

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.306/KB/2020

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

M/s Rohit Ferro-Tech Ltd., (CIN: L27104WB2000PLC091629) a public Limited Company incorporate under the Companies Act, 1956 having its registered office at 35,Chittaranjan Avenue, Kolkata- 700012.

... Operational Creditor

Versus

In the matter of:

M/s Chiraag Vyapaar Pvt. Ltd., (CIN: U51109WB2008PTC122342), a company incorporate under the provisions of Companies Act, 1956 and an existing company under the Companies Act, 2013 having its registered office at 14, Roop Chand Roy Street, Kolkata-700007.

...Corporate Debtor

Date of hearing : 17/02/2022

Order Pronounced on :01/04/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Orihit Chatterjee, Adv.] For Operational Creditor
2. Mr. Swati Dalmia, Adv.
3. Mr. Shubham Raj, Adv.

1. Ms. Nikita Baid, Adv.] For Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by Rohit Ferro-Tech Limited, a company within the meaning of the Companies Act, 2013 having its registered office at 35, Chittaranjan Avenue, Kolkata- 700012(hereinafter referred to as the Operational Creditor), through its constituted attorney, namely, Samir Mukherjee, authorised vide Board Resolution dated 24.03.2016 seeking initiation of corporate insolvency resolution process in respect of **M/s Chiraag Vyapaar Pvt. Ltd., (CIN: U51109WB2008PTC122342)**, having its registered office at 14, Roop Chand Roy Street, 1st Floor, Kolkata-700007, West Bengal (hereinafter referred as the Corporate Debtor).
3. It is submitted by the Operational Creditor that the Operational Creditor is engaged in the business of trading in steel products and had long term business relationship with the Corporate Debtor. The Corporate Debtor has issued various invoices and dispatch memos from time to time to supply TMT bars, C.R.Coils, GC Sheets, H.R. M.S. Round, M.S. Angles and other products at agreed specifications and rates.
4. It is submitted that a total of 11 dispatch memos dated (i) 11.8.13, (ii) 6.9.13,(iii) 10.9.13, (iv) 15.9.13 (v)20.12.13, (vi) 15.01.14 and (viii) 4 memos dated 28.11.14 were issued by the Corporate Debtor in favour of

the Operational Creditor. After every supply made by the Operational Creditor pursuant to the dispatch instruction given by the Corporate Debtor, the Corporate Debtor used to issue tax invoice(s).

5. It is submitted that the Corporate Debtor had a running account with the Operational Creditor. The Corporate Debtor never paid full and final payment, since the payments made by it did not correspond to any of the tax invoices issued by the Operational Creditor such payments were made on account of running and continuous business between the parties, and the outstanding debt was shown in the aforesaid running account.
6. It is submitted that one of the last payments made by the Corporate Debtor was of on 1st January, 2017 of Rs.3.46 Crores and the same would be evident from the ledger maintained by the Operational Creditor. Subsequently, with the consent of the parties and on account of the ongoing business relationship, a further adjustment had been made with respect to the amounts due by the Corporate Debtor to the Operational creditor, and, resultantly , as on 31st March ,2017 (i.e., the date of adjustment) as aggregate amount of Rs.27,06,92,925/- has been outstanding. For the sake of clarity, it is stated that an amount of Rs.27,06,92,925/- has been due and payable by the Corporate Debtor to the Operational Creditor as on 31st March, 2017, i.e. the date of default.
7. It is submitted that a chart indicating the outstanding principal amount and the computation of interest thereon has been annexed to the petition. In additional to the aforesaid principal amount of Rs.27,06,92,925/- the Operational Creditor is claiming an amount of Rs.12,18,78,562/- on account of interest.
8. It is submitted that it is an undisputed fact, that the Corporate Debtor

has accepted and consumed all the goods supplied to it by the Operational Creditor. It never raised any complaint or dispute regarding the quality and/or quality of the goods supplied.

9. It is submitted that despite repeated reminders, the Corporate Debtor failed to pay the outstanding amounts due to the Operational Creditor. The Operational Creditor issued a notice dated 25th October, 2019 under section 8 of the Code calling upon the Corporate Debtor to pay the outstanding amounts. ***Despite receipt of the said notice, the Corporate Debtor did not pay the outstanding amount nor replied to the said notice.***
10. It is submitted that the Operational Creditor has also filed an affidavit under section 9(3)(b) of the Code, confirming that the Corporate Debtor has not replied to the demand notice issued under section of the Code, despite receipt of the same, and that no notice of dispute regarding the quality of good supplied or the claims raised by the Corporate Debtor has been furnished.
11. It is submitted that the present petition was filed 21st January,2020
12. It is submitted that there is no existence of any dispute between the Corporate Debtor and the Operational Creditor against the debt in question.The Operational Creditor has relied on and filed following documents:-
 - a. Copies of dispatch instruction,
 - b. Copies of unpaid invoices,
 - c. Copy of ledger account indicating outstanding debt,
 - d. Copy of Demand Notice dated 25th January, 2019 along with tracking report,
 - e. Computation sheet,
 - f. Bank statement indicating that no amount has been received from the Corporate after 1st January, 2017 to 31st March, 2017, onwards,

- g. Affidavit under section 9(3)(b) of the Code,
- h. Written communication from the proposed IRP Mr. Daulat Ram Jain. The authorization for Assignment dated 13th May, 2021 issued in favour of Mr. Daulat Ram Jain is enclosed hereto.
13. It is submitted that in the meantime, pursuant to an order dated 7th February, 2020 passed by this Tribunal in CP(IB) 1214/KB/2018, the corporate insolvency resolution process of the Corporate Debtor had been initiated, and Mr. Supriyo Kumar Chaudhuri had appointed as the Interim Resolution Professional. Subsequently, he had been confirmed as the Resolution Professional by the Committee of Creditors, and since then been in charge of the affairs of the Operational Creditor.
14. It is submitted that despite notice of this petition being issued to the Corporate Debtor, it is only on 5th October, 2021, i.e., after 21 months from the date of filing of the instant petition, that the Corporate Debtor entered appearance and filed its reply sometime in December, 2021.
15. It is submitted that in its reply, the Corporate Debtor has admitted its debt and submitted that it is undergoing a financial crunch. Therefore, in the light of the aforesaid circumstances wherein the Corporate Debtor has admitted its debt as well as its inability to repay the same, making it apparent that it is insolvent, and the instant petition being complete this is a fit case for admission and initiation of CIRP of the Corporate Debtor under section 9 of the Code.
16. That it is submitted the Operational Creditors humbly prays that the corporate insolvency resolution process against the Corporate Debtor be initiated and appropriate orders in this regard be passed by this Adjudicating Authority.
17. ***On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.***
-

18. **In reply** to the petition, the Corporate Debtor through its Director, namely, Mr. Chandan Prasad, submitted that Corporate Debtor had suffered severe financial stress and there were pre-existing disputes between the Operational Creditor regarding issuance of payments and as such the debts started falling due.
19. It is submitted that the Operational Creditor has made out a false case of for debt realization suppressing the disputes existing between the parties, furthermore each and every allegation so as to the existence of the debt is explicitly denied and disputed.
20. It is submitted that the Corporate Debtor under no circumstances intended to not repay such debt and had approached the Operational Creditor on various occasions with bona fide intent to resolve such existing disputes with regard to the dues and clear the same but was unsuccessful and failed to persuade the Operational Creditor to amicably resolve the same and as such the debts fell due.
21. It is submitted that the Operational Creditor with mala fide intent has made out a false case under the garb of this application and has approached this Adjudicating Authority with unclean hands.
22. It is submitted that the subject reply is filed with bona fide intent with a belief that this Adjudicating Authority will in the interest of fairness and natural justice allow the Corporate Debtor a fair opportunity to amicably resolve the existing disputes with the Operational Creditor and repay all the accruing debts. Furthermore, it is stated that purpose and intent of the IBC proceedings is not debt realization but debt resolution, and therefore the instant application is premature and uncalled for and should not be entertained.
23. It is submitted that the Corporate Debtor has taken all necessary steps to resolve its financial crunch and start repayment of the outstanding

dues to the Operational Creditor subject to the preexisting debts being amicably resolved.

24. During the course of arguments, Ld. Counsel for the Operational Creditor precisely submitted his arguments that the Operational Creditor has supplied the TMT Bars, C.R. Coils, GC Sheets, HR Coils, MS Round and MS Angles of various quantities to Corporate Debtor and that the materials were fully consumed by the Corporate Debtor without raising any objections but the Operational Creditor did not receive any payment from the Corporate Debtor against supply materials.
25. It is further argued that a Demand Notice in Form was issued by the Operational Creditor to the Corporate Debtor demanding payment in respect of the unpaid operational debt due from the Corporate Debtor but the Corporate Debtor failed to make any payment towards the outstanding dues of the Operational Creditor to the tune of Rs.39,25,71,488.57.
26. The Ld. Counsel appearing for the Corporate Debtor, however, submitted her arguments that Corporate Debtor is suffering severe financial stress and hence the debt of Operational Creditor started falling due. It is submitted that the Corporate Debtor seeks an opportunity within two years from the date of passing of the order.
27. We have gone through the pleadings, documents and other materials placed on record by the parties. From this material and from the arguments of the Ld. Counsel for the Corporate Debtor, it is quite clear that the Corporate Debtor is running severe financial crises and is unable to repay the operational debt of the Operational Creditor. The request of the Ld. Counsel for the Corporate Debtor to grant two years period to repay the debt cannot be accepted. The liability has been fully admitted. The Corporate Debtor did not reply to the Section 8 Notice.

28. The Operational Creditor proposed the name of **Mr. Daulat Ram Jain** to act as an IRP having Registration No. **IBBI/IPA-P00945/2017-18/11565**, who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.
29. The application is complete in all respects.
30. In view of the failure of the Corporate Debtor in repayment of its operational debt due to the Operational Creditor, the petition deserves to be admitted. We, therefore, pass the following order:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Daulat Ram Jain IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-P00945/2017-2018/11565** and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs.5,00,000/- (Rupees Five Lacs only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

31. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

32. List the matter on 20/05/2022 for filing of **Progress Report**.
33. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 1st day of April, 2022

PJ.