

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-III**

CP (IB) No. 3698 OF 2019

Under 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

Harshad V. Vora

40, Carnac Siding Road, Iron Market,
Steelyard Building Gate, Mumbai-
400009.

.... Operational Creditor

versus

Atharva Metal Pvt. Ltd.

102, A-Wing, Bonzer Avenue CHS,
Katrap Road, Near Hatti Bungalow & Old
Petrol Pump, Balapur (E) Thane- 421503

.... Corporate Debtor

Order delivered on: 25.03.2022

Coram:

Hon'ble Shri. H. V. Subbarao, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing) :

For the Operational Creditor : Mr. Rajeshwer K. Gupta,
Advocate

For the Corporate Debtor : Ms. Anita a/w. Ravi Jadhav,
Advocates

Per Shri. H. V. Subbarao, Member (Judicial)

ORDER

1. This Company Petition is filed by Mr. Harshad V. Vora, (hereinafter called "Operational Creditor") seeking to set in motion

the Corporate Insolvency Resolution Process (CIRP) against Atharva Metals Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Resolution of Operational Debt of Rs. 35,29,738/- excluding interest @18 per annum from 01.07.2019.

2. The counsel appearing on behalf of the Operational Creditor submitted that the Operational Creditor is the proprietor of a firm namely 'Utkarsh Steel Corporation'. The Operational Creditor had, from time to time, supplied certain goods i.e. H.R. Coils & C.R. Coils to the Corporate Debtor and invoices were raised for the same. The total value of the invoices was Rs.38,34,220/- out of which an amount of Rs.3,04,482/- was received and amount of Rs.35,29,738/- remains to be paid by the Corporate Debtor to the Operational Creditor.
3. The counsel for the Operational Creditor further mentions that as per the terms of payments, the Company was required to make the payments within a period of 45 days from the date of Invoice. The counsel stated that as there is no communication received regarding any deficiency in the quality of goods, therefore, it is deemed that the quality is accepted.
4. The counsel for the Operational Creditor stated that as there was no payment received from the Corporate Debtor as Corporate Debtor failed to make the outstanding payment and therefore, the Operational Creditor through their Advocate sent a Demand Notice under Section 8 of the Code dated 19.07.2019, inter alia,

demanding payment in respect of unpaid operational debt amounting to Rs.35,29,738/-.

5. The Operational Creditor has annexed the following documents with the petition:
 - i. Copy of Invoices dated 02.04.2019, 08.04.2019, 17.04.2019, 20.04.2019, 22.05.2019 (ANNEXURE P-3 of the Petition) (Colly);
 - ii. Copies of Ledger accounts (ANNEXURE P-5 of the Petition);
 - iii. Copy of the Email dated 19.07.2019 issued by the Operational Creditor to the Corporate Debtor (ANNEXURE P-2 of the Petition);
 - iv. Copy of Demand Notice dated 19.07.2019 (ANNEXURE P-1 of the Petition);
 - v. Copy of confirmation of accounts by auditors, maintained by Operational creditor in respect of the Respondent (ANNEXURE P-6 of the Petition);
 - vi. Copy of Bank Statement of Operational Creditor from 18.07.2019 to 06.09.2019 (ANNEXURE P-7).

6. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file reply but also failed to make any representation before this Bench. Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 31.01.2022. Heard the counsel appearing for the Operational Creditor and perused the documents submitted by him. The counsel appearing for the Operational Creditor successfully demonstrated and proved the existence of debt and default. The debt is within limitation. Thus, this Company Petition satisfies all the requirements for admission. Since the Corporate Debtor has been set ex-parte, the claim of the applicant remains

unchallenged. This Tribunal upon considering the arguments of the petitioner and the documents, pass the following:

ORDER

- (a) The above Company Petition No. (IB)- 3698/(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Atharva Metals Pvt. Ltd.
- (b) This Bench hereby appoints **Mr. Uday Shreeram Sakrikar**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01230/2018-19/11927, email : ipudaysakrikar@gmail.com, address: 303, Rahul Vihar A, Lane Nos.8, Dahanukar Colony, Kothrud, Pune-411038, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- (c) The Operational Creditor shall deposit an amount of Rs.2 Lakhs (two) towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) 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.

- (e) 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.
- (f) 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.
- (g) That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- (h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- (j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- (k) Accordingly, this Petition is allowed.
- (l) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)