

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (Court-II)
KOLKATA**

C.P (IB) No.52/KB/2023

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

And

In the matter of:

Surya International , having its office at 123, Dr. Mashik Ali Road, Sonar Toli, Patna- 800008.

... Operational Creditor

Versus

In the matter of:

M/s Salasar Exim Limited, (CIN: U51909WB2004PLC098942) having its registered office at 222, Girish Gosh Road, Belurmath, Howrah, West Bengal-711202.

...Corporate Debtor

Date of hearing :21/03/2023

Order Pronounced on : 11/07/2023

Coram:

Mrs. Bidisha Banerjee, Member (Judicial)
Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference

For Operational Creditor : Ms. Urmila Chakraborty, Adv.
Ms. Sweta Mohanty, Adv.
Ms. Rishika Goyal, Adv.

For Corporate Debtor : Mr. Arik Banerjee, Adv.
Mr. Prashant Kumar Singh, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Surya International**, through its Proprietor namely Rama Kant Joshi, (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **M/s Salasar Exim Limited** (hereinafter referred as the Corporate Debtor).
3. It is submitted in the petition that the Operational Creditor is inter alia engaged in the business of supply of heavy metal scrap. Salasar Exim Limited, is engaged in the business of manufacturing of bright bars.
4. It is submitted that both the Operational Creditor and Corporate Debtor were engaged in the business since long time and the Corporate Debtor had been placing orders for the supply of scrap with the Operational Creditor and has been using the same for the manufacture of bright bars. Accordingly, the Corporate Debtor had also placed orders with the Operational Creditor for supply of scrap aluminum for the manufacturing of bright bars for the period 17, January 2022 to January 31, 2022.

5. Pursuant to the various orders placed by the Corporate Debtor from time to time, the Operational Creditor had supplied scrap to the Corporate Debtor. The Operational Creditor had supplied material as per the orders placed without any delay or default and such materials were duly accepted by the Corporate Debtor without any disputes.

6. It is further submitted that the Operational Creditor against the orders placed by the Corporate Debtor had raised invoice bills for payment by the Corporate Debtor. Copy of the Invoice bills for the period January 17,2022 to January 31, 2022 are annexed as Annexure-D to the petition.

7. Despite various reminders, the Corporate Debtor failed, avoided, and neglected to make payments for the materials supplied by the Operational Creditor and invoice bills raised from the period January 17,2022 to January 31,2022.The amount of debt due and payable shall be evident from the copy of the ledger amount of the Corporate Debtor maintained in the books of the Operational Creditor, which is annexed as Annexure-E to the petition.

8. It is submitted that on February 17, 2022, the Operational Creditor issued a letter to the Corporate Debtor requesting to clear the outstanding payment which was due and payable as on that date. Thereafter, several communications were exchanged between the Operational Creditor and Corporate Debtor whereby constant assurances were given by the Corporate Debtor for making payment of the outstanding debts. However, despite such assurances, the Corporate Debtor failed making any payment to the Operational Creditor till date. Copy of the communications exchanged between the parties are annexed as Annexure-F to the petition.

9. In view of the above facts and circumstances, on December 14,2022, the Operational Creditor was compelled to issue notice under Section 8 of the Code demanding the outstanding payments to be made by the Corporate

Debtor. Such Demand Notice dated December 14,202, with an endorsement 'Received' by Salasar Exim Limited is annexed as Annexure-G.

10. It is argued that even after expiring of more than 10 days from the issue and receipt of the demand notice, neither any payment nor any reply to the said demand notice has been received by the Operational Creditor. Therefore, requirement under Section 9(1) of the IBC is fulfilled.

11. The Operational Creditor has further submitted that a total sum of **Rs.13,08,13,221/-** (Rupees Thirteen Crore Eight Lakhs Thirteen Thousand Two Hundred Twenty One only) is due.

12. It is further submitted that the date of default committed by the Corporate Debtor in payment of outstanding debt is **31st January,2022** and as such the Petition is within limitation period.

13. Ld.Counsel appearing for the Corporate Debtor submits that he does not want to file reply affidavit in the matter.

14. We have gone through the petition and after hearing Ld. Counsel for the parties, we are of the view that the Corporate Debtor has in fact defaulted in making the payment of Rs. **13,08,13,221/-** as claimed by the Operational Creditor. The liability is duly admitted by the Corporate Debtor. The argument advanced by the Operational Creditor seems quite justified and we accept the same.

15. The petition is otherwise complete in all respects.

16. In the aforesaid backdrop, the petition deserves to be admitted.

17. We, therefore, pass the following orders:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, 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) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process 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 Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) 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 Securitisation 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Subrata Ghosh** , having Reg. No. **IBBI/IPA-003/IP-N00373/2021-2022/13799** email ID.subhomusic@gmail.com act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.

- x) **Mr. Subrata Ghosh**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs.3,00,000/- (Rupees Three Lacs only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- 18.Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- 19.List the matter on **4-08-2023** for filing of **Progress Report**.
20. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 11th day of July , 2023

PJ