



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
JAIPUR BENCH**

**Coram: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,  
HON'BLE TECHNICAL MEMBER**

**CP No. (IB) – 22/9/JPR/2021**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**IN THE MATTER OF:**

**SH. VIKAS MAHESHWARI, PROP. OF M/S VIKAS TRADING  
COMPANY**

**..... OPERATIONAL CREDITOR**

**VERSUS**

**SANWARIYA FURNACES PVT. LTD.**

**.....CORPORATE DEBTOR**

**MEMO OF PARTIES**

**Sh. Vikas Maheshwari,  
R/o C-2/2, Zakheera, Rohtak Road,  
Amar Park, Delhi- 110035**

**..... Petitioner / Operational Creditor**

**VERSUS**

**M/s. Sanwariya Furnaces Pvt. Ltd.  
R/o F-642-643, Industrial Area,  
Khushkera Bhiwadi,  
Rajasthan- 301707**

**.....Respondent / Corporate Debtor**

**For the Operational Creditor : Dhrubajit Saikia, Adv.  
Sachin Aggarwal, Adv.**

**For the Corporate Debtor : Yashu Gupta, Adv.**



**Order Pronounced On:28.07.2022**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application has been filed by Mr. Vikas Maheshwari, Proprietor of M/s. Vikas Trading Company ('Operational Creditor / Applicant') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code / IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules, 2016'), with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s. Sanwariya Furnaces Pvt. Ltd. ('Corporate Debtor / Respondent').
2. The Applicant has its Registered Office at C-2/2, Zakheera, Rohtak Road, Amar Park, Delhi- 110035. Application has been filed in Form-5 as prescribed in Rules, 2016 for alleged default on the part of Respondent for non-payment of operational dues amounting to Rs. 1,84,85,231/- which is inclusive of interest at the rate of 18% per annum.
3. The Respondent, M/s Sanwariya Furnaces Pvt. Ltd., is a private limited company incorporated under the Companies Act, 1956 on 17.01.2012, duly registered with Registrar of Companies, Jaipur, bearing CIN: U27109RJ2012 PTC 037629. The registered office of the Respondent is at F-642-643, Industrial Area, Khuskhera Bhiwadi, Rajasthan- 301707. The Company's authorised share capital is Rs. 30000000/- and its paid-up share capital of Rs. 20000000/-. The registered office of the Corporate Debtor is



in District Alwar, Rajasthan. This Adjudicating Authority has jurisdiction to decide the instant Application of the Operational Creditor.

4. The Applicant sold Iron scrap to the Corporate Debtor through various invoices on a running account basis whereby a principal amount of Rs. 1,56,65,450/- is due as the goods were sent to the aforementioned Corporate Debtor's registered office. The copy of the sale invoices raised on the Corporate Debtor is annexed in Annexure-5 (Colly) of the Application.
5. As the Corporate Debtor did not pay the amount, the Applicant issued a demand notice dated 29.01.2021 under Section 8 of the Code. The outstanding amount enumerated in Part IV of Form-5 filed with the Application for payment of money, with interest calculated at the rate of 18% per annum:

#### **PART IV**

<b>Particulars of Operational Debt</b>	
The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<u>Amount of Debt Due: 1,84,85,231/-</u> Total Outstanding Principal Amount: Rs. 1,56,65,450/- Total Interest: Rs. 28,19,781/-
Amount claimed to be in default and the date on which the default occurred	The total amount to be in the default is Rs. 1,84,85,231/- The date of default is 13.09.2021

6. The Applicant submits that the sales of goods were made to the Corporate Debtor as per Corporate Debtor's instructions and following the law



prescribed under the CGST / SGST Act. Further, the written clause of the payment of interest contains that if the payment is not made within seven days of raising the invoice, the Debtor would have to pay interest at the rate of 18% per annum from the date of the Bill on the principal amount. The aforesaid demand notice was served on 17.02.2021 through the post on the address of the Corporate Debtor. Postal receipt along with postal tracking slip are annexed at Annexure-2 (Colly) of the Application.

7. Applicant further submits he had not received any complaint concerning the quality and quantity of goods sold to Corporate Debtor. Additionally, no proceedings are pending before the court of law regarding the supply of goods.
8. The Corporate Debtor, in its reply, *vide* Diary No. 1411/2022 dated 09.05.2022, acknowledged the debt and said it is not wilfully defaulting the payment. It intends to repay the said amount and, the same is evident from the fact that the Respondent continued to pay its earlier debt even when it started to incur losses in the business. Given the global pandemic, the Company's growth has been hampered a lot, and it is passing through a significant financial crisis. It also stated that it does not want to shy away from its obligation and will pay the entire amount; however, it requires an extension of time.
9. It has been shown that the Corporate Debtor failed to pay the aforementioned amount due on the dates mentioned in the statutory notice. It is also observed



that the condition under Section 9 of the Code stands satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under IBC, 2016.

10. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'), but it is not obliged to do so. Therefore, the Bench is appointing Mr. Jayprakash Bansilal Somani, bearing Registration No. IBBI/IPA/IP-N00262/2019-2020/12976 and Phone No. +91-7719913587 as the IRP in the present matter. The said IRP is directed to file the written consent to act as Resolution Professional in Form-A as provided under Section 16(4) of the Code.

11. In this matter, the Interim Resolution Professional appointed herein, Mr. Jayprakash Bansilal Somani, shall exercise all the powers enumerated under the Code read with Rules made thereunder. He is directed to file his consent as per applicable Rules and Regulations. The Applicant shall also provide a copy of this Application, if not provided already, along with this order to the said IRP for his pursuance.

12. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

13. Consequences of commencement of CIRP shall be inter-alia as follows:



- i. The IRP appointed by the Adjudicating Authority, Mr. Jayprakash Bansilal Somani, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code, calling for claims from the creditors of the Corporate Debtor and collation of the same shall be done.
- ii. Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
- iii. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (One Lakh Only) to the bank account of IRP within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon forming a Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of



the affairs of the Corporate Debtor shall vest with the IRP.

iv. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

14. Copy of this order is to be supplied to the parties. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Interim Resolution Professional by all modes for information.

Accordingly, CP No. (IB)- 22/9/JPR/2021 is admitted.

DEEP  
CHANDRA  
JOSHI

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**