

**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.498/Chd/Pb/2019

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Kabir Impex

with its registered office at
Jaspal Bangar Road
Industrial Area C
Ludhiana, Punjab

...Petitioner-Operational Creditor

Vs.

M/s Swati Cast & Forge Pvt. Ltd.

with its registered office at
D100-101, Phase-V, Focal Point
Ludhiana, Punjab-141010

...Respondent-Corporate Debtor

Judgement delivered on: 03.06.2022

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

For the Petitioner-Operational Creditor : 1. Mr. Vishav Bharti Gupta,
Advocate
2. Ms. Mamta Gupta, Advocate

For the respondent-Corporate Debtor : Mr. Saurabh Kapoor, 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 M/s Kabir Impex (**for
brevity 'Operational Creditor' / 'Petitioner'**), represented by its authorized

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signatories, Mr. Damanpreet Singh, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Swati Cast & Forge Pvt. Ltd. (for brevity '**Corporate Debtor**'/ '**Respondent**').

2. The Corporate Debtor namely, M/s Swati Cast & Forge Pvt. Ltd., is a Company incorporated on 22.03.2011 under the provisions of Companies Act, 1956 with CIN No.U28939PB2011PTC034860 with its registered office at D-100-101, Phase-V, Focal Point Ludhiana, Punjab-141010 IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-3.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is a partnership firm and engaged primarily in the business of Labour Job Forging. The corporate debtor receiving Labour Job Forging from Operational Creditor since 2012 against various invoices. Corporate Debtor duly received the goods upon a trust that it will be making the payment for these goods. Operational Creditor has used FIFO i.e. method, wherein all the payments made by the Corporate Debtor has been adjusted towards pending bills on that date. However, lately after making last payment on 25.08.2012 Corporate Debtor stopped making payments towards the dues of the Operational Creditor. Copy of ledger account is attached as Annexure-5 of the petition. Copy of invoices Annexure-4. Copy of computation sheet Annexure-6 and copy of demand notice is attached as Annexure-1.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.2,37,8812/- (Rs. 8,82,128/- plus delayed payment interest @ 24 % p.a. amounting to Rs.14,46,684/- and legal fee of

Rs.50,000/-)and the corporate debtor acknowledged the debt through written communication on 07.03.2017 (Annexure-2). Therefore, the default occurred on 07.03.2017.

5. A demand notice in Form 3 dated 29.08.2019 and duly received is stated to be issued to the operational creditor by speed post. Copy of postal receipt along with tracking report and affidavit by operational creditor to the effect that it has not received any reply against demand notice (Annexure-1 & 7 respectively of the petition)

6. In Part-III of Form No. 5, Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Pawan Sharma, Insolvency Resolution Professional.

7. Accordingly, order dated 30.09.2019, notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. The corporate debtor filed its reply vide Diary No. 5872 dated 23.10.2019 whereby it stated that company has been facing a very high liquidity crunch and is unable to pay the debt.

8. We have heard the learned counsel for the petitioner and respondent-corporate debtor have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 29.08.2019 was properly served. The petitioner has placed a tracking report, whereunder it was stated that the speed post was delivered to the corporate debtor.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that respondent-corporate debtor in its reply has admitted that its liability and inability to pay

the debt. Moreover, petitioner has appended affidavit u/s 9(3)(b) stating that corporate debtor has not issued any notice or raised any dispute regarding the debt for which the present petition has been filed by the operational creditor.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 19.09.2019 vide Diary No.4927. Whereas the date of default is 07.03.2017 i.e. date of written acknowledgement of the debt, therefore, this Adjudicating Authority finds that this application has been filed within limitation. Apart liability of debt is admitted by respondent-corporate debtor.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt Rs.2,37,8812/- (Rs. 882128/- plus delayed payment interest @ 24 % p.a. amounting to Rs.1,44,6684/- and legal fee of Rs.50,000/). The operational creditor has provided Labour Job Forging to the corporate debtor and raised invoices attached as Annexure-4. 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.

13. 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. It is evident that from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. 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. 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 Swati Cast & Forge Pvt. Ltd. and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below.

- 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.

15. 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 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.

16. 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.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr.Pawan Sharma and there is nothing adverse against him. In view of the above, we appoint Mr.Pawan Sharma, Registration No. IBBI/IPA-002/IP-N00772/2018-2019/12463, E-mail;pawansharmairp@gmail.com; Mobile No. 9417496655 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr.Pawan Sharma shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) The Interim Resolution Professional, Mr. Pawan Sharma is directed to file **his** written consent in Form-2 within one week of this order.

- iii.) 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;

- iv.) 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;

- v.) 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;
- vi.) 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;
- 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 regular progress report to this Tribunal every fortnight.

18. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh 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.

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

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

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

June 03, 2022
HM/ASH