

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP 3552 (IB)/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of

**Mahalaxmi TMT Private Limited**

...Operational Creditor/ Applicant

v/s

**Shree Siddhi-Vinayak Ispat Private  
Limited**

...Corporate Debtor

**Order Dated 14.10.2019**

**Coram:** Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Rajesh Sharma

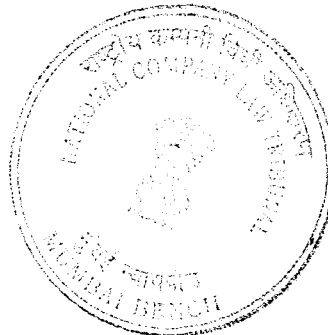
**For the Applicant:** Adv. Nishitha Nambiar, Adv. Almira Lasrado.

**For the Respondent:** None Present.

*Per Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an application being CP 3552/2018 filed by, **Mahalaxmi TMT Private Limited**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Shree Siddhi-Vinayak Ispat Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr. Surat Ram Dakhera, duly authorised by Board Resolution dated 04.09.2017 claiming default of the operational debt of ₹6,86,18,556/- (Rupees Six Crore Eighty Six Lakh Eighteen Thousand Five Hundred and Fifty Six Only). Copy of the Board Resolution is annexed to the Application.
3. The Applicant Company has supplied goods (M.S Billet) to the Corporate Debtor based on the purchase order bearing No.31 dated 21.11.2013 and raised invoices from 14.01.2014 to 06.03.2014,



total invoice amounts being ₹6,95,91,651/- (Rupees Six Crore Ninety Five Lakh Ninety One Thousand Six Hundred and Fifty One. The Corporate Debtor has made on account payments which are adjusted by the Applicant towards the earlier invoices, the first invoice being dated 14.01.2014. Copies of the purchase order and the invoices raised along with the delivery challans and particulars of the claim are annexed to the Application.

4. The Applicant has annexed Bank Certificate dated 21.08.2018 under the Bankers Book Evidence Act, 1891 certifying that the Applicant has not received any amount from the Corporate Debtor in the period 14.01.2014 to 06.03.2014.
5. The Applicant submits that the Corporate Debtor has received the supplied goods and utilised them to its satisfaction however has made part payments by NEFT, RTGS and adjusting the debit Balance of Ambey Vaishno Steel Private Limited from 25.04.2014 to 31.03.2017. The amounts so received have been adjusted towards the earlier invoices raised being dated 14.01.2014.
6. The Applicant issued Demand Notice dated 13.06.2018 under section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3, vide speed post and the same was duly served on the Corporate Debtor on 23.06.2018. Copy of the Demand Notice along with postal receipt and acknowledgment is annexed to the Application.
7. The Corporate Debtor in its Reply dated 05.07.2018 to the Demand Notice, contended that the Demand Notice is barred by the law of limitation. Copy of the Reply is annexed to the Application.
8. The Corporate Debtor in its Affidavit in Reply to this Application has contended that the application is barred by limitation as the invoices are of the year 2014 and as per the invoices annexed to the Application, the amounts fell due on the date of delivery. The Applicant in its Rejoinder submits that the ledger of the Applicant annexed to the Application makes it clear that the Corporate Debtor has made certain payments in the year 2014 and 2015. It is further stated that the last payment received from the Corporate Debtor is on 06.11.2015.



9. The Applicant states that the directors of the Corporate Debtor are also the directors of Ambey Vaishno Steels Private Limited requested the Applicant vide letter dated 31.03.2017 to adjust the debit balance of Ambey Vaishno Steels Private Limited with the Corporate Debtor. The Application being filed on 07.09.2018 is well within limitation. The Applicant, in support of its claim that the Application is within limitation, has annexed to the Rejoinder, copies of the letter dated 31.03.2017, MCA records of Ambey Vaishno Steels Private Limited and the Corporate Debtor.
10. We have heard the parties and perused the records.
11. On perusal of the invoices raised for the goods supplied, the Delivery Challans, the Bank Certificate, it is established that the Corporate Debtor has received goods from the Applicant. Further, on perusal of Ledger of Corporate Debtor, the Bank Statement reflecting payments made by the Corporate Debtor, letter dated 31.03.2017, it is established that the Corporate Debtor has made on account payments from 2014 to 06.11.2015 and further the debit balance of Ambey Vaishno Steels Private Limited is adjusted towards the earlier invoices as per letter dated 31.03.2017. The same is evident on perusal of the said letter and the MCA records of Ambey Vaishno Steels Private Limited and the Corporate Debtor. The last payment being made on 06.11.2015, the date of default is 06.11.2015 as per the Application, the application is filed well within the period of limitation.
12. The Corporate Debtor has made part payments and not raised any dispute in relation to the quality of the goods supplied and has not denied the receipt of the goods. The Corporate Debtor in its Reply to the Demand Notice as well as the Reply to this Application raised the contention the Application is barred by limitation, however, the same is not valid contention as it is clear from the documents placed on record that the Applicant has received payments till 06.11.2015 and the thereafter, the MCA records of the Corporate Debtor reflect the fact that the debit balance of the Ambey Vaishno Steels Private Limited has been adjusted towards the invoices amounts. It is however, important to note that the Corporate



Debtor has not raised contention denying receipt of goods, disputing the quality of goods.

13. It is pertinent to mention that the Hon'ble Supreme Court in the case of *"Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 Supreme Court Cases 353, held:*

*"All that the adjudicating authority is to see at the stage of admitting/rejecting the application is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However in doing so, the authority does not need to be satisfied that the defence is likely to succeed so long as the dispute is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application, Moreover the existence of the dispute and /or the suit or arbitration proceeding must be pre-existing i.e It must exist before the receipt of the demand notice or invoice"*

14. In the light of the above decision and the facts of the instant application, it is seen that there is no valid dispute as contemplated under the Code. The debt and default are established, The outstanding debt of more than Rs One Lakh is due and payable against the corporate debtor and the corporate debtor has committed default in making the payment.
15. The application filed by the Applicant is on proper form 5, as prescribed under the Adjudicating Authority Rules is complete.
16. The Applicant has proposed the name of **Mr Arun Kumar Gupta**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P01594/2019-20/12496]** as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.



17. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

**ORDER**

The application filed under Section 9 of I&B Code, 2016, by **Mahalaxmi TMT Private Limited** against the corporate debtor, **Shree Siddi Vinayak Ispat Private Limited**, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 activity under the Securitization 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 possession of the corporate debtor.



- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints **Mr Arun Kumar Gupta**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P01594/2019-20/12496]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
18. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-  
**RAJESH SHARMA**  
Member (Technical)

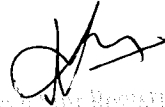
Sd/-  
**V.P. SINGH**  
Member (Judicial)

**14<sup>th</sup> October 2019**



6/6

Certified True Copy  
Copy issued "free of cost"  
On 28/11/2019

  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench