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

CP (IB) No. 57/Chd/CHD/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

<u>In the matter of:</u>

M/s Jai Bhawani Steel Industries
Through Sh. Nilesh Kumar(Sole Proprietor)
having its registered office at:
Shop No. 33, Central Market,
Gill Road, Ludhiana-141003.

….Operational Creditor-Petitioner

Versus

M/s EEE and CEE Pressings Private Ltd.
having its registered office at:
Plot No.824, Industrial Area Phase-2,
Chandigarh-160002.

…Corporate Debtor-Respondent

Judgement delivered on: 19.02.2021

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

For the Petitioner : Mr. Pulkit Goyal, Advocate

For the respondent : None

<u>Per: Ajay Kumar Vatsavayi, Member (Judicial)</u>

<u>JUDGEMENT</u>

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC'/'Code'), 2016** read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Jai Bhawani Steel Industries (through its proprietor, Sh. Nilesh Kumar (**for brevity 'Operational Creditor'/ 'Petitioner'**) dated 21.01.2019, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s EEE and CEE Pressings Private Ltd. (**for brevity 'Corporate Debtor'**).

2. The Corporate Debtor namely, M/s EEE and CEE Pressings Private Limited is a Company incorporated on 12.01.1987 under the provisions of the Companies Act, 1956 with CIN No. U34102CH1987PTC007231 having its registered office at Plot No.824, Industrial Area Phase-2, Chandigarh which falls within the Union Territory of Chandigarh-160002. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹50,00,000 and Paid-Up Share Capital of the Company is ₹50,00,000 as per Part-II of Form 5.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor used to supply goods to the corporate debtor and there was a running account between the petitioner and the respondent. It is submitted that the operational creditor supplied articles between 28.04.2018 to 26.09.2018 and raised various invoices (Annexure-3) qua which payment has not been made by the corporate debtor. The ledger account maintained by the operational creditor of the corporate debtor w.e.f. 01.04.2018 to 26.09.2018 is at Annexure-4 of the petition. As per Part-IV of Form 5, total amount of default is stated to be ₹21,57,659.69. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the petitioner-operational creditor, in as much as it has failed to make payment due to operational creditor.

4. A demand notice in Forms 3/4 is stated to have been issued on 06.12.2018. The demand notice was accompanied by a total of 6 invoices, copy of ledger account and copy of cheques which were dishonoured. The corporate debtor vide demand notice dated 06.12.2018 was called upon to repay the total unpaid operational debt (in default) of ₹21,57,659.69 within 10 days from the receipt of the notice. Copy of the postal receipt, along with tracking reports and email sent to the corporate debtor are attached as Annexures-8 and 9 respectively.

5. It is deposed by the operational creditor that after the service of demand notice dared 06.12.2018, the corporate debtor did not raise any dispute within the stipulated time

or up to the date of filing this petition. It is also deposed that no dispute was pending with or arose from the corporate debtor qua the outstanding amount even prior to sending of the demand notice dated 06.12.2018.

6. Notice of this petition was issued to the corporate debtor on 14.02.2019 to show cause as to why this petition be not admitted.

7. The Operational Creditor has filed affidavit of service vide Diary No. 1195 dated 12.03.2019 wherein it has been stated that notices along with complete paper book were sent vide speed post and on registered e-mail address of the corporate debtor. The email and postal receipts along with envelope so received back are found as Annexures A-1 to A-2 (Colly) of the affidavit. The petitioner has also filed another affidavit of service vide Diary No.4211 dated 21.08.2019 in which the petitioner has deposed that notice of hearing was published in two newspapers i.e. Daily Post (English) and Dainik Savera (Hindi) on 08.08.2019. Copy of newspaper clippings are found at Annexure A-3 (colly) of the affidavit. Accordingly, several opportunities were afforded to the corporate debtor to file its reply but there has been no representation from the respondent so far.

8. We have heard the learned counsel for the operational creditor and have also perused the records

9. The first issue for consideration is whether the demand notice in Forms 3/4 dated 6.12.2018 was properly served. The demand notice dated 06.12.2018 was sent at the address mentioned in the master data of the corporate debtor as well as at the email address. The postal receipt along with tracking report and email sent to the corporate debtor are at Annexures-8 and 9 respectively. A compliance affidavit filed vide Diary No.862 dated 20.02.2019 showing the postal envelope vide which the demand notice was sent to the corporate debtor and same was returned with remarks “left” is at Annexure A-1.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent-corporate debtor has neither filed any reply to the

petition nor disputed the liability towards the operational creditor. Thus, there is no dispute regarding the liability between the corporate debtor and the operational creditor. It is also observed that till the last date of hearing, there has been no representation from the respondent-corporate debtor.

11. We have gone through the contents of the petition filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹21,57,659.69. It is stated that the demand notice dated 06.12.2018 was sent for an amount of ₹21,57,659.69. Copy of ledger account of corporate debtor in the books of operational creditor for the period 17.04.2018 to 26.09.2018 is appended as Annexure-4. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 18.01.2019 (page Nos.17A to 18) stating that despite service of the demand notice dated 06.12.2018, the corporate debtor did not raise any dispute qua the outstanding payment and even no dispute was pending with or arose from the corporate debtor prior to sending of the statutory demand notice. A certificate from the Banker of the operational creditor certifying that no credits have been received from the corporate debtor from 06.12.2018 to 31.12.2018 in the account of the operational creditor is found at Annexure-6. Copy of cheques dated 03.12.2018 along with Return Memo are at Annexure-6(A) of the petition.

12. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The operational creditor-petitioner states that from the above mentioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner has proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9(5)(i) of the IBC and

accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(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 Financial 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 the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

(f) 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) 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 corporate debtor under Section 33 as the case may be.

14. In Part III of Form 5, the Operational Creditor has proposed Mr. Rakesh Kumar Singhala as Interim Resolution Professional having Registration No. IBBI/IPA-001/IP-

P01290/2018-19/12151, E-mail: rakesh.singhala@gmail.com, M: 99845-25522. The consent of the proposed IRP furnished in Form 2 is placed at Annexure-2. The Law Research Associate of this Tribunal has checked the credentials of the above mentioned IRP and there is nothing adverse against him. In view of the above, this Bench appoints Mr. Rakesh Kumar Singhala as Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC inter-alia under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

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

Sd/- Sd/-

(Raghu Nayyar) (Ajay Kumar Vatsavayi)
Member (Technical) Member (Judicial)

February 19, 2021
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