

ORDER

Per: Ravikumar Duraisamy, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Aadilaxmi Trading Company** [GST IN:27AGRPD7793G1ZT], a Proprietary Concern represented by its Sole Proprietor, Mr. Laddaram M Dembda, (“the Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Bhadramaruti Concast Private Limited** [CIN: U27100MH2004PTC148361] (“the Corporate Debtor”).
2. The Corporate Debtor is a company incorporated on 02.09.2004 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U27100MH2004PTC148361. Its registered office is at Plot No. E-12, Additional MIDC, Phase II, Jalna-431203, within the state of Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed on 28.11.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹60,27,682.00 (Rupees sixty lakh twenty-seven thousand six hundred eighty-two only) as principal amount and ₹65,23,039.00 (Rupees sixty-five lakh twenty-three thousand and thirty-nine only) as the interest at the

rate of 24% p.a. (at p.5 of the Petition). The date of default, taking the last of the invoices into account is 28.03.2014.

4. The case of the Operational Creditor is as follows: -

(a) The Operational Creditor supplied M S Scrap to the Corporate Debtor and raised the following invoices which are placed on record as **Annexure 6&7** (at page 19-33 of the Petition):

- (1) Invoice No. 123 dated 24.03.2014 for a sum of ₹4,56,095.00. Invoice copy is at p. 19;
- (2) Invoice No. 124 dated 24.03.2014 for a sum of ₹6,03,407.00. Invoice copy is at p.20;
- (3) Invoice No.125 dated 24.03.2014 for a sum of ₹4,78,775.00 Invoice copy is at p.21;
- (4) Invoice No.126 dated 24.03.2014 for ₹ 4,61,084.00 Invoice copy is at p.22;
- (5) Invoice No.127 dated 25.03.2014 for ₹ 3,60,839.00 Invoice copy is at p.23;
- (6) Invoice No.128 dated 25.03.2014 for ₹ 4,28,879.00 Invoice copy is at p.24;
- (7) Invoice No.129 dated 25.03.2014 for ₹ 4,43,281.00 Invoice copy is at p.25;
- (8) Invoice No.130 dated 25.03.2014 for ₹ 4,50,198.00 Invoice copy is at p.26;
- (9) Invoice No.131 dated 25.03.2014 for ₹ 4,39,992.00 Invoice copy is at p.27;

- (10) Invoice No.132 dated 25.03.2014 for ₹ 4,24,570.00 Invoice copy is at p.28;
- (11) Invoice No.133 dated 25.03.2014 for ₹ 4,04,838.00 Invoice copy is at p.29;
- (12) Invoice No.134 dated 26.03.2014 for ₹ 4,93,970.00 Invoice copy is at p.30;
- (13) Invoice No.135 dated 26.03.2014 for ₹ 4,40,332.00 Invoice copy is at p.31;
- (14) Invoice No.136 dated 26.03.2014 for ₹ 4,18,559.00 Invoice copy is at p.32; and
- (15) Invoice No.137 dated 27.03.2014 for ₹ 4,93,063.00 Invoice copy
- (16) is at p.33
- (b) The date of default is stated to be 28.03.2014, taking the last of the invoices into account.
5. The invoices provide for interest at the rate of 24% per annum in case of delayed payments. Bank Statements are also attached as **Annexure 6&7** at pp. 42-45. The total debt due and payable to the Operational Creditor is ₹1,25,50,721.00 (Rupees one crore twenty-five lakh fifty thousand seven hundred and twenty-one only), as mentioned at page 5 of the Petition.
6. The Operational Creditor had sent a Demand Notice dated 26.10.2018 to the Corporate Debtor (**Annexure 9**, pp.47-48) in terms of section 8 of the IBC. The said Demand Notice was

received by the Corporate Debtor on 30.10.2018. The Corporate Debtor has not replied to the Demand Notice.

7. On 01.11.2018 the Corporate Debtor sent a letter to the Operational Creditor regarding confirmation of balance due as on 31.03.2018 which is at p.38 of the Petition. Furthermore, the Operational Creditor submitted the Confirmation of Accounts dated 01.04.2016, 01.04.2017 and 01.04.2018 duly acknowledged by the Corporate Debtor which is placed at pp. 39-41 of the Petition.
8. It is observed that the date of default as mentioned in the Petition is 28.03.2014 and the Petition is filed on 28.11.2018. The Corporate Debtor has acknowledged the liability of debt vide its Confirmation of Accounts dated 01.04.2016, 01.04.2017 and 01.04.2018 and vide its letter of confirmation of balance dated 01.11.2018. Therefore, the case of the Operational Creditor is not time barred as per section 18 of the Limitation Act, 1963, which reads as follows :-

“18. Effect of acknowledgment in writing-

Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

In view of the above provision, the fresh period of limitation starts from 01.11.2018.

9. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.
10. On 08.11.2019 Mr. Anil Dattabhau Lingade, Director of the Corporate Debtor appeared in person and admitted his inability to pay the debt.
11. It is noticed from the petition that-
 - a) There is unequivocal admission of liability on the part of the Corporate Debtor in its Letter at p. 38 dated 01.11.2018 and its balance confirmation of accounts at pp. 39-41 of the petition.
 - b) The date of default, taking the last of the invoices into account is 28.03.2014.
 - c) In view of the unequivocal acknowledgement of liability on the part of the Corporate Debtor during the period of limitation, the petition filed on 28.11.2018 is within the period of limitation.
12. Therefore, the Petition 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.

13. The Operational Creditor has proposed Mr. Laxman Digambar Pawar as Interim Resolution Professional (IRP) in the matter.

14. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB) 4493/MB-IV/2018** filed by **Aadilaxmi Trading Company**, 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 **Bhadramaruti Concast Private Limited [CIN: L24100MH1984PLC033519]**, 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 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. Laxman Digambar Pawar, registration No. IBBI/IPA-003/IP-N00015/2017-18/10104**, is appointed as an Interim Resolution Professional to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 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 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.3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

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expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The IRP/RP shall submit periodical reports to this Adjudicating Authority indicating the progress of CIRP.
- (j) 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.
- (k) 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)
04.02.2020

Sd/-

RAJASEKHAR V.K.
Member (Judicial)