

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

CP (IB) 4238/MB/C-IV/2018

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Steelman Engineering & Forgings,
a proprietorship represented by its
proprietor

Mr. Anand Mehta.

...Operational Creditor

Versus

**AG Conveying Systems Private
Limited**

[CIN: U29299PN2008PTC131563]

Corporate Debtor

Order Delivered on: 03.12.2019

Coram:

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

Appearances:

For the Operational Creditor	:	Mr Girish B Kedia a/w Ms. Shivangi Kedia, Advocates
For the Corporate Debtor	:	Mr Avinash R Khanolkar, 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 Steelman Engineering & Forgings ("the Operational Creditor"), a proprietorship concern represented by its proprietor Mr. Anand Mehta, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against AG Conveying Systems Private Limited ("the Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares and incorporated on 05.03.2008 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Pune. Its Corporate Identity Number (CIN) is U29299PN2008PTC131563. Its registered office is at Gat No. 322A, Plot No. 6 & 7, Pirangut, Pune 412111. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 02.11.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.6,97,915.00 (Rupees six lakh ninety-seven thousand nine hundred and fifteen only) as principal and Rs.2,40,078.00 (Rupees two lakh forty thousand and seventy-eight only) as interest as on 10.10.2016, which is the date of default.
4. The case of the Operational Creditor is as follows: -

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- (i) Pursuant to the written Purchase Orders placed by the Corporate Debtor, the Operational Creditor has sold, supplied and delivered steel materials during the period from 11.06.2016 till 22.08.2016 for aggregating sum of Rs.16,27,915/- (Part IV, para 1 at page 3 of the Petition) under ten invoices;
- (ii) With respect to Invoice No. 141 dated 11.06.2016 of Rs.4,69,481/- part payment of Rs.3,96,205/- has been received by Operational Creditor but with respect to Invoice Nos. 142 dated 28.07.2016, 251 dated 26.09.2016, 252 dated 26.09.2016, 254 dated 26.09.2016, 267 dated 09.10.2016 and 266 dated 10.10.2016, the Corporate Debtor failed and neglected to make payment in aggregate of Rs.6,97,915/-. (Part IV para 3 at page 4 of the Petition);
- (iii) In discharge of the said liability, the Corporate Debtor had issued two cheques of Rs. 3 Lakh each aggregating to Rs. 6 Lakhs. Details of cheques are as follows
- a) Cheque No. 100272 dated 30.12.2017 and
 - b) Cheque No. 100273 dated 28.01.2018.

Both the cheques were dishonoured upon presentment. (Part IV para 4 at page 4-5 of the Petition)

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5. Invoices have been placed on record as **Exhibit '6-11'** at pp.33-38. The invoices provide for interest in case of delayed payments, to be charged at the rate of 18% per annum. Bank statements are also attached as **Exhibit '4'** at pages 13-26. The total debt due and payable to the Operational Creditor is Rs.9,37,993.00 (Rupees nine lakh thirty-seven thousand nine hundred and ninety-three only), as mentioned at page 3 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 09.06.2018 on the Corporate Debtor (**Exhibit '5'**, pp.27-32) in terms of section 8 of the IBC, which has been duly served on the Corporate Debtor by Registered Post.
7. There was, however, no reply to the Demand Notice. Since the Corporate Debtor failed to make a payment, the Operational Creditor has filed this Petition on 02.11.2018 before this Adjudicating Authority.
8. As per section 9(3)(b) of the I&B Code, the Operational Creditor has stated on affidavit that in response to the Demand Notice the Corporate Debtor has neither made a payment towards the outstanding dues nor raised any dispute. Further, Operational Creditor states that there is no dispute in existence about the unpaid operational debt. This affidavit is placed at pp. 42-43 of the petition.

9. The copy of the Petition was served on the Corporate Debtor on 20.11.2018. Necessary Proof of service in this regard have been placed on record by way of separate affidavit of service. The Corporate Debtor has not filed a reply to the Petition.
10. Mr. Avinash R Khanolkar, Learned Counsel appeared on behalf of the Corporate Debtor and made following submissions in his memo of appearance dated 11.10.2019:
 - a. The liability of debt is acknowledged by the Corporate Debtor.
 - b. Furthermore, it was stated that the Corporate Debtor is not able to pay its liability towards the Operational Creditor.
 - c. Due to inability of payment of debt, the Corporate Debtor does not want to contest this Petition.
11. We have heard the arguments of both sides and perused the records.
12. The Operational Creditor has raised several invoices between the period 11.06.2016 and 22.08.2016 amounting to Rs.16,27,915/- (Rupees sixteen lakh twenty-seven thousand nine hundred and fifteen only) for the supply of goods to the Corporate Debtor. Since the invoices remained unpaid, the Operational Creditor called upon the Corporate Debtor to make the payment. The payment received was adjusted towards total outstanding amount, Current

outstanding amount is Rs.6,97,915/- (Rupees six lakh ninety-seven thousand nine hundred and fifteen only) which is remaining towards invoices between period 11.06.2016 and 22.08.2016.

13. There is no pre-existing dispute regarding the unpaid operational debt, being the principal amount of Rs.6,97,915/- (Rupees six lakh ninety-seven thousand nine hundred and fifteen only). The invoices for the period of 11.06.2016 to 22.08.2016 were raised upon the Corporate Debtor on a running account basis, but the outstanding dues were not paid. Thus, the existence of debt and default is established. The date of default is 10.10.2016.
14. As Corporate Debtor had given two cheques to Operational Creditor in discharge of unpaid liability, total amounting to Rs.6,00,000/- which proves acknowledgement of debt on part of Corporate Debtor.
15. The Advocate for Corporate Debtor submits that claim of Operational Creditor is not disputed and the liability is acknowledged. The Corporate Debtor does not want to contest this Petition.
16. From the material available on record, apparently there is nothing that would point to the petition being collusive in nature.
17. 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, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

18. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
19. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB) 4238/MB/C-IV/2018** filed by **Steelman Engineering & Forgings**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **AG Conveying Systems Private Limited [CIN: U29299PN2008PTC131563]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) 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 or suspended or interrupted during the moratorium period;
 - (ii) That 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;

- (d) 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.
- (e) 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.
- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their

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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.

- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

03.12.2019

Sd/-

RAJASEKHAR V.K.
Member (Judicial)