

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 655/IB/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Pheonix Industries Limited

243, Udyog Bhavan, Sonawala Road,
Goregaon (East), Mumbai – 400 063

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

Vs

PR Castalloys Private Limited

Row house No. 45, Sahyadri Hills,
Garkheda, Aurangabad- 431 001

..... Corporate Debtor

Order Reserved On: 14.12.2022

Order Pronounced On: 01.02.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Applicant: Ms. Sunila Chavan, (Advocate)

For the Respondent: None Appeared.

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by Pheonix Industries Limited hereinafter called as the (“**Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against PR Castalloys Private Limited herein after referred to as the (“**Corporate Debtor**”) by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “**Code**”) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 41,67,154/-

2. The Petitioner has attached the following documents to demonstrate the existence of Debt:
 - a. Statement of Claim;
 - b. Purchase orders along with, E-way bills and Lorry receipts;
 - c. Cheques with return memo;
 - d. Notice under Section 138 of Negotiable Instruments Act with Acknowledgement;
 - e. Operational Creditors Ledger Statement;
 - f. Demand Notice;

Facts of the case

3. The Petitioner submits that the Respondent had approached the Petitioner for supply of Aluminium Alloys from July, 2019 till August, 2019. The Petitioner further submits that goods worth Rs. 40,02,474/- were supplied to the Respondent as against the confirmed Purchase Orders. Furthermore, the Respondent had accepted the delivery of goods without any dispute. The Petitioner states that for the purpose of repayment of the invoice amounts, the Respondent had issued four cheques amounting to Rs.40,02,474/-. The said four cheques were presented for encashment but the same were returned dishonoured with the remark as “Funds Insufficient”. In this regard, the Petitioner has already initiated proceeding under Section 138 of the Negotiable Instruments Act,1881.

4. The Petitioner submits that, after several requests and reminders were given by the Petitioner to the Respondent regarding repayment of the invoice amounts, on 23.10.2019 the Respondent deposited an amount of Rs. 50,000/- in the Petitioner's bank account. Thereafter, the Petitioner was in constant follow up with the Respondent regarding repayment of the balance amount, and had also issued several reminders and notices, but the Respondent has failed to make the payment of Rs. 41,67,154/-.
5. As a result, the Petitioner issued a Demand Notice dated 02.01.2020, which was duly received by the Respondent as on 07.01.2020. The Petitioner submits that the Respondent has also failed to reply to the said Demand Notice within 10 days nor has paid the outstanding amount. Hence the Petition.

Reply by the Respondent

6. The Respondent in its reply has denied each and every allegation and contentions raised by the Petitioner. The Respondent with regard to part IV point 1 of the present application denies the amount of Rs. 41,67,154/- being an amount of total debt. The Respondent further denies the contents of part V point 8 of the present application and submits that the documents produced therein are forged and fabricated. Hence the Respondent prays for the dismissal of the present application. The Respondent has also denied the pendency of any proceedings under Section 138 of the Negotiable Instruments Act, 1881 initiated against it by the Petitioner.
7. The Respondent further submits that it had made payments which the Petitioner has failed to disclose in the Petition. In this regard the Respondent submits that payment of Rs. 9,00,000/- was paid to the Petitioner which was duly recorded in the Ledger Account of the Respondent.

8. The Respondent submits that the Respondent Company, is financially sound and also can meet its liabilities. For this purpose, the Respondent has referred to the Balance Sheet which reflects the sound and financial health of the Respondent Company. The Respondent further submits that the present dispute is not originating from a wilful default but arises because the existing recession in the industry. In the end, the Corporate Debtor has asked for a period of 9 months for paying the outstanding amount to the Petitioner.

Findings

9. We have heard, Counsel for the Parties and have gone through the record.
10. This is a Petition Under section (9) of the Code whereby the Petitioner is seeking initiation of CIRP against the Respondent on the allegations that the letter has failed to repay the total debt amount of Rs. 41,67,154/- outstanding against the Respondent. The case of the Petitioner is that it supplied of goods i.e. Aluminium Ingots to the Respondent worth Rs. 39,52,474.00/- against the purchase orders and Invoices (Exhibit- B1 to B4). The Respondent has made a payment of only Rs. 50,000/- and apart from that, has not been made any other payment. The Petitioner also claimed interest at the rate of 15% per annum amount of Rs. 2,14,680/-. A perusal of the invoices (Exhibit- B1 to B4) reveals that there is an interest clause in the invoices which entitles the Petitioner to charge interest at the rate of 15% p.a. if the payment is not made in time. The Petitioner is also shown to have served demand notices dated 20.09.2019 and 09.11.2019 (Exhibit G and H), calling upon the Respondent to make the outstanding payment against the supply of goods. However, the Respondent has not replied to the said notices. It has been claimed that the Respondent has made a part payment of Rs. 50,000/- only on 23.10.2019 as is evident from Annexure (J) attached with the Petition. The Petitioner has also placed

on record the documents i.e. lorry receipts (Exhibit- B1 to B4) which prove that the goods were actually delivered to the Respondent. Thus, from the documents relied upon by the Petitioner, it is evident that the Respondent was supplied goods worth Rs. 39,52,474/- as against which the Respondent has made a payment of Rs. 50,000/- and sum of Rs. 41,67,154/- was outstanding which includes interest amount of 2,14,680/- charged at the rate of 15% p.a., as stated in the invoices. The Respondent was served with demand notices but no reply to the said notices have been given by the Respondent which means that he has nothing to say in its defence.

11. In the reply filed by the Respondent, a case of complete and absolute denial has been set-up. It has been denied that the Respondent owes Rs. 41,67,154/- against the supply of goods or on account of interest for non-payment. The Respondent has denied if any proceedings has been issued against him under Section 138 of Negotiable Instruments Act, on account of the dishonour of the cheques issued by him towards the payment to the Petitioner. However, the Petitioner has further placed on record the Cheques (Exhibit- C1 to C5), and the copy of online case status (Exhibit E1 and E2) which states that the proceedings under Section 138 are pending before the Metropolitan Magistrate. Thus, the defence raised by the Respondent is without any substance. The Respondent has further claimed in the reply that he has made a payment of Rs. 9,00,000/- to the Petitioner and for this purpose the Respondent has relied upon a ledger entry but prima facie the payment of Rs. 9,00,000/- does not stand prove, as no record of any bank transfer has been placed on record. The Respondent has further, claimed in the reply that in it needs nine months time to make the balance of payment as there is a recession in the Industry. Thus, in a way the Respondent has admitted its liability. In totality, the reply filed by the Respondent is self-contradictory as on one hand, the Respondent has denied its liability to be existing against him and at the same time he sought nine months-time to make the payment. The

Respondent has further failed to show any pre-existing dispute with regard to the transaction of the sale alleged by the Petitioner on the basis of which the Petition has been filed. Thus, the Respondent has absolutely no defence in this case.

12. From the above discussion it is evident that the Respondent owed a sum of Rs. 41,67,154/- at the time of filing Petition which it has failed to pay despite the demand notice issued against him. In the given circumstances, the Petition under Section (9) filed against him to be deserves to be allowed. It is order accordingly in the following terms.

ORDER

- A. The above Company Petition No. (IB) 655 of 2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **PR Castalloys Private Limited.**
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Hemant Shripad Shetye**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00894/2019-2020/12872, having Email id IRP@HSPNASSOCIATES.IN and contact number- 9820078999 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- C. The Operational Creditor shall deposit an amount of Rs. (2) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend

the above amount only towards expenses and not towards his fee till his fee is decided by COC.

- D. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- E. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- F. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- G. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- H. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- I. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- K. Accordingly, the **C.P.(IB) 655 of 2020** is admitted.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

**ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)**

SD/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**