

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 1889/KB/2019

In the matter of:

An application by Operational Creditor to initiate Corporate Insolvency Resolution Process under the Code. (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.

And

In the matter of:

Ply Com Private Limited, having its Registered Office at 8, Khairu Place, 4th Floor, Kolkata 700072.

...Operational Creditor/Applicant

Versus

Nippon Alloy Limited (Formerly Narayani Ispat Limited), having its Registered Office at 23A, N.S. Road, 7th Floor, Room No. 31, Kolkata 700001.

...Corporate Debtor/Respondent

Coram:

Shri Jinan K.R., Hon'ble Member (Judicial) &

Shri H.C. Suri, Hon'ble Member (Technical)

Counsel present:

Joy Saha, Senior Advocate]
Rahul Auddy, Advocate] For the Applicant

Manju Bhuteria]
Arnab Basu Mullick] For the Respondent

Date of pronouncement of Order: 30/01/2020

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[Signature]

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ORDER

Per Shri Jinan K.R. Hon'ble Member (Judicial)

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "I & B Code") by **Ply Com Private Limited** (hereinafter referred to as the Operational Creditor/Applicant) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against **Nippon Alloy Limited, formerly known as Narayani Ispat Limited**, (hereinafter referred to as the Corporate Debtor/Respondent).
2. Brief facts of the Applicant's case are as follows:
 - a) The Applicant is in business of *inter alia* trading of iron and steel products viz. TMT Rebars, Billets, M.S. Rounds, Blooms and WRCs etc. had been procuring the said iron and steel products from the Corporate Debtor since long and had been making timely payments for the purchases. In view of the downward trend in the steel market resulting in depressed margins, the Applicant, sometime around January 2018, approached the Corporate Debtor/Respondent to offer additional discounts/incentives on its purchase, the Respondent agreed to offer quantity based incentive by way of Credit Note, subject to fulfilment of certain conditions and lifting of a minimum quantity of products during the period from 01.04.2017 to 31.03.2019. The detailed terms and conditions were then recorded in a Memorandum of Understanding (MoU) entered into between the parties herein on 16.02.2018.
 - b) The Applicant, during the period from 01.04.2017 till 31.01.2018, had already lifted a total of 1892.56 MT of iron & steel products from the Respondent and post signing the said MoU, lifted another 1786.28 MT of iron and steel products from the Respondent to maximise the incentive and made payments as per the agreed terms. Thereafter,

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upon expiry of the period mentioned in the MoU and as per terms contained in the said MoU, the Respondent issued 3 credit notes bearings nos. NICN/6/19-20, NICN/7/19-20 and 01 all dated 27.06.2019 was issued for the agreed incentive of Rs. 3000/- per MT for the total lifted quantity of 3678.84, totalling to Rs. 1,10,36,520/- (Rupees One Crore Ten Lakhs Thirty Six Thousand Five Hundred and Twenty only) in favour of the Respondent.

- c) Despite regular follow-ups with the concerned officials of the Respondent, the Respondent wilfully did not pay the amount. The credit notes were issued by the Respondent in terms of the MoU and there was never any dispute with respect to the amount, entitlement or correctness of the credit notes.
 - d) Due to such wilful defaults, the Applicant was constrained to issue a demand notice on 18.07.2019 under the provisions of the Insolvency and Bankruptcy Code, 2016 demanding the payment of the unpaid amount or Rs. 1,10,36,520/- (Rupees One Crore Ten Lakhs Thirty Six Thousand Five Hundred and Twenty only) in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which was received by the Respondent at its Registered Office on or about 19.07.2019.
 - e) Till date despite all efforts taken by the Applicant to realise its dues from the Respondent, the Applicant has remained unsuccessful in recovering the claim from the Corporate Debtor. On no action on part of the Respondent, the Applicant has filed the present Company Petition.
3. Notice of the Company Petition was served on the Respondent upon which the Respondent entered appearance and filed Affidavit in Reply wherein it submitted as follows:

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- a) It is true that the steel industries across India is facing one of its worst market situation and are registering a very poor business performance.
 - b) The Company i.e. Nippon Alloy Limited is also hit by poor market situation and passing through a very poor business condition. In the current business environment and market situation our Company is not in a position to meet the liabilities and repay the debt.
 - c) It is correct to say that the respondent Company has an outstanding with Ply Com Private Limited of Rs. 1,10,36,520/- which we will repay when market conditions improve.
4. It is clear from the submissions made by the Respondent that a debt is owed by it to the Applicant and that there is a default in its repayment. Even during the oral submissions, the Counsel for the Respondent made the said submission and expressed its inability to repay the debt since its bank accounts are frozen and all the funds coming into the accounts are being appropriated by the bank towards the debt owed by the Respondent to the said bank.
5. As per section 9 of the Insolvency and Bankruptcy Code, 2016 the Adjudicating Authority/Tribunal can, within fourteen days from the date of receipt of the application, ascertain the existence of a default from the records of a regulated information utility. Once the Adjudicating Authority/Tribunal is satisfied as to the existence of the default and has ensured that the Application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the Application.
6. In the present case also, there is no payment of the debt and an admission thereof, there is default in its repayment, the present Application is

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otherwise complete, the invoice or notice for payment to the Respondent-Corporate Debtor has been delivered by the Operational Creditor, there is no disciplinary proceeding pending against the resolution professional proposed by the Applicant, a written communication from the said professional to that effect has been annexed to this application and no notice of dispute has been received by the Operational Creditor i.e. all the compliance for initiation of CIRP have been met by the Operational Creditor.

7. The Applicant has produced and relied upon various documents to prove its case. Following are the documents relevant for the consideration of the case in hand:- Form 2 (written communication) by the proposed Interim Resolution Professional, copy of ledger along with the copies of debit notes issued by the Respondent to the Applicant showing the amount claimed to be in default, copy of the Memorandum of Understanding dated 16.02.2018 entered into between the Applicant and the Respondent, copies of the Bank statement from the date of the Debit/Credit note till date of Axis Bank where the Applicant is maintaining its account, confirming that no payment has been received from the Corporate Debtor against the said Debit/Credit notes, copy of Demand Notice dated 18.07.2019 in Form-3 along with its enclosures and the postal receipts and relevant track report showing service of such notice upon the Corporate Debtor and an affidavit affirming that no notice of dispute has been received by the Applicant.
8. Heard the Ld. Senior Counsel appearing for the Applicant, the Counsel appearing for the Respondent and perused the records. In the Light of the above said discussions, this Tribunal is of opinion that this is a fit case for admission. The application is hereby admitted under section 9 of the I & B Code upon the following directions:-

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ORDER

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Nippon Alloy Limited (Formerly Narayani Ispat Limited) is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 (54 of 2002);

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- 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.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) **Mr. Subodh Kumar Agrawal**, residing at 301, Viceroy House, 1 Ganesh Chandra Avenue, Kolkata-700013 having email: subodhka@gmail.com and registration number being **IBBI/IPA-001/IP-P00087/2017-18/10183**, as proposed by the Applicant, is appointed as Interim Resolution Professional for ascertaining the particulars of

- creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Interim Resolution Professional/Resolution Professional to conduct CIRP of the Corporate Debtor as per time line prescribed under Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- xii) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xiii) The Operational Creditor/Petitioner is directed to deposit 3,00,000/- (Rupees Three Lakhs Only) within one week from the date of this order, in the ESCROW Account in SBI maintained by the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional before the constitution of the CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance, if any, can be withdrawn by the Operational Creditor.
- xiv) Registry is hereby directed under Section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through email.
- xv) List the matter on **16.03.2020** for the filing of the progress report.

- xvi) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R)
Member (J)

Signed on this, the 30th day of January, 2020.

HB/VC