IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201

TP 158 of 2019 [CP(IB) 653 of 2019]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Velji Doshabhai & Sons Pvt Ltd **........Applicants**
V/s
Taneja Iron & Steel Co Ltd **........Respondents**

Order delivered on 07/07/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicants :
For the Respondents :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd- -Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Braj Mohan

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

TP 158 of 2019 [CP(IB) 653 of 2019]

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

In the Matter of:

Velji Dosabhai & Sons Private Limited
5th Floor, Godrej Coliseum
Bh Everad Nagar
Off Eastern Express Highway
Sion East
Mumbai-400022

Applicant/ Operational Creditor

Versus

Taneja Iron & Steel Co Limited
315, Transport Nagar
Indore-452017

Respondent/ Corporate Debtor

Order reserved on: 09.06.2022
Order pronounced on:07.07.2022

Coram: Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Present:
For the Applicant: Ld. Advocate Ms. Aarti Sonawane
For the Respondent: ex-parte

ORDER

1. The instant Application is filed by Velji Dosabhai & Sons Private Limited (‘**Applicant**’) under section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, through Mr.Nilesh Dolatrai Kansara, senior accounts executive of the company, who is duly authorized vide Board Resolution dated

28.09.2018, for initiation of Corporate Insolvency Resolution Process ('**CIRP'**) against Taneja Iron & Steel Private Limited (**Corporate Debtor**) for the default amount of Rs.3,58,976/-, wherein the principal amount is Rs.2,09,669/- and the interest amount is Rs.1,49,307/-.

2. The applicant is a Private Limited Company registered on 27.10.1994, CIN: U63090MH1994PTC082465 and is engaged in the business of range of export-oriented services, ocean freight and custom clearance services.

The Corporate Debtor is registered on 23.08.2006, CIN: U27109MP2006PLC018892 and is engaged in the business of manufacturing and supplying Leaf Spring, Metal Bolt and Alloy Steel Flat. The authorised share capital and the paid up share capital of the corporate debtor is Rs.4,00,00,000/- and Rs.3,79,37,850/- respectively.

3. The averments made by the Applicant/Operational Creditor are summarized hereunder:

(i) The operational creditor had provided freight forwarding services on credit to the corporate debtor for the products manufactured by the corporate debtor for which the operational creditor raised an invoice dated 15.07.2016 amounting to Rs.2,09,669/-.

(ii) The corporate debtor accepted the services and invoice of the operational creditor without raising any dispute and issued three post dated cheques (09.08.2016, 07.11.2016, 06.12.2016) in favour of the operational creditor for discharging its liability. However, the said post dated cheques were dishonoured on 12.08.2016, 30.11.2016 and 08.12.2016 respectively.

(iii) The operational creditor time and again requested the corporate debtor to make payment, but the corporate debtor never replied and therefore, the operational creditor sent demand notice dated 08.07.2019 under section 8 of the Code which was duly served on the corporate debtor. The track report is placed on record, which states 'Item Delivery Confirmed'. The corporate debtor had neither raised any dispute to the said notice nor made any payment towards outstanding dues and therefore, it is an admitted liability. Thus, the operational creditor filed present application under Section 9 of Code.

(iv) The corporate debtor has accepted the invoice dated 15.07.2016 along with the terms and conditions, wherein it is specified that the interest at 24% shall be charged on delayed payments and therefore, interest is payable. The said invoice falls within the ambit of the definition of operational debt as defined under section 5(21) of the Code and the applicant is operational creditor as defined under section 5(20) of the Code.

(v) The operational creditor has filed an Affidavit under Section 9(3)(b) stating that the corporate debtor has not sent any notice disputing the said unpaid operational debt.

(vi) The name of the Interim Resolution Professional (IRP) Mr.Ketan Dand having registration No.IBBI/IPA-002/ IPN00089/2017-18/10233 is proposed and the consent of the IRP is also placed on record.

(vii) The present application is filed on 23.08.2019. The application has been filed well within the period of limitation as per section 18 read with section 19 and 20 of the Limitation Act, 1963.

4. We have heard the learned Counsel for the operational creditor and perused relevant documents available on record. It is noted that despite service of notice by post and email upon the Corporate Debtor and further through paper publication, none appeared nor any reply is filed by the corporate debtor and therefore, an order to proceed ex-parte against the Corporate Debtor was passed on 19.06.2020.

5. It is also noted that the post-dated cheques were issued by the corporate debtor dated 09.08.2016, 07.11.2016 and 06.12.2016 which were dishonored on 12.08.2016, 30.11.2016 and 08.12.2016 respectively and the order dated 24.08.2021 of this Adjudicating Authority states that the corporate debtor approached the applicant for settlement.

6. The claim of the operational creditor stands established and prima facie there is default in payment of the amount due to the applicant without any dispute in existence. Moreover, the claim of applicant is not contested by the corporate debtor in spite of various opportunities given, which amounts to admission of debt.

7. The default amount meets the threshold limit as per Section 4 of the IB Code, 2016 (prior to the amendment under section 4 of the IB code) and is well within the limitation for filing the present application.

8. In the view of facts, it is clear that corporate debtor has defaulted in the payment of its debts. On the basis of the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

(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 IBC, 2016, as the case may be.

(iii) The Operational Creditor has proposed the name of the IRP, therefore, this Adjudicating Authority hereby appoints **Mr.Ketan S. Dand** having registration No.IBBI/IPA-002/IPN00089/2017-18/10233 to act as an IRP under Section 13(1) (c) of the IBC, 2016.

(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 extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is 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. 50000/- (Rupees Fifty Thousand 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.

9. Accordingly, CP(IB) 653 of 2019 is allowed.

-sd-
Kaushalendra Kumar Singh
Member (Technical)

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Madan B. Gosavi
Member (Judicial)

Swati