

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.152/ALD/2024

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016.)

IN THE MATTER OF:

MR. SHABAJ ALI Proprietor of M/s Golden Steel

Add: Khasra No.2 M, 45 Futa Road, Hindon Vihar,
Village Bhonjha, Ghaziabad (U.P.)
Email Id: alibittu417@gmail.com

.... Operational Creditor

Versus

M.S.A STEEL & ALLOYS PRIVATE LIMITED.

R/o at 7th KM Mile Stone, Opp. Rana Girder,
Meerut Road, Muzaffarnagar- 251003, Uttar Pradesh
Email Id: msa_steel@rediffmail.com

.....Corporate Debtor

Order Pronounced On: 18.03.2025

Coram:

Ms. Reeta Kohli : *Member (Judicial)*
Mr. Ashish Verma : *Member (Technical)*

Appearances:

Sh. Himanshu Gupta, Adv. : *For the Operational Creditor*
Ms. Parul Aggarwal, Adv. : *For the Corporate Debtor*

ORDER

1. The present Application was filed on 13.12.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code/IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as “the Rules”) by Mr. Shabaj Ali, Proprietor of M/s Golden Steel (hereinafter referred as "Applicant/Operational Creditor") to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s M.S.A Steel & Alloys Private Limited (hereinafter referred as "Corporate Debtor") due to its failure to pay the total outstanding amount of ₹1,89,48,782/- as on 28.10.2024 along with interest at a rate of 24% per annum until full realization of the dues remains payable to the Operational Creditor. The date of default, as stated in the application, is 06.03.2024.
2. The Operational Creditor, Proprietor of M/s Golden Steel engaged in the business of trading of MS Scrap, was approached by the Corporate Debtor for the supply of MS Scrap to its location at Khasra No. 1490, Meerut Road, Village

Jarona Muzaffarnagar, (U.P.). As per the details provided in the application, the Corporate Debtor issued various purchase orders from 25.10.2022 till 14.12.2023, specifying that payment for the supplied materials was to be made within 60 days from the date of delivery.

3. As stated in the application, the Operational Creditor supplied MS Scrap as per the purchase orders issued by the Corporate Debtor and subsequently raised invoices for the delivered materials.
4. It is further submitted that initially the Corporate Debtor made certain payments, however over the time it delayed in making the requisite payments. Despite the non-payment, the Operational Creditor continued to supplying goods to the Corporate Debtor. However, the Corporate Debtor failed to fulfill its payment obligations as per the terms and conditions specified in the purchase orders.
5. As the Corporate Debtor did not address the repeated requests of the Operational Creditor for payment, the Operational Creditor issued a demand notice in Form 3 under Section 8 of the Code dated 28.10.2024, demanding payment

of the outstanding amounts of Rs. 1,89,48,782/-. In response, the Corporate Debtor through an email dated 05.11.2024, acknowledged the debt and stated that it was unable to pay all its creditors due to financial difficulties faced by it. The Corporate Debtor further requested additional time to fully settle the outstanding dues of the Operational Creditor.

6. Having explicitly acknowledged its liability for the outstanding dues owed to him, the Operational Creditor, despite exercising considerable restraint, ultimately concluded that, given the Corporate Debtor's admitted financial difficulties, it is unlikely that the Corporate Debtor will be able to repay the outstanding amount in the foreseeable future.
7. Aggrieved by the delay in clearing of debt by the Corporate Debtor and its continued failure to clear the outstanding payments, the Operational Creditor filed the present Application seeking for initiation of CIRP against the Corporate Debtor.

REPLY ON BEHALF OF THE CORPORATE DEBTOR

8. The Respondent/Corporate Debtor filed its reply, vide Diary No. 159 dated 24.01.2025, denying all the contention raised by the Applicant in the present Application. The Corporate Debtor asserts that it has already made a bona fide commitment to the Operational Creditor assuring that upon availability of funds, they shall duly clear the outstanding amounts owed to him. Further, the Corporate Debtor maintains that it has consistently acted in good faith and has demonstrated a sincere intention to meet its financial obligations.
9. The Corporate Debtor states that they had made certain payments to the Operational Creditor, with only some payments being delayed.
10. Further, while the Corporate Debtor acknowledges that invoices were duly issued by the Operational Creditor and admits the existence of outstanding dues, it strongly refutes the allegation that it is making excuses to avoid repayment or attempting to evade its financial obligations.
11. The Corporate Debtor submits that outstanding debt remains unpaid due to financial difficulties faced by them and

expresses confidence that with the revival of its business operations, it will be able to clear the dues owed to the Operational Creditor. Therefore, the Corporate Debtor argues for the dismissal of the present application.

FINDINGS AND ORDER

12. We have heard the arguments of the Learned Counsels appearing for both parties, Applicant/Operational Creditor and Respondent/Corporate Debtor and perused the pleadings, records, and exhibits/annexures marked thereto. Having heard the Learned Counsels appearing for the parties, and on perusal of the records, exhibits/annexures and after considering the arguments advanced by respective Learned Counsels, we find that following issues are for consideration to be decided for admissibility or otherwise of this Application u/s 9 of the Code.

- a. Whether there is a Debt and Default
- b. Whether there is a Pre-Existing Dispute

a. Debt and Default

13. As per the present Application filed by the Operational Creditor in Form 3, seeking initiation of CIRP against the

Corporate Debtor is based on the outstanding dues mentioned in Part-IV of the Application amounting to Rs. 1,89,48,782/- along with further interest calculated till the realization of the outstanding dues with the date of default as mentioned therein being 06.03.2024. The facts leading to the above debt and default are that the Corporate Debtor had approached the Applicant/Operational Creditor for supplying of MS Scrap at Muzaffarnagar and placed the following purchase orders wherein the agreed payment terms required settlement of dues within 60 days from the date of delivery:-

S. No.	Date of Purchase Orders	Purchase Order No.
1	25.10.2022	MSA/22-23/09
2	28.10.2022	MSA/22-23/010
3	31.10.2022	MSA/22-23/011
4	04.11.2022	MSA/22-23/012
5	15.11.2022	MSA/22-23/020
6	15.11.2022	MSA/22-23/021
7	16.11.2022	MSA/22-23/022
8	17.11.2022	MSA/22-23/023
9	18.11.2022	MSA/22-23/024
10	12.12.2023	MSA/23-24/012
11	14.12.2023	MSA/23-24/013

- 14.** In compliance of these purchase orders, the Operational Creditor duly supplied the materials and issued various invoices dated 06.01.2024, 19.12.2023, 03.12.2022,

01.11.2022, 02.11.2022, 12.11.2022, 03.11.2022,
04.11.2022, 05.11.2022, 06.11.2022, 08.11.2022,
13.11.2022, 14.11.2022, 16.11.2022, 17.11.2022,
18.11.2022, 19.11.2022, 20.11.2022, 29.11.2022,
30.10.2022 and 28.10.2022 (attached as Annexure 5 with the
present application).

- 15.** As per the above-mentioned invoices, it has been seen that the last invoice issued by the Operational Creditor was dated 06.01.2024. As per the agreed payment terms, the Corporate Debtor was required to make the payment within 60 days from the date of delivery. As the material was delivered locally, it was delivered on the same day as the date on which invoice was issued i.e. 06.01.2024. However, the Corporate Debtor failed to fulfill the obligation of paying within 60 days from the date of issuance of last invoice i.e. 06.01.2024 and the invoices issued earlier were also not paid thus, it resulted in a default of debt exceeding Rs. 1crore with all the unpaid invoices taken together, and the date of default on which the latest default of payment occurred as per the last invoice issued, is 06.03.2024. This confirms that despite receiving

the materials as supplied by the Operational Creditor, the Corporate Debtor did not make payments as per the payment terms agreed between the parties, leading to an outstanding debt with default as the same remains unpaid.

- 16.** Subsequently, after the default occurred on 06.03.2024, the Operational Creditor issued a demand notice under section 8 of the Code demanding the payment of the outstanding amount of Rs. 1,89,48,782/- within 10 days of the receipt of the notice. However, neither any payment was made by the Corporate Debtor nor any notice of dispute was given, leading to filing of the present application by the Operational Creditor on 13.12.2024, which falls within the prescribed limitation period.
- 17.** Further, it is also observed that in response to the demand notice dated 28.10.2024, the Corporate Debtor through an email dated 05.11.2024, has admitted its liability and acknowledged the outstanding payment towards the Operational Creditor, stating that due to financial difficulties, it was unable to clear the dues immediately. The relevant excerpt of the email dated 05.11.2024 is reproduced below:

“We have received your demand notice for outstanding payment for our material supply. As we’ve discussed earlier also, our financial position is not good at this time but we are good business man and will pay all the creditors all the amount in time. You, also please be assured, we will fully settle your account as and when funds will come, please have some more patience, also we our self will inform you at the moment some funds come to the company and we could pay your dues.”

- 18.** After considering the above facts and circumstances of the case, we are of the view that the acknowledgment made by the Corporate Debtor through its email dated 05.11.2024, unequivocally establishes the existence of a legally enforceable debt. The Corporate Debtor’s failure to make payments towards the invoices raised by the Operational Creditor confirms the occurrence of default. It is also observed that the admission by the Corporate Debtor, wherein it cited financial distress as the reason for non-payment, reinforces the fact that the outstanding dues remain unpaid, not due to any dispute regarding the liability but solely due to the inability of the Corporate Debtor to fulfill its payment obligations. Thus, it is evident that a valid debt

has been incurred and remains unpaid, leading to a default on the part of the Corporate Debtor.

- 19.** As per section 4 of the Code, the minimum threshold for initiating a CIRP application is Rs. 1 Crore. In the present case, the Applicant has placed sufficient documents to show that a debt more than Rs. 1 crore as also mentioned in Part IV of the Application, is due and that there has been a default in payment on the part of the Corporate Debtor. Therefore, we are satisfied that there is a debt of more than Rs. 1 Crore and also a default has occurred on part of the Respondent to pay this debt.

b. Whether there is a Pre-Existing Dispute

- 20.** As regards there being any pre-existing dispute in respect of the claim made by the Operational Creditor as discussed above, we find that no notice of dispute was raised by the Corporate Debtor against the demand notice dated 28.10.2024 as required under Section 9(5)(i)(d) of the Code. Additionally, the email dated 05.11.2024 confirms the Corporate Debtor's admission of default as against the payment of dues for the materials supplied by the

Operational Creditor. The reply submitted by the Corporate Debtor further acknowledges the issuance of invoices by the Operational Creditor and subsequently the existence of outstanding dues against the said invoices raised. The assertion of the Corporate Debtor, in its reply, that the debt remains unpaid due to financial difficulties, with an expectation of repayment upon business revival, does not establish a pre-existing dispute. Instead, it reinforces the admission of default by the Corporate Debtor. Therefore, no pre-existing dispute has been found in existence in the present case.

- 21.** After finding that in the present case, there is debt more than the threshold limit of Rs. 1 crore, there is a default in repayment of the said debt and there is no pre-existing dispute with respect to this debt, further, all other conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, have also been found to be fulfilled, we find this application as being fit for admission under Section 9(5)(i) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor.

22. We note that the Operational Creditor has proposed the name of NPV Insolvency Professionals Private Limited, an IPE as IP, to be appointed as Interim Resolution Professional (IRP), having Registration No. IBBI/IPE-0040/IPA-2/2022-2023/50021. Upon verification from the website of IBBI, it is found that IP held valid authorization only till 06.01.2024. Therefore, since the proposed IRP does not hold a valid AFA, this Tribunal appoints Mr. Ankit Agrawal from the panel provided by the IBBI, having Registration No. IBBI/IPA-002/IPN01070/20202021/13514, R/o 62A, KK Hospital Road, Near Swamvar Wedding Hall (Rajendra Nagar), Bareilly, Uttar Pradesh- 243122; Email: ankitagarwalcs@gmail.com, as IRP. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Ms. Kriti Kaushal and it is found that there is no proceeding pending against the appointed IRP and it is also found that this insolvency professional holds valid authorization till 30.06.2025.

23. Accordingly, this application is admitted u/s 9 of the Code, 2016 under the following terms and conditions.

- i.** The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., **M/s M.S.A Steel & Alloys Private Limited** is hereby admitted.
- ii.** We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii.** This Adjudicating Authority hereby appoints Mr. Ankit Agrawal to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 28 above.
- iv.** The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -

- 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- vi.** Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as

may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

- vii.** 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- viii.** 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 the corporate debtor under Section 33 as the case may be.
- ix.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

- x.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as “**COC**”) and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.
- xi.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.
- xii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP 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 IRP/RP 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.

- xiii.** 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.

- xiv.** The IRP/RP is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest.
- xv.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP 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.
- xvi.** The IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench/IBBI/MCA for this purpose.
- xvii.** 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.
- xviii.** The IRP/RP 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.

- xix.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xx.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.
- xxi.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- xxii.** We direct the Financial Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

- 24.** A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.
- 25.** List the CP (IB) 152/ALD/2024 on 21/04/2025 for filing of the progress report/further proceedings.

-Sd-
(ASHISH VERMA)
Member (Technical)

-Sd-
(REETA KOHLI)
Member (Judicial)

Date: 18th March, 2025