

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.634/Chd/Hry2019
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Sandeep Steel Traders

Regd. Office at:

Shop No.302, Loha Mandi, Sector-59
Pragati Vihar, Ballabgarh, Faridabad
Haryana-121004

...Petitioner-Operational Creditor

Vs.

1. M/s OSM Projects Pvt. Ltd.

Regd. Office at:

Plot No.53, Sector-59,
Pragati Vihar, Ballabgarh, Faridabad
Haryana-121004

**2. Union of India, Ministry of Corporate Affairs
through its Secretary**

Regd. Office at:

5th Floor, A Wing, Shashtri Bhavan
Dr. Rajendra Prasad Road,
New Delhi-110001

...Respondent-Corporate Debtor

Judgement delivered on: 16.02.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

Present

For the Petitioner-

Operational Creditor : Mr. Vishal Sharma, Advocate.

For the Respondent-

Corporate Debtor : Proceeded against ex parte v.o.d 20.09.2022.

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by M/s Sandeep Steel Traders through its Authorised Representative, Mr. Anup Lohia, (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of M/s OSM Projects Private Limited (for brevity 'Corporate Debtor' / 'Respondent'). A copy of the Authorization is attached as Annexure-A1.

2. The Corporate Debtor, namely, M/s OSM Projects Pvt. Limited is a Company incorporated on 08.09.2004 under the provisions of the Companies Act, 1956, with CIN No. U29150HR2004PTC035467 with its Redg. Office: Plot No.53, Sector-59, Pragati Vihar, Ballabgarh, Faridabad, Haryana-121004. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition as Annexure A-3 of compliance affidavit filed vide diary No.678 dated 24.01.2020.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor supplied iron and steel material to the Corporate Debtor since 2012-13 to 2016-17 and the last transaction of the supply of the material was on 18.12.2017 and the last payment received on 01.01.2018. Moreover, the Corporate Debtor has not complied with the settlement agreement dated 22.06.2016. Therefore, the amount claimed to be in default is Rs.40,56,422/- and is still unpaid.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 40,56,442/- (Rupees Forty Lacs Fifty Six Thousand Four Hundred Twenty-Two Only) along with interest as mentioned in the invoices. A copy

of the invoices, balance sheet and CA Certificate (Annexure A-3), and Ledger statement (Annexure A-4) is attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 25.02.2019 through speed post (Annexure A-5), the same has been received, and the corporate debtor has filed the reply to that effect, stating that the outstanding amount has been settled vide settlement letter dated 23.02.2016. Though, no proof of the amount due to the operational creditor has been placed along with the said reply.

6. Notice of this petition was given to the respondent-corporate debtor vide order dated 03.03.2020 of this Adjudicating Authority as to why this petition be not admitted. Further, despite notices, none appeared on behalf of the corporate debtor. Therefore, on non-appearance on behalf of the respondent, was proceeded against ex parte vide order dated 20.09.2022.

7. We have heard the learned counsel for the petitioner and carefully perused the record available.

8. The first issue for consideration is whether the demand notice in Form 4 dated 25.02.2019 was sent by the operational creditor through the speed post and was duly served. It may be noted that the said demand notice has been received, and the corporate debtor has replied to the same, stating the pending amount has been paid, but without placing any evidence to that effect.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit dated 23.01.2020 that the statements made in paragraphs of Part-1 to part-V in the petition are true, wherein it is not pleaded that there is a dispute communicated by the corporate debtor for the unpaid debt and payment had been received during

this period, and there is a pre-existing dispute between the parties at all with regard to the unpaid operational debt. Further, it is not stated by the respondent-corporate debtor in its reply to Form 4 that there is any dispute with regard to the unpaid amount before receipt of Form 4. Therefore, the operational debt, which is above the threshold limit of rupees one lakh, is still due.

10. The other issue for consideration is whether this application is filed within the limitation period. The operational creditor has received the last payment of Rs. 3,60,839 on 01.01.2018 against the supply of goods, and thereafter, no payment has been received. As stated the default occurred on 02.01.2018, whereas, the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 has been filed on 29.10.2019 vide Diary No. 6700. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt is Rs. 40,56,422/- along with interest, as mentioned in the invoices attached with the petition, against the goods supplied by the operational creditor. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020).

12. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The

material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s OSM Projects Private Limited, and also direct moratorium on taking effect and appointing Interim Resolution Professional as below.

13. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Narender Kumar Sharma, and there is nothing adverse against him. In view of the above, we appoint Mr Narender Kumar Sharma, Registration.No.IBBI/IPA-002/IP-N00125/2017-18/10294;E-mail:nksharma.fcs@gmail.com, Mobile No. 9818782268 as the Interim Resolution Professional with the following directions :-

i.) The term of appointment of Mr Narender Kumar Sharma shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended, and the management of the affairs shall vest with the Interim Resolution Professional and the officers, and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking

control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant

information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies, and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall

convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

14. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) 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 Operational Assets and Enforcement of Security Interest Act, 2002;
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

15. It is further directed that the supply of essential goods or services to the corporate debtor, as may be specified if any, shall not be terminated or suspended, or interrupted during the moratorium period. The provisions of Section 14(3) shall ,

however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

17. The petitioner is directed to deposit an amount of ₹70,000/- (Rupees Seventy Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

February 16, 2023
DS/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)