

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

CP (IB) 4549/MB-IV/2018

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

**Swastik Coal Corporation Private
Limited**

...Operational Creditor

Versus

Srithik Ispat Private Limited

Corporate Debtor

Order Delivered on 30.09.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr Manoj Kumar Saboo,
Advocate
For the Corporate Debtor : Mr Rohan Deshpande i/b
Alisha Pinto, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Swastik Coal Corporation Private Limited ("the Operational Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Director, Hitesh Bindal, on the basis of a Board Resolution dated 03.05.2018 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Srithik Ispat Private Limited ("the Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares and incorporated on 12.02.1998 under the Companies Act, 1956, with the Registrar of Companies (RoC), Goa. Its Corporate Identity Number (CIN) is U27106GA1998PTC002516. Its registered office is Plot No. 3, Sanguem Industrial Estate, Sanguem, Goa-403704. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 07.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.1,85,04,146.00 (Rupees one crore eighty-five lakh four thousand one hundred and forty-six only) as principal and Rs.2,32,07,812.00 (Rupees two crore thirty-two lakh seven thousand eight hundred and twelve only) as interest as on 10.11.2015, which is the date of default.

4. The case of the Operational Creditor is that they had supplied South African coal to the plant of the Corporate Debtor located in Goa (para 4 at page 10 of the Petition). Invoices have been placed on record as **Exhibit 'D'** at pp.42-197. The total debt due and payable to the Operational Creditor is Rs.4,17,11,958.00 (Rupees four crore seventeen lakh eleven thousand nine hundred and fifty-eight only), as mentioned at page 274 of the Petition.
5. The Operational Creditor had served a Demand Notice in Form 3 dated 12.07.2018 to the Corporate Debtor (**Exhibit 'J'**, pp.275-279) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.
6. Mr. Rohan Deshpande i/b Alisha Pinto, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.
7. In its reply dated 04.06.2019, the Corporate Debtor has set up the following defence: -
 - (a) The transactions are not part of continuous chain but can be classified into two tranches- one prior to 2013 and other arising in 2015. (para I at page 332 of the Reply);
 - (b) The first tranche of transaction is barred by the Limitation Act, 1963 and the second tranche was paid for in advance as admitted by the Operational Creditor in page 244 of the petition (para I at page 4 of the Reply);

- (c) The first tranche of supplies made were defective- extremely poor quality with miserably low carbon content resulting in enormous losses being caused to the Corporate Debtor (para D at page 329 of the Reply); and
- (d) Supplies of coal made in November and December 2015 are not relatable to previous supplies of coal made between December 2012 to June 2013 (para 15 of Written Arguments).
8. We have heard the arguments of both sides and perused the records. The Corporate Debtor has stated that the claim of the Operational Creditor is not valid, on the following grounds: -
- (a) That the claim is barred by limitation; and
- (b) That there is a pre-existing dispute owing to poor quality of supplies.
9. We have perused the copies of correspondence exchanged between the Operational Creditor and the Corporate Debtor are placed at Exhibit 'G' on page 251 to 260.
10. We have especially noticed the email correspondence dated 14.12.2015 which states in the middle of the page at page 251 and spills over to the next page at page 252 against the heading "**payments**" in the table at page 252 the sentence "**Advance before dispatch. (80% material and 20% against in old dues)**" has been mentioned. It is clear that it was never the intention of the

Corporate Debtor to consider the entire transaction between the parties as comprising of two distinct sets of transaction each having no relation to the other. Had this been so, there would have been no need to request the operational creditor to adjust 20% of the payment towards earlier dues. There was no dispute the quantity or quality of the coal supplied from 2012-15.

11. The effect of this also is that there an acknowledgement towards old dues that in implicit even though admittedly the same has not quite been quantified. Therefore, the Corporate Debtor cannot be now heard to say that there were two different sets of transaction each distinct from each other. In any case, there is not a whisper in the reply, on even in the written agruments as to why the shipments made by the Operational Creditor were not returned but were instead retained by the Corporate Debtor.
12. There is also not even a plausible explanation offered either in the reply or in the written submission as to why there was no communication pointing out the poor quality of the coal supplied.
13. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable. There is no reason to deny the admission of the Petition. In the view of this, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.

14. This Adjudication Authority appoints **Mr. Raj Kumar Dad, Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962**, as Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with copy of the Certificate of Registration.
15. It is, accordingly, hereby ordered as follows: -
- (a) The petition filed by **Swastik Coal Corporation Private Limited** under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Corporate Debtor *i.e.* **Srithik Ispat Private Limited (CIN: U27106GA1998PTC002516)** is **admitted**.
- (i) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (ii) 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;
- (iii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

- (iv) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (v) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- (b) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.
- (c) The moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of corporate debtor under section 33 of the IBC, as the case may be.

- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) **Mr. Raj Kumar Dad**, Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962, having address at 205 B Wing, Oxford Chambers Saki Vihar Road, Powai, Andheri East, Mumbai-400072, Contact No. 8879980072 email: rajkdad@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- (g) The Operational Creditor shall deposit a sum of Rs. 1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses towards issue of public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (h) The Registry is directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email **within two days** from the date of this Order.
- (i) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days**.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

PS/30.09.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)