THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 221/Chd/Hry/2020

Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:

Jyoti Strips Private Limited
through its Authorized Representative
with its registered office at
B-103 Mithapur Extension,
Badar Pur New Delhi 110044

…Petitioner-Operational Creditor

Vs.

Vardhman Industrial Steel Private Limited
with its registered office at
Shop No. 15-16, Mama Chowk Mie Part-A,
National Highway-10
Bahadurgarh, Haryana 124507
through its Authorized Representative
CIN No. U2705HR2011PTC042420

…Respondent-Corporate Debtor

Judgement delivered on: 25.11.2022

Coram: **Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)**
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Petitioner-Operational Creditor : Ms. Prachi Johri, Advocate

For the respondent-Corporate Debtor : Mr. Rajbir Singh, Advocate, proxy counsel for Mr. R.K. Modi, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'),** by Jyoti Strips Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), through its authorized representative with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Vardhman Industrial Steel Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Vardhman Industrial Steel Private Limited, is a Company incorporated on 15.03.2011 under the provisions of Companies Act, 1956 with CIN No. U2705HR2011PTC042420 with its registered office at Shop No. 15-16, Mama Chowk Mie Part-A, National Highway-10 Bahadurgarh, Haryana-124507. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with main petition and marked as Annexure B.

3. The facts of the case, briefly, as stated in the petition are that Jyoti Strips Pvt. Ltd. is a trader in iron and steel. Vardhman Industries steel Pvt. Ltd. approached Jyoti Strips Pvt. Ltd. for supply of HR plates of particular dimensions. The Operational Creditor raised 10 invoices between 14.01.2019 and 02.04.2019 for supply of goods. However, these invoices remained outstanding and a small amount against invoice no. P100/18-19/6745 dated 14.01.2019 was paid by Corporate Debtor. The Operational Creditor

presented two cheques dated 30.08.2019 to its bank for encashment but the said cheques were returned dishonoured with noting “exceeds arrangement”. The Operational Creditor is also in custody of two more cheques of Rs. 25 lakhs each. Cheques worth Rs. 1 Crore had been issued by Corporate Debtor to Operational Creditor in acknowledgement of its liability to pay. In admission of liability a sum of Rs. 15 lakhs was paid as part payment by Corporate Debtor. The Operational Creditor issued notice under Section 8 of Code and Corporate Debtor sent a reply without showing any pre-existing dispute.

4. It is submitted by the petitioner in Form 5, Part IV that the principal amount i.e. ₹86,56,813/- (Eighty Six Lakhs Fifty Six Thousand Eight Hundred Thirteen Only) claimed to be in default + 18% interest (Rs. 47,508/-) and total Rs. 87,04,321/- (Rupees Eighty Seven Lakhs Four Thousand Three Hundred and Twenty One Only) from the date of default i.e. 25.09.2019 i.e. when the last payment was received. Copies of pending invoices (Annexure-C), statement showing outstanding invoices (Annexure-D), two cheques along with return memo dated 31.08.2019 (Annexure-E), two other cheques (Annexure-F), statement of bank account (Annexure-J) and ledger maintained by Operational Creditor (Annexure-K) are attached with the main petition.

5. A demand notice in Form 3 dated 23.10.2019 signed by the partner of the petitioner firm duly served to the corporate debtor (Annexure H).

6. Accordingly, order dated 10.12.2020, notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. Affidavit of service was filed vide Diary No. 02249/1 dated

15.03.2021. The respondent-corporate debtor filed reply vide Diary No. 02249/2 dated 16.06.2021 wherein it is stated that the petition was signed and verified by a competent person. The Operational Creditor has not supplied the copy of ledger accounts or invoices as stated in the notice dated 23.10.2019 and the Corporate Debtor had stated about non-receipt of invoices and ledger in reply dated 03.11.2019. The operational creditor has filed the petition on basis of manipulated statement of account. No proper mandatory certificate under Section 65(B) of Indian Evidence Act has been filed in respect of computer generated statement of account.

7. The short written submissions are filed vide Diary No. 02249/4 dated 21.10.2022 and Diary No. 02249/3 dated 26.09.2022, respectively reiterating their respective stands taken in the petition and reply. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 dated 23.10.2019 was properly served. The demand notice was duly served upon respondent as reply dated 03.11.2019 was received wherein it is stated that the operational creditor took four blank cheques as security for supply of goods on credit basis and as per the mutual terms the payment was to be made in six months from the date of purchase. The entire amount had been paid and petitioner was asked to take back the defected/rejected goods. On receiving information about dishonour of two security cheques, the accounts were settled and a total sum of Rs. 15 lakhs was paid as full and final settlement amount and security cheques were to be returned. Therefore, it can be said that the demand notice has been duly served.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by the operational creditor that there is no dispute in relation to the outstanding amount claimed. In fact, in admission of liability a sum of Rs. 15 lakhs was paid as part payment on 25.09.2019. It is deposed by way of affidavit that notice was issued dated 23.10.2019 and reply dated 03.11.2019 was received, however, the same does not raise a bonafide dispute. No money has been received by operational creditor from corporate debtor in lieu of outstanding operational debt.

10. The other issue for consideration is whether this petition is filed within limitation. A demand notice dated 23.10.2019 in Form 3 attached as Annexure H was duly served on the corporate debtor . It is observed that reply from the corporate debtor was received dated 03.11.2019 against above stated demand notice. Therefore, the period of limitation would begin from the date of default i.e. 25.09.2019 i.e. when the last payment was received. This petition was filed on 17.02.2020 vide Diary No. 1305. Therefore, this Adjudicating Authority finds that this petition was filed within limitation.

11. We have gone through the contents of the petition filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 86,56,813/- (which is inclusive of 18% interest p.a. i.e ₹47,508/- from the date of default till date). The operational creditor supplied HR Plates goods to the corporate debtor and raised invoices. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied.

Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. Although, it is contended on behalf of corporate debtor that the operational creditor has filed the petition on the basis of manipulated statements of accounts but there is no supporting evidence to this allegation. Thus, in view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s. Vardhman Industrial Steel Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

13. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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 Securitization and Reconstruction of Operational 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.

14. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

15. The order of moratorium shall have effect from the date of this order till 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.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arvind Kumar and there is nothing adverse against him. In view of the above, we appoint Mr. Arvind Kumar, Registration No. IBBI/IPA-001/IP-P01120/2018-19/11865,

E-mail:caarvindchauhan@gmail.com, Mobile No. 9818088484 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Arvind Kumar shall be in accordance with the provisions of Section 16(5) of the Code subject to the written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. This petition is accordingly admitted.

Sd/- 25.11.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 25.11.22
(Harnam Singh Thakur)
Member (Judicial)

November 25, 2022
YP/TB