

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

C.P. No.2663/I&BP/2019

Under section 8 & 9 of the IBC, 2016  
In the matter of

SKM Steels Limited,  
Having its Office at 30 C P 2<sup>nd</sup> Floor,  
Tank Road, Mumbai-400004

....Petitioner

v/s.

Phoenix Aluminium Products Private Limited,  
Having its Office at Unit No.19, F-II,  
Block Plot No.51, MIDC, Pimpri, Pune-411018

....Respondent

Order delivered on: 13.11.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)  
Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner : Mr. Nithish Bangera, PCS.

For the Respondent : None Present.

*Per: Shyam Babu Gautam, Member (Technical)*

**ORDER**

1. This Company Petition is filed by SKM Steels Limited, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Phoenix Aluminium Products Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 16.10.2018 in making payment to the extent of Rs. 42,70,370/- inclusive of interest @ 24% per annum by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The brief facts of the case are that the Petitioner is engaged in the business of Steel and Trading Company and the Corporate Debtor is engaged



is in the business of Manufacturer and Dealer of Array of Sheet Metals Components Assembly. On perusal of the Petition it reveals that the Corporate Debtor approach the Petitioner for purchase of HRPO Coils and Sheet from the period from 21.03.2015 to 17.10.2015. The Petitioner raised invoices which are annexed with the Petition for an amount of Rs. 30,54,791/-.

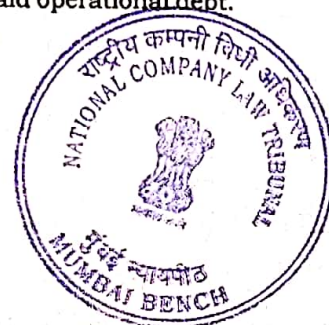
3. The Petitioner further submits that on 15.10.2019 in CP No. 430 of 2018 filed by them against the same Corporate Debtor, the Corporate Debtor agreed to settle the dues and both the parties have filed settlement agreement dated 16.10.2019. The Petitioner further submits that the Corporate Debtor had handed over 16 post-dated cheques in favour of the Petitioner which were got bounced. Since the Corporate Debtor breached the settlement agreement, the Petitioner has left with no other option except to approach this Tribunal. Hence this Petition.

4. Since the Corporate Debtor failed to repay the outstanding dues, the Petitioner issued Demand Notice in Form-3 under Section 8 of the Code on 03.04.2019 demanding for repayment of Rs.42,70,370/- inclusive of interest. However, the Corporate Debtor failed to repay the aforesaid dues despite receiving of the said Demand Notice, the Corporate Debtor neither replied to the same nor repaid the outstanding amount.

11. The Petitioner enclosed the statement of account issued by Bank of India stating that a payment of Rs. 1.00 Lac has been received from the Corporate Debtor on 25.09.2019 in respect of the debt due.

12. The Petitioner submits that the Petition was served on the Corporate Debtor on 26.08.2019 and filed proof of service to that effect. The Petition was listed for hearing on 17.09.2019 wherein the Corporate Debtor was absent, and the Petitioner was directed to intimate the next date of hearing, the Corporate Debtor complied with the direction of this Bench and filed proof of service. Despite sufficient service of Petition as well as intimation of date of hearing, the Corporate Debtor neither appeared nor filed reply in rebuttal.

5. The Petitioner has filed affidavit under Section 9(3)(b) stating that no notice has been received relating to the dispute of an unpaid operational debt.



is in the business of Manufacturer and Dealer of Array of Sheet Metals Components Assembly. On perusal of the Petition it reveals that the Corporate Debtor approach the Petitioner for purchase of HRPO Coils and Sheet from the period from 21.03.2015 to 17.10.2015. The Petitioner raised invoices which are annexed with the Petition for an amount of Rs. 30,54,791/-.

3. The Petitioner further submits that on 15.10.2019 in CP No. 430 of 2018 filed by them against the same Corporate Debtor, the Corporate Debtor agreed to settle the dues and both the parties have filed settlement agreement dated 16.10.2019. The Petitioner further submits that the Corporate Debtor had handed over 16 post-dated cheques in favour of the Petitioner which were got bounced. Since the Corporate Debtor breached the settlement agreement, the Petitioner has left with no other option except to approach this Tribunal. Hence this Petition.

4. Since the Corporate Debtor failed to repay the outstanding dues, the Petitioner issued Demand Notice in Form-3 under Section 8 of the Code on 03.04.2019 demanding for repayment of Rs.42,70,370/- inclusive of interest. However, the Corporate Debtor failed to repay the aforesaid dues despite receiving of the said Demand Notice, the Corporate Debtor neither replied to the same nor repaid the outstanding amount.

11. The Petitioner enclosed the statement of account issued by Bank of India stating that a payment of Rs. 1.00 Lac has been received from the Corporate Debtor on 25.09.2019 in respect of the debt due.

12. The Petitioner submits that the Petition was served on the Corporate Debtor on 26.08.2019 and filed proof of service to that effect. The Petition was listed for hearing on 17.09.2019 wherein the Corporate Debtor was absent, and the Petitioner was directed to intimate the next date of hearing, the Corporate Debtor complied with the direction of this Bench and filed proof of service. Despite sufficient service of Petition as well as intimation of date of hearing, the Corporate Debtor neither appeared nor filed reply in rebuttal.

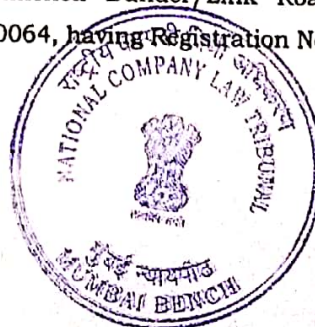
5. The Petitioner has filed affidavit under Section 9(3)(b) stating that no notice has been received relating to the dispute of an unpaid operational debt.



6. This Bench has gone into the details provided in the Form 5 and connected materials and after hearing the Petitioner is of the considered view that there is debt and default.

7. This Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Petition declaring Moratorium with the directions as mentioned below:

- i. 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.
- ii. 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.
- iii. 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.
- iv. That the order of moratorium shall have effect from 13.11.2019 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.
- v. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- vi. That this Bench hereby appoints Mr. Prakash Naringrekar, 503-A, Blue Diamond, CHS Ltd, Chincholi Bunder/Link Road Junction, Malad West, Mumbai-400064, having Registration No.



IBBI/IPA-002/IP-N00270/2017-2018/10783 as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

8. The Registry is hereby directed to communicate this order to both the parties.

Shyam Babu Gautam  
Member (Technical)  
/NP/

BHASKARA PANTULA MOHAN  
Member (Judicial)



Certified True Copy  
Copy Issued "free of cost"  
On 25/11/19

  
Assistant Registrar

National Company Law Tribunal Mumbai Bench