

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

CP (IB) No.720/MB-V/2021

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6
of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rule 2016)

In the matter of

Darukhana Steel Private Limited

[CIN: U27109MH2007PTC173788]

..... Operational Creditor/Petitioner

Vs

Ardent Maschinfabrik Private Limited

[CIN: U74900MH2007PTC173245]

..... Corporate Debtor

Date of the order: 11.07.2023

Coram:

Sh. Shri Kuldip Kumar Kareer, Member (Judicial)

Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Mr. Amir Arsiwala, Advocate.

For the Corporate Debtor: Mr. Paras Oza, Advocate.

Per: Anuradha Bhatia, Member (Technical)

ORDER

1. This is an application bearing C.P. (IB) No. 720/MB-V/2021 filed by Darukhana Steel Private Limited, **the Operational Creditor/Applicant**, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter **“Code”**) seeking initiation of Corporate Insolvency Resolution Process (hereinafter **“CIRP”**) against Ardent Maschinfabrik Private Limited, **the Corporate Debtor**. The Ld. Counsel appearing for the Petitioner/ Operational Creditor mentions that the debt which is “due” and “payable” by the Corporate Debtor is Rs. 3,18,35,835/- which includes Rs. 2,48,45,678/-, towards the principal and Rs. 69,90,157/- towards the interest component.
2. The Operational Creditor is a renowned dealer and supplier of Iron & Steel products.
3. The Corporate Debtor approached the Operational Creditor for providing goods, as per specifications stated in the purchase orders. The Operational Creditor duly supplied the goods, as per the purchase orders, issued by the Corporate Debtor.
4. Further, after delivering goods to the satisfaction of the Corporate Debtor, the Operational Creditor raised necessary invoices in respect thereof. **It is pertinent to mention that the invoices categorically mentions that the interest @ 24% p.a. will be charged on invoices remaining unpaid for more than 60 days after the delivery of the goods.**

5. However, despite providing quality goods in a timely manner, the Corporate Debtor failed to honour the payments, stated in the said invoices. After giving credits to the amount received from the Corporate Debtor, the Ledger Account of the Corporate Debtor for the period 01.04.2018 to 31.03.2021, as maintained in the books of the Operational Creditor, reflects that the Corporate Debtor is liable to pay principal sum Rs. 2,48,45,678/- along with interest of Rs. 69,90,157/- (as mentioned in Part IV of the Corporate Debtor).
6. The Operational Creditor has repeatedly approached the Corporate Debtor to clear the outstanding payment. However, the Corporate Debtor has defaulted in making the payment. Thereafter, the Operational Creditor, vide an email dated 03.10.2020 had informed the Corporate Debtor that the above-mentioned principal amount of Rs. 2,48,45,678/- was due and payable as on 30.09.2020. It was brought to the notice of this Bench that the Corporate Debtor had admitted its liability by confirming the outstanding balance vide email dated 30.04.2021.
7. Thereafter, the Operational Creditor issued Form 3 and Form 4, as prescribed under Section 8 of IBC, 2016 dated 20.04.2021, calling upon the Corporate Debtor to make payment of the outstanding amount. The Corporate Debtor was further informed that in the event of non-payment of outstanding debt within 10 days of the receipt of the demand notice, the Operational Creditor shall file an Application before the Adjudicating Authority for initiating a corporate insolvency resolution process under Section 9 of the IBC, 2016. The said demand notice has been duly received

by the Corporate Debtor.

8. It is pertinent to mention that the Ld. Counsel of the Operational Creditor stated that inadvertently an amount of Rs. 3,16,58,228/- was mentioned in its Demand Notice. The same should read as Rs. 3,18,35,835/-
9. The Corporate Debtor filed its reply to the demand notice on 10.05.2021. Despite of several reminders, the Corporate Debtor has not paid a single penny. Therefore, the Operational Creditor was constrained to file the present Petition before the Adjudicating Authority for initiating Corporate Insolvency Resolution Process u/s 9 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

Reply filed by the Corporate Debtor

10. The Corporate Debtor in its reply filed on 23.12.2022 submits that they are making every attempt to revive its business operations despite the unfavourable market conditions. The Corporate Debtor further accepted that they are liable to pay the defaulted amount claimed by the Operational Creditor/ Petitioner. However, even after making several attempts to resolve the matter no concrete settlement has materialized. Hence, the Corporate Debtor admits that due to financial losses, the Corporate Debtor has not been able to pay the outstanding dues.
11. The Corporate Debtor mentioned that in its reply dated 10.05.2021, in response to the Demand notice dated 20.04.2021, they had apprised the Petitioner regarding the inferior quality of goods supplied by them. Despite this, the Corporate Debtor was willing to settle the account with the

Petitioner.

Findings/Observations:

12. We have heard the arguments of the Learned Counsel for Operational Creditor/ Petitioner and the Ld. Counsel appearing for the Corporate Debtor and perused the records.
13. It is the case of Operational Creditor that the Operational Creditor has supplied the goods, as per the specification stated in the purchase orders and raised several invoices with respect to the same. The ledger account of the Corporate Debtor for the period 01.04.2018 to 31.03.2021, maintained in the books of accounts of the Operational Creditor, clearly demonstrates that the Corporate Debtor is liable to pay the outstanding amount “due” and “payable” to the Operational Creditor. The Operational Creditor had approached the Corporate Debtor for the release the outstanding amount, but the Corporate Debtor failed to pay the outstanding amount. Thereafter, vide an email dated 03.10.2020, the Operational Creditor has informed the Corporate Debtor that the principal amount is due and payable to them. At this stage also, the Corporate Debtor has not raised any dispute regarding the quality of product, In fact, the Corporate Debtor has provided the balance confirmation to the Operation Creditor. The Corporate Debtor in its email has confirmed that the amount of Rs. 2,48,45,678/- is due and payable to the Operational Creditor. The Operational Creditor has also enclosed the affidavit 9(3)(b) along with the Company Petition.

14. The Bench is of the considered view that that based on the documents placed on record, it is sufficiently proved that Corporate Debtor has failed to make the payments of the said invoices to the Operational Creditor and is liable to pay its debt owed to the Operational Creditor.
15. After carefully perusing the records, we hold that there has been an operational “debt” and “default” on the part of the Corporate Debtor and under the circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code.
16. The Applicant has proposed the name of Mr. Shreyansh Jain, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.
17. It is ordered accordingly in following terms:

ORDER

- a. The Application bearing CP (IB) No.720/MB-V/2021 filed by **Darukhana Steel Private Limited**, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Ardent Maschinfabrik Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against **Ardent Maschinfabrik Private Limited**.
- b. This Bench hereby appoints **Mr. Shreyansh Jain**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01683/2019 - 2020/12727 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs

towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)