

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1**

**CP (IB 227/9/NCLT/AHM/2018)**

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.06.2020**

Name of the Company: Jay Manek Steels  
V/s  
Yogi Infrastructure Pvt Ltd

Section: Section 9 of Insolvency & Bankruptcy Code

<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
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**ORDER**


The case is taken up through video conferencing.

The Parties are represented through their respective counsel(s).

The case is fixed for pronouncement of order today.

The order in detail is recorded vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 3rd June, 2020

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. (I.B.) No. 227/9/NCLT/AHM/2018**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

**In the matter of:**

M/s. Jay Manak Steels,  
Through its Sole Proprietor,  
Nr. Zenith School, Godi Road,  
Pratap Nagar,  
Vadodara - 390004.

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

**Versus**

M/s. Yogi Infrastructure Pvt. Ltd.,  
7, Ashokvatika Society,  
Opp. Narayan Nagar Society,  
Gorwa,  
Vadodara - 390016,  
India.

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

**Appearance:**

Mr. Akshat Khare, Advocate for the Petitioner.

Mr. Shreyang S. Vayeda, Advocate for the Respondent.

**Order delivered on 3<sup>rd</sup> June, 2020.**

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**ORDER**

**[Per: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]**

1. The present I.B. Petition is filed under **Section 9** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"). Thereby, the Petitioner/Operational Creditor has sought for initiation of the Corporate-Insolvency-Resolution-Process ("CIRP" in Short) in respect of the Corporate-Debtor, **M/s. Yogi Infrastructure Pvt. Ltd.**
  
2. The Petitioner/Operational-Creditor, M/s. Jay Manak Steels is stated to be a proprietorship firm and having its registered office at: Nr. Zenith School, Godi Road, Pratap Nagar, Vadodara - 390004, India. It has prayed for grant of following relief(s) in the present I.B. Petition which are stated as under:
  - (i) *To admit the Corporate Insolvency Resolution Process against the Corporate Debtor Company, i.e. M/s. Yogi Infrastructure Pvt. Ltd.*
  - (ii) *To declare a moratorium against the Corporate Debtor Company under Section 13(1) read with Section 14 of the I.B. Code, 2016.*
  - (iii) *To order for "Cause Public Announcement" of the initiation of the Corporate Insolvency Resolution Process against M/s. Yogi Infrastructure Pvt. Ltd. and to call for submission of claim under Sec.13(1) r.w. Section 15 of the I.B. Code, 2016.*

(iv) To appoint Mr. Shalabh Kumar Daga as an Interim Resolution Professional under Section 13(1) r.w. Section 16 of the I.B. Code, 2016.

(v) To provide for the cost of this application.

3. The Respondent/Corporate-Debtor-Company, namely M/s. Yogi Infrastructure Pvt. Ltd. was incorporated under the provisions of the Companies Act, 1956 on 01.02.2005 with CIN: U45201GJ2005PTC045396. As submitted, the authorised share capital of the company is Rs.1,00,000/- (Rupees One Lakh only). The issued, subscribed and paid up share capital is Rs.1,00,000/- (Rupees One Lakh only). It is stated that the Respondent Company is engaged in the business of construction and developers. The registered addresses of the Respondent/Corporate-Debtor-Company is: 7, Ashokvatika Society, Opp. Narayan Nagar Society, Gorwa, Vadodara – 390016, India.

4. It is the case of the Petitioner that it supplied steel goods, i.e. MS Angle, to the Respondent/Corporate Debtor for a total value of **Rs.27,17,818/- (Rupees Twenty-Seven Lakh Seventeen Thousand Eight Hundred Eighteen only)**. It is stated that against each supply, the Petitioner generated tax invoices and supplied by way of delivery challan. The said copies of all the tax invoices and

delivery challans are annexed with the present petition as Annexure-B.

5. It is stated that as per the standard market practice, the Petitioner, in his invoices has mentioned that the bill amounts were required to be paid within two (2) to seven (7) days as per the case and from the date of invoices as per the clause no. 4 under declaration in tax invoices. Therefore, as per the Petitioner, the Respondent is liable to pay the amount of invoices along with **24% interest** if failed to be paid within the stipulated period of 2 to 7 days as mentioned therein.
6. It is stated that the Corporate Debtor paid the amount of Rs.17,74,977/- out of the claimed amount of Rs.27,17,818/-. It is contended that the Respondent failed to pay the remaining amount of **Rs.9,42,841/-** as on accounting balance date 22.09.2017.
7. It is stated that the Petitioner raised various demands to clear the dues against the total amount of the tax invoices so generated for above mentioned sale of the goods. In support of its contentions, the Petitioner has annexed a copy of ledger account with the present I.B. Petition as Annexure-C.



8. It is stated that the Petitioner issued a demand notice dated 06.04.2018 in the prescribed format of Form No.3 and 4 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and had called upon the Respondent/Corporate Debtor to pay the entire outstanding amount along with the interest so accrued. A copy of said demand notice has been annexed as Annexure-D.
9. It is submitted that the Respondent neglected the said notice, thus the Petitioner was compelled to file the present I.B. petition under the provision of Insolvency and Bankruptcy Code, 2016.
10. It is submitted that the Respondent Company is unable to pay its outstanding in normal course of its business hence, the Corporate Debtor has become commercially insolvent and is in poor financial status. For the aforesaid reasons, the Petitioner herein has demanded to initiate insolvency proceedings in respect of Corporate Debtor Company.
11. The Petitioner, in support of its contention has relied on the information placed by the Ministry of Corporate Affairs as on March 2018 that the Respondent Company

filed its last annual return in the financial year ended on **March 31, 2016.**

12. In the present matter, the Petitioner Bank has suggested the name of an Interim Resolution Professional, **Mr. Shalabh Kumar Daga**, who, vide his letter dated **09.05.2018** has given his affirmative consent to act as an Interim Resolution Professional in the present matter. He also certified himself for not having any disciplinary proceedings pending against him with the Board or ICSI, Insolvency Professional Agency.
  
13. In response to the present I.B. Petition, the Corporate Debtor has filed its reply/objection by denying the allegations made therein and thus has opposed the initiation of C.I.R.P. in respect of it. The Respondent further contended that the present petition is not filed in prescribed proforma in law and original documents are not placed on record. Further, the Respondent, in Para 14 has also mentioned about supply of low quality and defective material to it. The Respondent also denied such allegation that the company is not able to pay its outstanding financial debt.

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14. In response to the reply of the Respondent, the Petitioner filed his rebuttal document by clarifying to the objection made by the Respondent.
15. The Petitioner, through its rebuttal documents has furnished a copy of some emails as well as **whatsapp screen shots about the communications** entered between them. It is evident therefrom such communication that the Corporate Debtor did not mention or even whisper about the lower quality goods supplied to the it. The Corporate Debtor nowhere raised any objection or made complaint about low quality of goods or disputed price/rate of the material supplied. A perusal of such correspondence/ communication reveals that when the payment was asked from the Respondent then on Mr. Rajubhai Panchal being representative/ Director of the company simply responded that he would call the petitioner later on.
16. As per the record, present matter was initially listed on 19.06.2018. Thereafter, 18.07.2018, 28.08.2018, 11.10.2018, 28.11.2018 and on 04.01.2019, the Respondent was given to file his reply/ objections within two weeks, the same was not complied with in time and was filed on 04.01.2019. Therefore, on 04.01.2019 an I.A. No.12 of 2019 was moved by the Respondent/ Corporate

Debtor for permission to file reply and to be taken on record. Such request was opposed by the petitioner but in the interest of justice, the Respondent was allowed for filing the same with a cost of Rs.5000/-. Thus, the matter was adjourned to 20.02.2019, 18.04.2019, 01.07.2019, 30.07.2019 and on 20.08.2019 the Petitioner was further directed to remove the defects in the petition. On 17.09.2019 **the petitioner filed additional affidavit (dated 23.08.2019) enclosing a copy of amended Form No.V of the I.B. Petition with request be taken on record as an amendment to the present I.B. Petition. After hearing the counsels for both parties, such amendments were allowed vide this Court's order dated 14.10.2019 and the amended form No.V of the I.B. Petition formed part of the proceedings.**

17. We considered the above stated averments made by the Petitioner in the present I.B. Petition as well as the Respondent / Corporate Debtor in its reply objection so as to examine the merits and on admissibility or otherwise of the present Petition. We also perused the documents annexed with their respective pleadings filed by both of the parties.

18. A careful perusal of the reply filed by the respondent shows that it has not denied the procuring of the

material / steel goods (i.e. MS Angle) from the Petitioner and which were properly delivered to and have been utilised by the Corporate Debtor. The Corporate Debtor did not produce any document to show that it raised some objection in respect of lower quality of goods supplied to it or on price/ rate of material supplied. Contrary to this, the Petitioner made such declaration about the tax invoices wherein, TDS is stated to have been deducted on the invoices raised by the petitioner. It is also a matter of record that the Corporate Debtor has made a part payment and amount of Rs.17,74,977/-. Thus, there is remaining balance of Rs.9,42,841/- as on 22.09.2017. The Petitioner, by filing rebuttal document has refuted the allegation of the Corporate Debtor in respect of low quality of goods and defective material and produced copies of communication through email / whatsapp screenshot for perusal of this Court along with its rebuttal documents which shows that there was certain communication/ correspondence entered between the Petitioner and the Corporate Debtor for making enquiry about the supply of material to be procured (i.e. M.S. steel angle) from the petitioner company the same was duly delivered to the Respondent / Corporate Debtor. Thereafter, the Petitioner demanded for making payment of the supplied goods. The Respondent through its representative (Director) Mr. Rajubhai Panchal merely

respondent by making such comment / remark in Whatsapp screen "I will call you later". Thus, on being frequently requested by the Petitioner, the Corporate Debtor made only such evasive reply that he would make call to the Petitioner later and but never whispered or complained about low quality of material or defective goods supplied nor categorically disputed about the rate / price of the goods supplied but made attempt to avoid the payment. Thus, it seems to be a moon shine defence which resulted in sending of statutory demand notice dated 06.04.2018 to the corporate debtor by the petitioner which was also not replied by the corporate debtor nor any payment was made by the corporate debtor to the petitioner. Hence, the present IB Petition.

19. By taking into consideration of above narrated facts and circumstances of the present case, we find that the corporate debtor is having outstanding debt liability towards payment of materials were supplied to it and utilized by it for a sum of Rs.9,42,841/- such amount is obviously is more than of one lakh, hence, such attracts triggering of the Corporate Insolvency Resolution Process ("CIRP" in short), in respect of the corporate debtor.

20. That apart, the corporate debtor did not deny specifically and categorically about its loan liability for making

payment nor paid the balance payment nor refused goods supplied, but utilized the same. Therefore, the corporate debtor is liable to make payment of the aforesaid amount, wherein, the corporate debtor has failed. Thus, the default of outstanding dues has been occurred.

21. It is now well settled legal position of the IB Code as per the decision of the Honourable Supreme Court in the matter of ***Innoventive Industries vs. ICICI Bank Ltd.*** that this Adjudicating Authority is bound to admit the IBC proceedings, if the debt is established and default has been occurred. Provided that the IB Petition be found to be complete as per the provisions of the I&B Code. As in this matter, the remaining amount is of Rs.9,42,841/- as against balance due as on 22.09.2017 and the present IB Petition is filed in the year of 2018. Hence, it is found to be filed well within the limitation. In addition, to this, the petitioner has proposed the name of an Insolvency Professional, Mr. Shalabh Kumar Daga, to be appointed as IRP, who also given his consent and filed a declaration to this effect that there is no disciplinary proceedings is against him.

22. For the aforesaid reasons, the present IB Petition is found complete and deserves admission by placing reliance on Honourable Supreme Court's decision in the

matter of ***Innoventive Industries vs. ICICI Bank Ltd. and Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Private Limited.***


23. For the aforesaid reasons, and on the basis of above given facts, this Adjudicating Authority hereby admits the present IB Petition with following directions / observations:
24. Hence, this Adjudicating Authority hereby appoints, as proposed, **Mr. Shalabh Kumar Daga**, having Insolvency Professional Registration No. **IBBI/IPA-001/IP-P00071/2017-18/10157**, **Mobile No.9687605050**, **Email ID: jlnus.ahd@gmail.com**, **Address: 405, Atlantis Enclave, Opp. Maruti Row House, Nr. Subhash Chowk, Gurukul, Ahmedabad - 380052.** as an **Interim-Resolution-Professional**. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.


25. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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);*
- (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 supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to*
  - (a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

26. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 18, 20, 21 of I.B Code. Further the personnel of the Corporate Debtor are advised to extend co-operation to Interim Resolution Professional as required Under Section 19 of IB Code.
27. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.
28. Accordingly, the present IB-Petition stands admitted.

  
(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member (Technical)

  
(Harihar Prakash Chaturvedi)  
Adjudicating Authority &  
Member (Judicial)

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