

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
IB-552(ND)/2023**

Order 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:

M/s. Agarwal Coal Corporation Pvt. Ltd.

.... Operational Creditor

Vs.

M/s. Aryan Ispat And Power Pvt. Ltd.

.... Corporate Debtor

Order delivered On: 22.03.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Shraddha Deshmukh, Mr. Utkarsh, Mr. Praveen Surange, Advs.

For Respondent : Mr. Rakesh Kumar, Ms. Preeti Kashyap, Mr. Ankit Sharma, Mr. Varun Pandit, Mr. Yash Dhawan, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application has been filed by M/s. Agarwal Coal Corporation Pvt. Ltd., the Operational Creditor, under Section Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/s. Aryan Ispat and Power Pvt. Ltd.
2. It is the case of the Applicant that during the period from 2021 – 2023, the Operational Creditor supplied goods to the Corporate Debtor amounting to Rs. 33,60,06,642.85/-. Out of the said amount, the Corporate Debtor paid an amount of Rs.

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28,62,84,181.69/- to the Operational Creditor. Thus, an outstanding amount of Rs. 6,13,48,161.98/- remained unpaid by the Corporate Debtor for which the Operational Creditor has sent a demand notice on 06.07.2023 and subsequently filed the present application under Section 9 of the IBC, 2016.

3. The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Operational Creditor.
4. Ms. Shraddha Deshmukh, Ld. Counsel appearing for the Operational Creditor has contended that the total amount which was payable by the Corporate Debtor at the time of filing of the present application was Rs. 6,13,48,161.98/- out of which Rs. 4,97,22,461.16/- is towards Principal and Rs. 1,16,25,700.82/- is towards the Interest. She also submitted that invoices raised by the Operational Creditor stipulated that interest would be charged on delayed payments that have not been controverted by the Corporate Debtor. She has also submitted that even though the Corporate Debtor has paid an amount of Rs. 4,97,22,461.16/- out of the total amount of Rs. 6,13,48,161.98/-, the Corporate Debtor is liable to pay an amount of Rs. 1,16,25,700.82/-. In this regard, she submitted that the principal and interest amount should be taken as a whole and any outstanding payment or part payment made by a party, will have to be first appropriated towards the interest amount due and the principal amount would be paid thereafter. According to her in the instant case, out of the total amount of Rs. 6,13,48,161.98/- the Corporate Debtor has admittedly paid an amount of Rs. 4,97,22,461.16/- and the outstanding amount of

Rs. 1,16,25,700.82/- remains to be paid which includes both principal as well as the interest.

5. In support of the contentions, she has relied upon a judgment passed by the Hon'ble Supreme Court of India in the case of **“Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited and others”** reported in **2022 SCC OnLine SC 944**, wherein it has been held that:

*“...40. As argued by Mr. Kaul appearing on behalf of the Appellant, any part payments made by the Respondent would first be appropriated towards the interest amount due, as held by this Court in **Industrial Credit & Development syndicate Now called I.C.D.S. Ltd. Vs. Smithaben H. Patel (Smt.)”***

6. She also relied upon a judgment passed by the Hon'ble Supreme Court of India in the case of **“Bharat Heavy Electricals Limited Vs. R.S. Avtar Singh and Company”** reported in **(2013) 1 SCC 243**, wherein it has been held that:

“...31.1. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.”

7. In support of her contentions that as per the terms of the invoice 12% interest is payable on delayed payment. She has relied upon the judgment passed by the Hon'ble NCLAT in **Company Appeal (AT) (Ins.) No. 690 of 2022** titled as **“Mr. Prashat Agarwal Vs. Vikash Parasrampuriah and Ors”**, wherein it has been held that:

“...In this context, as discussed above, all 9 invoices clearly stipulated provision of interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and no dispute on this clause was ever raised as noted from record available before us.”

8. Mr. Rakesh Kumar, Ld. Counsel appearing for the Corporate Debtor has submitted that there is no agreement with respect to the interest between the parties. The invoices have been unilaterally raised and the Corporate Debtor has not agreed upon the terms and conditions.
9. We have heard the submissions made by the Ld. Counsel appearing for the parties and perused the records.
10. It is an admitted position that a total amount of Rs. 6,13,48,161.98/- is outstanding which includes Rs. 4,97,22,461.16/- towards principal and Rs. 1,16,25,700.82/- towards interest. Further, an amount of Rs. 4,97,22,461.16/- has been paid by the Corporate Debtor to the Operational Creditor. It is also not in dispute that the invoices bear interest clause and therefore the Corporate Debtor is liable to pay interest to the Operational Creditor for any default in payment of the amount. Further, the interest amount being Rs. 1,16,25,700.82/- is above the threshold limit as required under Section 4 of the Insolvency and Bankruptcy Code, 2016.
11. Further, we find force in the arguments of Ld. Counsel appearing for the Applicant that while making payment the interest component has to be paid first as held by the Hon'ble Supreme Court in the case of **Asset Reconstruction Company (India) Limited** (*supra*).

12. We are therefore of the considered view that this is the fit case for admission and CIRP ought to be initiated against the Corporate Debtor.

13. In view of the above facts and circumstances and the foregoing discussion. It is accordingly, ordered as follows: -

a) The Application bearing **IB-552/ND/2023** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted**.

b) We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

- c)** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- d)** The Operational Creditor proposed the name of Mr. Mangesh Vitthal Kekre, the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor. Therefore, this Adjudicating Authority appoints Mr. Mangesh Vitthal Kekre, as the Interim Resolution Professional of the Corporate Debtor. The registration number of the IRP is IBBI/IPA-001/IP-P-00539/2017-18/10964, the

address of the IRP is Off. No. 607, Chetak Center, RNT Marg, Near Hotel Shreemaya, Indore, Madhya Pradesh-452001 and the e-mail id of the IRP is ca.mangesh@gmail.com.

- e)** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g)** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h)** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting

claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).

- j)** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- k)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)