

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

CP (IB) No. 153/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

**MARUTI STRIPS AND FERRO ALLOYS
PRIVATE LIMITED**

[CIN: U27101PN2008PTC131771]

...Operational Creditor/Applicant
V/s

YATIN STEELS INDIA PRIVATE LIMITED

[CIN: U27100MH2004PTC145365]

...Corporate Debtor/Respondent

Order Dated: 28.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vikram Nankani, Ld. Sr.Counsel a/w
Mr. Amir Arsiwala, Mr. Amey Hadwale
and Ms. Geeta Lundwani, Ld Counsel.

For the Respondent(s) : Mr. Smit Shah, Ld. Counsel

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application being C.P. (IB) No. 153/MB/C-IV/2022 filed on 14/01/2022 by Maruti Strip's and Ferro Alloys Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Yatin Steels India Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The total amount claimed by the Operational Creditor as specified in the Part 4 of the Company Petition is Rs. 10,03,81,584.16/- is due and payable by the Corporate Debtor. The date of default is 04.12.2017 (date of last payment).
 - 2.1. The Operational Creditor submits that, as per the requirement of the corporate debtor, the Operational Creditor have supplied H. R. Coils. After supplying the said goods to the satisfaction of the Corporate Debtor, the Operational Creditor raised necessary invoices. The said invoices are duly acknowledged by the corporate debtor.
 - 2.2. However, despite providing quality goods in a timely manner, the Corporate Debtor has failed to perform its obligation of honouring the amounts raised under the said invoices. The Operational creditor has maintained a Running Accounting Ledger of the corporate debtor's company which shows that an Amount of Rs.10,03,81,584.16/- is still due and outstanding.
 - 2.3. The operational creditor states that in the interregnum period, the Operational creditor had preferred a Company Petition No. 2254 of 2019 before NCLT for initiation of CIRP against the corporate debtor, however vide letter dated 14.09.2019 the corporate debtor assured the operational creditor that the amount in question will be paid within a one-year time and requested them to not pursue their case filed in NCLT. Accordingly, the matter came to be dismissed for non-prosecution. The Operational Creditor placed reliance on the decision of Hon'ble Supreme Court decision in the matter of *Shivashankar Prasad Shah & Ors. vs Baikunth Nath Singh & Ors. on 7 March, 1969* to defend the objection that the present application is barred by Res-Judicata and quoted the following therefrom:

“We shall first take up the contention that the objection taken by the judgment debtors' is barred by principles of res judicata. Though at one stage, learned Counsel for the appellants-decree holders attempted to bring the case within Explanation 5. s. 11. Civil Procedure Code, he did not pursue that line of argument but tried to support his contention on the broader principles of res judicata. The real question for decision in this case is whether the dismissal of Misc. cases Nos. 94 and 110 of 1959 for default of the judgment debtors can be said to be a final decision of the court after hearing the parties. Before a plea can be held to be barred by the principles of res judicata, it must be shown that the plea in question had not only been pleaded but it had been heard and finally decided by the court. A dismissal of a suit for default of the plaintiff, we think, would not operate as res judicata against a plaintiff in a subsequent suit on the same cause of action. If it was otherwise there was no need for the legislature to enact rule 9, Order 9, Civil Procedure Code which in specific term say that where a suit is wholly or partly dismissed under rule 8. the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. The contention that the dismissal of a previous suit for default of the plaintiffs operates as res judicata in a subsequent suit in respect of the same claim was repelled by the Judicial Committee, of the Privy Council in Maharaja Radha Parshad Singh v. Lal Sahab Rai and Ors. (1). Therein the Judicial Committee observed thus "None of the questions, either of fact or law, raised by the pleadings of the parties was heard or determined by the Judge of the Shahabad Court in 1881; and his decree dismissing the suit does not constitute res judicata within the meaning of the Civil Procedure Code. It must fall within one or other of the sections of chapter VII of the Code: in the present case it

is immaterial to consider which, the severest penalty, attached to such dismissal in any case being that the plaintiff cannot bring another suit for the same relief."

- 2.4. The Operational Creditor has been approaching the Corporate Debtor vide various telephonic reminders to release the outstanding payment, the Corporate Debtor never denied or raised any objection as to the quality of the goods supplied and assured the payment of the dues and sought further time on one pretext or the other.
- 2.5. The Corporate Debtor has also acknowledged amount the outstanding vide confirmation of accounts dated 16-04-2020 which clearly shows that an amount to the tune of Rs 10,03,81,584.16/- is still due and outstanding in its books as on 31.03.2020.
- 2.6. After ample opportunities to the corporate debtor, the operational creditor issue Demand Notice u/s 8 dated 22.12.2021 and called up to the Corporate Debtor to make the payment of the outstanding due but same was not replied by the Corporate Debtor.
3. The Corporate Debtor in its reply dated 13.04.2022 has stated that the business activities of the Corporate Debtor have taken a hit since 2019 and facing financial difficulties and COVID-19 pandemic has worsened the financial position of the Corporate Debtor.
 - 3.1. The Corporate Debtor is deriving its income by manufacturing iron & steel. The Financial situation of the Corporate Debtor has eroded on account of huge to be recovered from its creditors. The Corporate Debtor has taken several recovery measures against its creditors however nothing could fructify. Most of the creditors of the corporate debtor are already facing insolvency proceedings or likely to face insolvency proceedings. The Bank

have already initiated recovery measures against the Corporate Debtor. All the accounts of the Corporate Debtor are declared as NPAs.

4. The Operational Creditor has proposed the name of IRP in the present petition.

Findings:

5. This bench has carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

5.1. As per the letter dated 14.09.2019 as stated by the Corporate Debtor *“we have been discussing the matter with you regularly and have also informed you that due to problems with our Debtors we have been unable to clear your dues in time. we acknowledge an amount of Rs. 10,03,81,584.16/- to be due and payable from our end. we request you to kindly allow us six months’ time to start releasing your payments and assure you that we will completely settle your payment in one years’ time”*, which clearly shows admission of liability on part of the Corporate Debtor.

5.2. Based on the documents placed on record it is clearly evident that the Corporate Debtor availed the goods of the Operational Creditor and defaulted in making the payment of the Invoice(s) due. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and has deemed to become commercially insolvent.

5.3. We do not find any merit in the plea of Res-judicata raised by the Corporate Debtor, as the earlier application was disposed of in view of settlement, which also failed. Accordingly, the issue in earlier application was not heard and decided on merits.

5.4. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated against the Corporate Debtor. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

6. The petition bearing CP (IB) No.153/MB-IV/2022 filed by Maruti Strip's and Ferro Alloys Private Limited, ("the Operational Creditor"), under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Yatin Steels India Private Limited, Corporate Debtor., ("the Corporate Debtor") is **Admitted**.

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Ramchandra Dallaram Choudhary, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00157/2017-2018/10326 Email: rdc_rca@yahoo.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. 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.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- IX. 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.
- X. 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/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
28.04.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)