

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

11. C.P.(IB)-472(MB)/2020

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **13.12.2021**

NAME OF THE PARTIES: Arvind Pipes And Fittings Industries Pvt Ltd.

V/s

KH Foges India Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Aniruth Purusothaman, counsel appearing for the petitioner, Mr. Suraj Pandey, counsel appearing for the corporate debtor are present through virtual hearing.

Mr. Suraj Pandey, advocate appearing for the corporate debtor conceded that the corporate debtor has clearly admitted their liability in the Books of Accounts of the Operational Creditor and therefore they have nothing to say in the above company petition and appropriate order may be passed.

Accordingly the above company petition is allowed detailed order would follow:

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
CP (IB) NO. 472 OF 2020**

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER
CHAPTER II OF PART II OF THE CODE.**

*(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)*

**In the matter of
ARVIND PIPES AND FITTINGS
INDUSTRIES PRIVATE LIMITED.**

Registered office at : Office No. 8, Floor-
1st, Plot No. 49 Maruti Mandir Marg
Durgadevi Udyan, 5th Kumbharwada,
Girgaon, Mumbai, Mumbai City, MH-
400 004.

.... Operational Creditor

Versus

KH FOGES INDIA PRIVATE LIMITED

Registered Office : 203, Joshi Chambers,
Ahmedabad Street, Carnac Bunder,
Masjid (East) Mumbai Mumbai City,
Maharashtra – 400009.

And :

MAFATLAL MISHRIMAL MEHTA
(Director),
Nene Building, Flat No. 702, 7th Floor,
12 Sadashiv Lane, Nr. Sikka Nagar,
Girgaon, Mumbai 400004.
MH IN.

.... Corporate Debtor

Order dated: 13.12.2021

**Coram: Hon'ble H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)**

Appearance :

For the Petitioner : Adv. Aniruth Purusothaman,

For the Respondent : Adv. Suraj Pandey,

ORDER

1. The above company petition is filed on 03.02.2020 by M/s. Arvind Pipes And Fittings Industries Private Limited (hereinafter called as /‘Operational Creditor’) against M/s KH Foges India Private Limited (hereinafter called as ‘Corporate Debtor’) under Section 9 of the Code for ordering initiation of Corporate Insolvency Resolution Process against the corporate debtor for resolution of an Operational debt of Rs. 4,05,89,889.00/-.

BRIEF FACTS OF THE CASE ARE AS FOLLOWS:

2. The petitioner submits that the company i.e. ARVIND PIPES AND FITTINGS INDUSTRIES PRIVATE LIMITED (Operational Creditor), having registered office at Office No. 8, Floor-1st, Plot No. 49, Maruti Mandir Marg Durgadevi Udyan, 5th Kumbharwada, Girgaon Mumbai Mumbai City MH 400004 IN.
3. The Petitioner company i.e. Operational Creditor is engaged in the business of Manufacture and Supply of the MS TMT Bars and having the factory in Gujrat.
4. The Corporate Debtor i.e. M/s. KH Foges Private Limited having address at 203, Joshi Chambers, Ahmedabad Street, Carnac Bunder, Masjid (East) Mumbai Mumbai City MH 400009 IN. is in the business of the piling work and infrastructure and project development in various area of the PAN INDIA.
5. The Corporate Debtor company had approached the Operational Creditor Company for the supply of the MS TMT Bars for the various project in India.

6. The Operational Creditor i.e. Petitioner company had agreed and supplied the MS TMT Bars based on the purchase order issued by the Respondent Company.
7. The Operational Creditor company had issued the various Tax Invoices against the delivery of the goods supplied on their site
8. The Corporate Debtor had failed to pay the tax invoices raised by the applicant company since 20.10.2018 and the last payment made by the Corporate. Hence this petition.
9. The Corporate Debtor failed to file their reply as directed by this bench vide its order dated 18.02.2021 and therefore the corporate debtor right to file reply stands forfeited by this bench vide its order dated 24.08.2021. The matter was finally listed for arguments on 13.12.2021 Mr. Suraj Pandey, advocate appearing for the corporate debtor conceded that the corporate debtor has clearly admitted their liability in the Books of Accounts of the Operational Creditor and therefore they have nothing to say in the above company petition and appropriate order may be passed. Mr. Suraj Pandey, Advocate appearing for the corporate debtor further mentioned that the parent company of the corporate debtor is undergoing liquidation at Singapore.
10. Heard the counsel appearing for the Operational Creditor and perused the record. The counsel appearing for the petitioner invited the attention of this bench to the relevant invoices Demand Notice and proof of service of Demand Notice on the corporate debtor along with other relevant documents which are annexed to the company petition. The subject matter of the invoices relates to 2018 and the company petition being filed on 03.02.2020 is well within limitation. The petitioner also suggested the name of proposed Interim Resolution Professional in the petition along with his consent letter in Form-2.

11. After hearing the counsel appearing for the Operational Creditor and upon perusing the material available on record this bench is satisfied that the above company petition fulfills all the necessary legal requirements for admission Under Section 9 of the Code and is liable to be admitted.
12. Accordingly the above company petition is admitted by passing the following:

ORDER

- (a) The above Company Petition No. (IB) -472(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against the corporate debtor i.e. M/s KH Foges India Private Limited.
- (b) Since the applicant has not suggested the name of any Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list of Insolvency Professionals furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints Mr. **Navin Khandelwal**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00703/2017-2018/11301 as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016
- (c) The Operational Creditor shall pay an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favor 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.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
CHANDRA BHAN SING
Member (Technical)

Sd/-
H V SUBBA RAO
Member (Judicial)