDER

I. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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;*

(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 order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency &

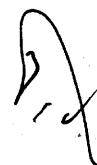
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Bankruptcy Code, 2016, as the case may be.

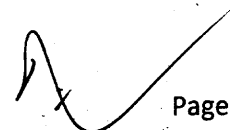
III. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. Piyush Kumar Kapoor** having **registration no. IBBI/IPA-001/IP-P02083/2020-2021/13283** to act as an IRP under Section 13(1) (c) of the CODE.

IV. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this



Adjudicating Authority with a prayer for passing an appropriate order.

- V. This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.
- VI. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- VII. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.100,000/- (One Lakh Only)** to the IRP within two weeks from the date of receipt of this order for



the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

VIII. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

10. Accordingly, CP(IB)/46[MP]2020 is allowed.



Ajai Das Mehrotra
Member (Technical)

Surbhi



Madan B Gosavi
Member (Judicial)