

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) 2119/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Vedanth.Com Worldwide Limited
[CIN: U64202WB2000PLC091491]

...Operational Creditor

Versus

Karthik Alloys Limited
[CIN: U31200GA1992PLC001969]

Corporate Debtor

Order Delivered on : 17.12.2019

Coram:

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

Appearances:

For the Operational Creditor : Mr Abdullah Qureshi a/w Ms.
Amira Lasrado i/b IndiaLaw
LLP, Advocates
For the Corporate Debtor : Mr TN Chandrasekar,
Advocate

ORDER

Per: Ravikumar Duraisamy, Member (Technical)



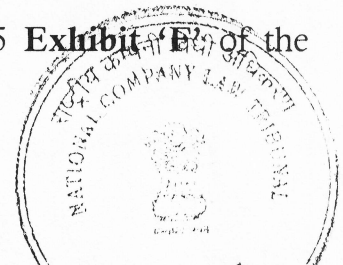
1. This is a Company Petition filed under section 9 of the Insolvency

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Limited [CIN: U64602WB2000PLC091491] ("the Operational Creditor"), a Public Limited Company represented by its Manager Mr. Subodh Vichare, duly authorised by the Board Resolution dated 27.05.2019 (**Exhibit 'A'** to the petition at p.9), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Karthik Alloys Limited [CIN: U31200GA1992PLC001969]** ("the Corporate Debtor").

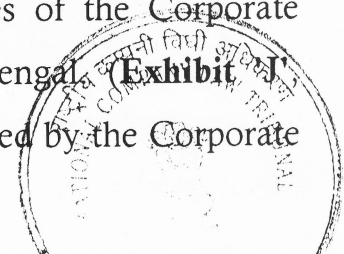
2. The Corporate Debtor is a public company limited by shares and incorporated on 30.12.1992 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U31200GA1992PLC001969. Its Registered Office is at L6 L7 Cuncolim Industrial Estate, Cuncolim Salcette, Goa 403703. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 04.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.34,11,111/- (Rupees thirty-four lakh eleven thousand one hundred and eleven only) as principal along with the interest at 18% P.A. on the outstanding amount.
4. The case of the Operational Creditor is as follows: -
 - (a) The Corporate Debtor placed order for Fixed Carbon, Moisture of various quantity for an amount of Rs. 75,00,000/- (Rupees seventy-five lakh only) by its three purchase orders and the details are given at pp. 214-215 **Exhibit 'B'** of the Petition.



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- (b) Pursuant to the orders placed by the Corporate Debtor, invoices were raised on the Corporate Debtor between 21.06.2018 and 04.09.2018 (at page 12-170 of the Petition).
- (c) The Corporate Debtor issued certain Debit Notes from 23.06.2018 to 24.10.2018, which are placed at pp. 220-231 of the Petition.
- (d) On 06.03.2019, the Corporate Debtor vide email forwarded a copy of the ledger account maintained by it to the Operational Creditor for confirmation, which was verified and accepted by the Operational Creditor vide reply email dated 22.03.2019. copies if the correspondence along with the ledger account have been placed on record at **Exhibit 'I'** on pp. 242-245 of the Petition.
5. Invoices along with the corresponding delivery challans have been placed on record as **Exhibit 'C'** at pp.13-170. 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 'E'** at PP. 172-213. The total debt due and payable to the Operational Creditor is Rs. 34,11,111/- (Rupees thirty-four lakhs eleven thousand one hundred and eleven only), as mentioned at page 3 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 by Speed Post on 10.04.2019 to both the addresses of the Corporate Debtor i.e. South Goa and Durgapur, West Bengal (**Exhibit 'J'** pp.246-249). The Demand Notice has been received by the Corporate



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as per speed post proof of Delivery placed at p. 24 of the Petition. The Corporate Debtor has not replied to the Demand Notice.

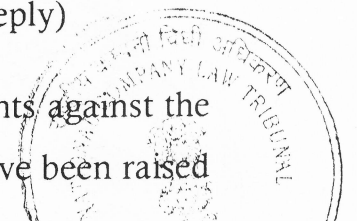
7. Mr TN Chandrasekar, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.
8. The Corporate Debtor has filed its reply/preliminary counter affidavit dated 30.08.2019. The case of Corporate Debtor is as follows: -

a) The Operational Creditor supplied fixed carbon, coke, moisture of various quantity to the Corporate Debtor, as per three purchase order (pp 2-3 para 3(a) of reply):.

- i) Purchase Order no. KAL-II/2018/19/038 dated 19.06.2018 for 300 MT of Coke for Rs. 75,60,000/-
- ii) Purchase Order no. KAL-II/2018/19/046 dated 14.07.2018 for 40 MT of Coke for Rs. 7,14,000/-
- iii) Purchase Order no. KAL-II/2018/19/052 dated 23.07.2018 for 500 MT of Coke for Rs. 7,80,000/-

b) Due to delay in delivery of the raw materials and supply of inferior quality of raw materials and shortage of supplies, the Corporate Debtor had to suffer losses. During the period from 23.06.2018 till 24.10.2018, inferior quality of raw materials of the value of Rs. 23,97,616/- have been supplied by the Operational Creditor for which Debit Notes have been raised by the Corporate Debtor. (P.3, para 3(b) of the reply)

c) The Corporate Debtor has been making payments against the supplies made by the Petitioner, Debit Notes have been raised



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by the Corporate Debtor to the Operational Creditor against the supply of inferior quality of raw materials and accounts have also been reconcile between the Operational Creditor and Corporate Debtor.

- d) The Demand Notice in Form-3 as received by the Corporate Debtor is undated and same not maintainable under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as the Corporate Debtor has a counter-claim due to the loss and damage suffered against delayed supplies of raw materials, short supplies of raw materials and inferior quality of raw materials.
- e) The Corporate Debtor has raised following main defences:
- i) The Corporate Debtor vide reply dated 03.05.2019 has countered the claim of the Operational Creditor against his undated Demand Notice through its counsel, regarding pre-existing disputes of time delay, inferior quality in supply and short supplies.
 - ii) The Master Data of the Operational Creditor appears to be old and a perusal of Master Data of the Operational Creditor downloaded from the MCA Website does not show the name of Director of Operational Creditor.

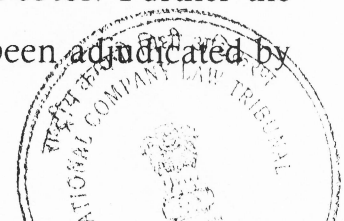
9. The Operational Creditor has filed Affidavit in Re-joinder and made the following submissions:



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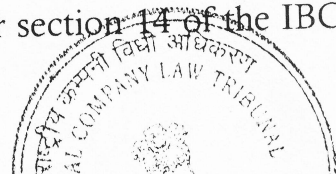
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- i) The Demand Notice was delivered to the Corporate Debtor on 12.04.2019 at the Factory address but not on the registered office. Operational Creditor also submitted the tracking report of the Postal Department in support of his claim.
 - ii) Operational Creditor also submitted that towards some wastage in delivery of goods, the Debit Notes priced by the Corporate Debtor and Credit Notes were issued by the Operational Creditor for the same. It is further submitted that various payments made by the Corporate Debtor has been duly reflected in the Bank Statement of the Operational Creditor and the same has been placed at pp. 172-242 of the Petition. Therefore, an amount of Rs. 34,11,111/- is outstanding amount which due and payable by the Corporate Debtor and prayed for admission of the Petition and to initiate CIRP against the Corporate Debtor.
10. We have heard the arguments of both sides and perused the records.
- i) From the records it is noticed that the Corporate Debtor has not submitted any proof to substantiate its claim that the dispute is pre-existing in accordance with the provisions of IBC 2016.
 - ii) Further there is no record to substantiate/justify the counter claim made by the Corporate Debtor for an amount of Rs. 23,97,616/- as claimed by Corporate Debtor. Further the said quantum of amount has also not been adjudicated by any relevant Authority.



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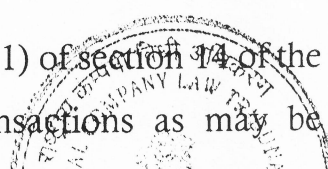
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11. The application made by the Operational Creditor is complete in all respects as required by law. The Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 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.
12. The Operational Creditor has proposed the name of Mr. Anneel Saroagi, Registration No. IBBI/IPA-001/IP-P01320/2018-19/12009, 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 the Certificate of Registration.
13. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB) 2119/MB-IV/2019** filed by **Vedant.Com Worldwide Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Karthik Alloys Limited Limited [CIN: U31200GA1992PLC001969]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:



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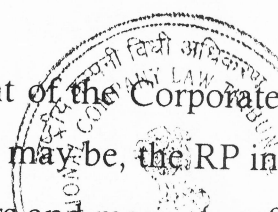
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- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, 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 Operational 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
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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 Tribunal 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) **Mr. Anneel Saraogi**, Registration No. IBBI/IPA-001/IP-P01320/2018-19/12009, having address at P1 Hyde Lane, 7th Floor, Suite-7B, Kolkata 700073, email: anneelsaraogi@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.
- (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 officer



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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.

- (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, Mumbai, 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)

17.12.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"

