IN THE NATIONAL COMPANY LAW TRIBUNAL

DELHI BENCH (COURT NO. IV)

Company Petition No. IB-2691/ND/2019

(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)

IN THE MATTER OF:

M/s. LAXMI STEELS

... Applicant/Operational Creditor

VERSUS

M/s. ADJOIN BUILT & DEVELPOERS PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 20.03.2020

<u>CORAM:</u>

Dr. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
SHRI HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)

For the Applicant : Mr. Anshuj Dhingra, Adv.

For the Respondent : Ex-parte

MEMO OF PARTIES

M/s. LAXMI STEELS

Having its office at:

18, Loha Mandi,

B.S. Road, Ghaziabad,

Uttar Pradesh-201009

...Applicant/Operational Creditor

VERSUS

M/s. ADJOIN BUILT & DEVELOPERS

PRIVATE LIMITED

Having its registered office at:

Unit No. 302, 3rd Floor,

D-Mall, Plot No. A-1,

Netaji Subhash Place,

Pitampura Delhi- 110034

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

M/s Laxmi Steels (for brevity 'Applicant'), having PAN No. AACFL2311B, through its partner and authorized signatory Mr. Rahul Singhal, with a prayer to initiate the Corporate Insolvency Resolution Process against (CIRP) against M/s. Adjoin Built & Developers Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a partnership firm, PAN No. AACFL2311B, having its office at 18, Loha Mandi, B.S. Road, Ghaziabad, Uttar Pradesh-201009, inter alia, engaged in the business of supply of M.S. Angle, M.S. Flat/ TMT Bars and other Iron products.

3. The Respondent, namely M/s. Adjoin Built & Developers Private Limited, is a company incorporated on 12.07.2013, under the provisions of Companies Act, 1956 with CIN No. U70109DL2013PTC255320, having its registered office at Unit No. 302, Third Floor, D-Mall, Plot No. A-1, Netaji Subhash Place, Pitampura, New Delhi-110034. The Authorised Share Capital of the respondent company is Rs.1,00,000/- and Paid Up Share Capital of the company is Rs.1,00,000/- as per Master Data of the company.

4. It is the case of the applicant, that the business relationship between the Operational Creditor and the Corporate Debtor started in and around the year 2015-16 and from 2015-16 onwards, the Operational Creditor had started supplying M.S. Angle, M.S. Flat/ TMT Bars and other Iron products to the Corporate Debtor. The Operational Creditor supplied M.S. Angle, M.S. Flat/ TMT Bars and other Iron Products to the Corporate Debtor and raised several tax invoices during the FY 2016-17 from 04.08.2016 to 18.02.2017 amounting to Rs. 1,39,75,358/- (Rupees One Crore Thirty Nine Lakhs Seventy Five Thousand Three Hundred Fifty Eight), after adjustments of the payment made by the Corporate Debtor, which were supposed to be paid by the Corporate Debtor within 30 days from the date of the invoice.

5. It is further stated that, after receiving the aforesaid M.S. Angle, M.S. Flat/ TMT Bars and other Iron products, the Corporate Debtor failed to make the payment against the above mentioned and raised invoices. Several reminders were made to the Corporate Debtor to make the overdue payment but no positive response was received from their end. The

details of invoices as provided by the Operational Creditor against which the alleged debt is claimed to be due is as follows:

Invoice No.	**Date**	**Invoice Value**
CSI-007	**04.08.2016**	**Rs. 8,19,456/-**
CSI-008	**05.08.2016**	**Rs. 7,94,580/-**
CSI-010	**06.10.2016**	**Rs. 11,83,455/-**
CSI-011	**12.10.2016**	**Rs. 11,50,185/-**
CSI-012	**26.10.2016**	**Rs. 11,26,529/-**
CSI-013	**24.11.2016**	**Rs. 8,54,622/-**
CSI-015	**26.11.2016**	**Rs. 8,37,207/-**
CSI-016	**01.12.2016**	**Rs. 2,57,295/-**
CSI-017	**01.12.2016**	**Rs. 12,12,400/-**
CSI-018	**17.12.2016**	**Rs. 12,13,098/-**
CSI-019	**08.01.2017**	**Rs. 9,20,705/-**
CSI-020	**10.01.2017**	**Rs. 10,29,548/-**

CSI-021	**06.02.2017**	**Rs. 11,03,803/-**
CSI-022	**10.02.2017**	**Rs. 2,80,090/-**
CSI-023	**18.02.2017**	**Rs. 12,80,409/-**
TOTAL		**Rs. 1,40,63,382/-**

6. In spite of various requests made and reminders sent by the Applicant, the Respondent did not reply. On failure to pay the outstanding dues by the Respondent, the Applicant sent a demand notice dated 03.08.2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the entire payment of unpaid debt to the tune of Rs. 1,39,75,358/- (Rupees One Crore Thirty Nine Lakhs Seventy Five Lakhs Three Hundred Fifty Eight), within 10 days from receipt of the notice, failing which the Applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

7. The Applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.

8. However, the same was found to be undelivered on the previous address as available with the Operational Creditor. Again, a fresh demand notice was sent to the Corporate Debtor via speed post sent & email on 19.08.2019. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has not filed its reply to the said notice, nor raised any dispute by way of notice any other. As no payment was coming, hence this application, seeking to unfold the process of CIRP.

9. The Applicant has stated that total debt due and payable is Rs.1,39,75,358/- (Rupees One Crore Thirty Nine Lakhs Seventy Five Lakhs Three Hundred Fifty Eight). The date on which the debt became due as claimed by the Applicant is 18.02.2017.

10. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The Applicant has also filed affidavit of service wherein he states that the Respondent

has been served through speed post on 09.11.2019 on both the addresses of the Corporate Debtor i.e., old address as well as new. Further, delivery has also been done through email on the registered email id of the Corporate Debtor on 30.10.2019. The relevant documents in this regard have been annexed along with the affidavit.

11. This Tribunal was constrained to proceed with the matter ex-parte against the Corporate Debtor as per order dated 19.11.2019, since the Corporate Debtor has not appeared, though Section 9 notice and the present application were duly served on the Respondent and proof of service is filed by the applicant.

12. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.

13. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant.

14. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.

15. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

16. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

17. The Applicant had on 14.02.2020 mentioned and requested to file fresh Form 2, the same was allowed, and a time of 5 days was granted to the applicant for compliance. However, the same has not been done. In light of given circumstances this Bench appoints Mr. Aditya Kumar, as Interim Resolution Professional, having registration no. IBBI/IPA-001/IP-P00338/2017-2018/10609, email address is aditya@ashwaniassociates.in, as the IRP of the Respondent.

The IRP is directed to take all such steps as are required, under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the I & B Code.

18. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Aditya Kumar to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the

pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

20. The Rregistry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

Sd/-

(Dr. DEEPTI MUKESH)
MEMBER (Judicial)

SIDDHANT