

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 133/CTB/2019

In the matter of:

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:

IMPERIAL REFRACTORIES, Newar Bhawan, Top Floor, 87, Chowringhee Road, Kolkata- 700020;

... Operational Creditor

-Versus-

SHRIKRUPALU STEELS PVT. LTD. at Niladrivihar, Unit-II, Umapada, Jajpur Road, Jajpur, Orissa- 755019.

... Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing):

For Petitioner (s)	:	Mr. B. Panigrahi, Adv.
For Respondent (s)	:	Mr. Jayanta Samanta, Adv.

Order reserved on: 06.04.2022

Order pronounced on: 02.05.2022

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. The applicant/Operational Creditor i.e., **IMPERIAL REFRACTORIES** is represented by Mr. Tanmay Adak. This application is filed under Section 9 of Insolvency and Bankruptcy Code,

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2016 (for brevity 'IBC') for initiation of Corporate Insolvency Resolution Process of respondent/Corporate Debtor i.e., **SHRIKRUPALU STEELS PVT. LTD** on the basis of an alleged Operational debt of ₹ 26,40,126/-.

2. The respondent/Corporate Debtor is **SHRIKRUPALU STEELS PVT. LTD.** is registered under Companies Act, 1956 having CIN: **U29253OR2015PTC019074**. The registered office of the respondent/Corporate Debtor is within the state of Odisha; hence, this Adjudicating Authority has jurisdiction.
3. The Operational Creditor has stated that they have sold and delivered HC Ferro Chrome, Carbon Raiser, Flake Graphite and Ferro manganese of various quantities to the Corporate Debtor and the said goods were received by the Corporate Debtor without raising disputes of any nature whatsoever. The Operational Creditor raises Tax Invoices against which the Corporate Debtor made payments and had running and continuous accounts with the Operational Creditor. The Operational Creditor raised Tax Invoices against which the Corporate Debtor made payments and had running and continuous accounts with the Operational Creditor.
4. That the Corporate Debtor made payments by cheques against three tax invoices bearing Nos. IR/ 18-19/299 dated 7th September, 2018; IR/18-19/295 dated 4th September, 2018 and IR/18-19/294 dated 4th September, 2018. All the three cheques bearing No. 000070 dated 22nd October, 2018 for Rs. 19,55,024/- No. 000073 dated 6th November, 2018 for Rs.2,53,831/- and No. 00071 dated 4th November, 2018 for Rs.13,216/- drawn on HDFC Bank Ltd. Bounced. Against tax invoice No. IR/18-19/237 dated 26th July, 2018 for a sum of Rs.15,88,563/- the Operational creditor has received a part payment of Rs. 14,01,179/-

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and is yet to receive the remaining amount of Rs. 1,87,384/- the total outstanding unpaid operational debt amounts to a total of Rs. 24,09,455/- (Twenty-Four Lakh Nine Thousand Four Hundred Fifty-Five only).

5. It is further stated that the Operational Creditor also wrote to the Corporate Debtor on numerous occasions to send the payment without further delay and also to pay along with 18% of interest more specifically on 04.01.2019, 08.01.2019, 09.01.2019 and 18.01.2019.
6. Further, that by an email dated 1st February, 2019, the Corporate Debtor has acknowledged the unpaid operational debt and has requested for some more time to make the payments. (Ref. pg-41 of the petition).
7. That since they failed to pay the sum, the Operational Creditor sent a demand notice dated 23rd April, 2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the registered office of the Corporate Debtor which was received by the corporate Debtor on 1st May, 2019.
8. That till date no reply to the said demand notice has been received by the Operational Creditor and the aforesaid unpaid operational debt has not been disputed by the Corporate Debtor. Therefore, an amount of Rs.26,40,126/- (Rupees Twenty-Six Lakhs Forty Thousand One Hundred and Twenty-six) [Principal amount due = Rs.24,09,455/- + Interest at 18% per annum Rs. 2,30,671/- is due and payable to the Operational Creditor by the Corporate Debtor on the date of notice U/s 8 of the IBC 2016 i.e., on 23.04.2019.
9. The Corporate Debtor in its email dated. 09.02.2019 and also in its counter has admitted the default made by it but challenged the quantum of defaulted amount to be a claim of Rs.17,55,398/- as principal and does not speak applicability of 18% interest.

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10. It is noted that in order to arrive at a settlement as is evident from the several dates in the present proceedings, the corporate debtor during the course of hearing of the application under section 9 of IBC, 2016 has admitted and agreed to pay a sum of Rs 37,49,967.00 by an email dated 17.11.21 out of which he has paid Rs 2,50,500 (Rs 1,50,000 on dt 17.11.21, Rs 25000 & Rs 75000 on dt 5.1.22) and the balance of Rs 34,99,967.00 is still due and payable as per the operational creditor. The settlement has failed.
11. Petitioner has relied on the judgement in the case of *Apya Capital Services (P.) Ltd. v. Guardian Homes (P.) Ltd.* reported in [2021] 129 taxmann.com 393 (NCL-AT) decided by the Hon'ble NCLAT that once the liability was admitted and the same was not discharged by the Corporate Debtor, dispute in regard to quantum of debt would be immaterial at the stage of admission of application.
12. It is noted from the reply of the respondent that they have admitted a claim of Rs.17,55,398/- therefore nothing further remains in this petition. This petition was filed on 25.10.19 when the pecuniary judiciary limit for initiation of CIRP was a default of Rs. 1.00 lakh. By his own admittance the respondent has confirmed default of more than Rs. 1.00 lakh.
13. Therefore, in the stated facts and circumstances of the case and the material on record this Tribunal is inclined to ADMIT this petition.
14. The Operational Creditor has not suggested the name of any Interim Resolution Professional. Therefore, this Tribunal appoints **Ms. Shipra Mishra** having (Registration No. IBBI/IPA-002/IP-N01142/2021-2022/13847) residing at Flat No 1131, Tower 8, Royal Lagoon, Raghunathpur, Bhubaneswar, SBI Raghunathpur Branch, Khordha, Orissa ,754005 and E-mail id. csshipramishra@gmail.com for Interim

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Resolution Professional, Liquidator, Resolution Professionals and Bankruptcy Trustee for Cuttack Zone, issued by the Insolvency and Bankruptcy Board of India. There is nothing on record to say that any disciplinary proceedings against the proposed Interim Resolution Professional is pending.

15. Accordingly, the following Orders are passed:

ORDER

- (a) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **SHRIKRUPALU STEELS PVT. LTD**
- (b) Moratorium Order is passed for a public announcement as stated in Section 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP 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 Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (c) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits 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;

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- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- (d) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
 - (e) 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.
 - (f) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
 - (g) 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 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.

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- (h) Necessary public announcement as per Section 15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (i) **Ms. Shipra Mishra** having (Registration No. IBBI/IPA-002/IP-N01142/2021-2022/13847) residing at Flat No. 1131, Tower 8, Royal Lagoon, Raghunathpur, Bhubaneswar, SBI Raghunathpur Branch, Khordha, Orissa ,754005 and E-mail id. csshipramishra@gmail.com is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of 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. She shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- (j) We direct the Operational Creditor to deposit a sum of ₹2.00 lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
- (k) Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of

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admission of the petition to the IRP, otherwise coercive steps to follow.

- (l) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- (m) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.
- (n) List the main CP for reporting progress on 02.06.2022.
- (o) Let the certified copy of the order be issued upon compliance with requisite formalities.

Sd :

Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

सात्य रंजन प्रसाद हेनो
CERTIFIED TO BE TRUE COPY

Signed on this the 2nd day of May, 2022.

Ravijeet_P.S.

उप कुलसचिव
Deputy Registrar
राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
कटक बेंच
Cuttack Bench

