BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB)No.22/BB/2020
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

M/s. Arihant Aluminium Corporation
A Partnership Firm
R/o. at No.76, Narsimha Raja Road,
Bengaluru – 560 002
Also at:
No.4, M.T.B. Road,
Kalasipalyam,
Bengaluru – 560 002 - Petitioner/Operational Creditor

And

M/s. Best Aluminium Fabricators Private Limited
No.51/1, Tippu Sultan Palace Road,
(Mariswamy Mutt Road),
New Kalasipalya Extension,
Bengaluru – 560 002 - Respondent/Corporate Debtor

Date of Order: 3rd February, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

For the Petitioner : Shri Vijay Narayan

For the Respondent : None

ORDER

Per: *Rajeswara Rao Vittanala, Member (Judicial)*

1. C.P.(IB)No.22/BB/2020 is filed by M/s. Arihant Aluminium Corporation , U/s.9 of IBC, 2016, R/w. Rule 6 of I&B (AAA) Rules,

2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Best Aluminium Fabricators Private Limited on the ground that it has committed default for total amount of Rs.6,25,572/- which includes principal amount of Rs.3,78,575/- and interest of Rs.2,46,997/- @ 18% p.a., as per the terms of the invoices from the due date of the Invoices till the date of Demand Notice i.e. 27th June, 2019.

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Arihant Aluminium Corporation (hereinafter referred as Petitioner/Operational Creditor) is a Partnership Firm, having its Principal place of Business at 76, Arihant Aluminium Corporation, Narasimha Raja Road, Bengaluru – 560002. It is involved in the businesses of manufacturing of Aluminium Door Partitions, Aluminium Window Partitions, Aluminium Frames, Aluminium Grills etc., and had supplied Aluminium Extrusions and Aluminium Sheets to the Corporate Debtor, who are the Wholesaler of Aluminium, Aluminium Extrusions and Aluminium Fabricators.

(2) Best Aluminium Fabricators Private Limited (hereinafter referred as Respondent/Corporate Debtor) is a Private Limited Company was incorporated on 25.04.2007, under the provisions of the Companies Act, 1956 bearing CIN: U27203KA2007PTC042606. Its Authorized Share Capital is Rs.15,00,000/- (Rupees Fifteen Lakhs only) and Paid-up Share Capital is Rs.13,80,000/- (Rupees Thirteen Lakhs Eighty Thousand only). It is involved in business of manufacture of basic precious and non-ferrous metals.

(3) The Aluminum Extrusions and Aluminum Sheets were received and accepted by the Corporate Debtor and there were no dispute

at the time of delivery of the same or thereafter relating to the quantity and quality of goods, but subsequently the Corporate Debtor had failed to make the payment for the outstanding invoices dated 13.10.2015 amounting to Rs.3,78,575/-. Therefore, the Corporate Debtor is also liable to pay an interest on the outstanding due amounting to Rs.2,46,997/- @18% p.a. as per the invoice from the due date of the invoices till the date of the Demand Notice. After giving several reminders, the Operational Creditor had issued the Statutory Demand Notice in Form-3 along with Form-4 dated 27.06.2019 as required U/s.8 of the IBC, 2016.

(4) The certified copy of the Statement of Bank Account of Operational Creditor where deposits are made or credits are received normally by the Operational Creditor in respect of the Corporate Debtor reflects that no amount has been received by the Operational Creditor from the Corporate Debtor. Further, the Corporate Debtor had reminded several times and again reminded the Corporate Debtor to clear the outstanding dues but the said outstanding remains unpaid till date and no reply has been received by the Operational Creditor from the Corporate Debtor.

(5) Therefore, the instant Petition is filed for seeking to initiate CIRP in respect of the Corporate Debtor.

3. Heard Shri Vijay Narayan, learned Counsel for the Petitioner, **through Video Conference** and none appeared for the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code and the rules made there under and law on the subject.

4. Shri Vijay Narayan, learned Counsel for the Petitioner submits that they have issued Demand Notice in Form-3 along with Form-4 dated 27.06.2019, by demanding to pay the outstanding amount. However, the Respondent failed to respond to the Demand Notice and did not care the notice issue by the Respondent. Therefore, the Debt and default in question is admittedly are not in dispute and the instant Petitioner is filed in accordance with law. And a qualified IP namely Mr. Kedarram Ramratan Laddha, bearing Reg.No.IBBI/ IPA-001/IP-P00586/2017-2018/11115 is proposed to appoint him as Interim Resolution Professional, who has filed Written Communication dated 02.09.2019. Therefore, the learned Counsel for the Petitioner has urged the Adjudicating Authority to admit the instant Company Petition by initiating CIRP as prayed for.

5. The case was listed for admission on various dates viz., 14.1.2020, 31.1.2020, 18.2.2020, 6.3.2020, 16.3.2020, 13.1.2021 and on 27.1.2021. Accordingly, Adjudicating Authority ordered notice to the Respondent on 14.01.2020. Further, the Petitioner has served the notice on the Respondent and filed the proof of service. However, the Respondent failed to avail opportunity given by the Adjudicating Authority. no reply has been filed. However, the Respondent has failed to oppose the claim of the Petitioner. Therefore, we have concluded that the Respondent has become insolvent and unable to pay the outstanding amount. Hence, it is deemed to be admitted.

6. The above facts clearly show that the instant Company Petition is filed in strictly in accordance with provisions of the Code. We are convinced that there is a debt and default in question, and a qualified Resolution Professional is also suggested. Therefore, it is fit case to admit by initiating CIRP against the Corporate Debtor, appointing IRP, imposing moratorium etc., as per the Code.

7. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s.9(5)(i) and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.22/BB/2020** by initiating CIRP in respect **M/s. Best Aluminium Fabricators Private Limited**, the Respondent/Corporate Debtor, with the following consequential directions:

(1) Mr. Kedarram Ramratan Laddha, bearing Registration No. IBBI /IPA-001/IP-P00586/2017-2018/11115, e-mail:ip@kpsjca.com, Ahmedabad – 380027, Gujarat, who is qualified Insolvency Professional, is hereby appointed as IRP, in respect of the Corporate Debtor namely M/s. Best Aluminium Fabricators Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

(2) The following moratorium is declared prohibiting all of the following, namely:

a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Securitisation 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) 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 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;

(3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.

(4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

(5) The Registry is directed to communicate this order immediately to both the Parties and also to IRP.

(6) Post the case for submission of report of the IRP on **02.03.2021**.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

SS