IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB) 1859/2019
Under section 9 of the IBC, 2016
In the matter of
Mr. Gangaprasad R. Tripathi
(Proprietor of Gold Ispat & Steel)
Flat No: 102, Vandan Apartment,
Sector 4, Kalamboli,
Navi Mumbai 410218

.... Operational Creditor

v/s.

Budhale Engineer Pvt. Ltd.
Plot No: A-20, MIDC Shiroli, Tal-Hatkanangale, Dist. Kolhapur-416122

.... Corporate Debtor

Order delivered on: 11.12.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner: Raina Birla, Advocate
For the Corporate Debtor: None Present

Per: Shyam Babu Gautam, Member (Technical)

राष्ट्रीय कम्पनी विधी अधिकरण NATIONAL COMPANY LAW TRIBUNAL मुंबई न्यायपीठ MUMBAI BENCH

ORDER

1. This Company Petition is filed by Mr. Gangaprasad R. Tripathi (Proprietor of Gold Ispat & Steel), (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Budhale Engineer Pvt. Ltd. (hereinafter called "Corporate Debtor") by invoking the provisions of

Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and alleging that the Corporate Debtor committed default in making payment to them in view of the goods supplied.

2. The Operational Creditor had initially filed this application in the name of Gold Ispat & Steel but being a proprietary concern, this Bench had directed them vide order dated 10/10/2019 to amend Form V. Accordingly the revised Form V was submitted and the cause title was also changed to the name of its proprietor Mr.Gangaprasad Tripathi. The Corporate Debtor is a company bearing CIN U99999MH1984PTC033297 and having authorized share capital of Rs. 5,00,000/- and paid up share capital of Rs. 3,52,200/-.

3. The counsel for the Operational Creditor submitted that in view of the Gold Rolled Coil supplied to the Corporate Debtor, eleven invoices were raised for the same which are valued to Rs.79,10,024/-. The amount received from the Corporate Debtor totals to Rs.9,29,390/- and the outstanding amount is Rs.1,06,83,342/- (including total of all invoices amounting to Rs.97,12,335/- along with the debit notes dated 31/01/2019, and an interest @24% amounting to Rs.9,71,007 calculated till 30/04/2019). The date of default is 29/09/2018 as submitted by the counsel appearing on behalf of the Operational Creditor.

4. The counsel appearing on behalf of the Operational Creditor further submitted that the Corporate Debtor regularly promised to pay the said amount but failed to do so. It was also mentioned that the Operational Creditor does not hold any security against the supply of services and the present debt is due as per provisions of Law of Contract, 1872 and Sale of Goods Act, 1930.

5. The counsel for the Operational Creditor also mentioned about the demand notice dated 02/04/2019 sent along with copies of invoices in Form 3 & 4 which was served on the Corporate Debtor wherein the demand for the outstanding payment was made by them. There was no reply by the Corporate Debtor to this notice of the Operational Creditor.

6. The Operational Creditor has annexed the following documents in support of the contentions made:

   i. Copy of Master Data of Corporate Debtor downloaded from the website of MCA
   j. Details of transaction on account of which debt fell due and the date from which such debt fell due.
   k. Copy of tabular working for computation of amount and dates of default.
   l. Copy of invoices from 09/07/2018 to 12/12/2018.
   m. Copy of Demand Notice dated 02/04/2019

7. It was made clear vide the order of this Bench dated 03/09/2019 that if the Corporate Debtor did not appear on the next date of hearing, the matter would be proceeded on merits. Even after that when the matter was listed for four times the Corporate Debtor was not present consecutively. Hence, this Bench has given ample opportunities to the Corporate Debtor but due to his absence, the matter was proceeded ex-parte on merits and we have heard the Operational Creditor in detail and the following order is hereby passed:

ORDER

8. We have heard the counsel appearing on behalf of the Operational Creditor in detail and after perusal of all the documents submitted by her, there remains no doubt that there were 11 invoices raised and the goods were accordingly delivered but a payment only upto Rs. 9,29,390/- was made by the Corporate Debtor and an amount of Rs.1,06,83,342/- including the principle, debit notes and interest as mentioned in the invoices is still pending to be paid.

9. Also, a Demand Notice dated 02/04/2019 was duly served on the Corporate Debtor which is a requisite condition for the admission of Section 9 petition. No reply to this notice was made by the Corporate Debtor.

10. Also, the Operational Creditor has submitted the invoices, ledger accounts and other relevant documents which make out the

existence of debt and the liability as well as default on part of the Corporate Debtor.

11. Despite of several chances given by this Bench to the Corporate Debtor, nobody had tendered the presence and therefore, we had to proceed on merits in their absence. It can be concluded that the documents submitted by the Operational Creditor are enough to establish the debt upon the Corporate Debtor and that they defaulted in repaying the debt. Also, the amount of debt is much above the minimum required amount of Rs.1,00,000/- Hence, all the requisite conditions for admission of a petition under Section 9 have been found to be fulfilled and therefore, this petition deserves to be admitted.

12. Therefore, this Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this petition declaring moratorium with the directions as mentioned below:

    (a) 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.

    (b) 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.

    (c) 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.

(d) That the order of moratorium shall have effect from 11.12.2019 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.

(e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(f) That this Bench hereby appoints Mr. Laxman Digambar Pawar, having his registered office at 15 & 16 Bhakti Complex, 1st Floor, Behind Dr. Ambedkar Statue, Pimpri, Pune-411018 and having Registration No: IBBI/IPA-003/IP-N00015/2017-18/10104 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

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Certified True Copy
Copy Issued "free of cost"
On 13/12/2019
Assistant Registrar
National Company Law Tribunal Mumbai Bench