

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 645/Chd/Pb/2019

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

In the matter of:

M/s Somal Pipes Private Limited

having Proprietorship concern of
Village Giaspura, P.O. Lohara,
Near Sua Chowk, G.T. Road,
Ludhiana

...Petitioner-Operational Creditor

Vs.

1. M/s Mahajan Steel Furnace Private Limited

with its registered office at
Opp. Dhandari Railway Station
Adjoining R.V. International, G.T. Road,
Dhandari Kalan, Ludhiana-141010 (Punjab)

...Respondent-Corporate Debtor

2. Union of India, Ministry of Corporate Affairs

with its registered office at
5th Floor, A. Wing, Shastri Bhawan,
Dr. Rajender Prasad Road,
New Delhi-110001.

...Respondent-Corporate Debtor

Judgement delivered on: 25.05.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Atul Aggarwal, Advocate

For the respondent-Corporate Debtor : Respondent already ex-parte vide
Order dated 22.12.2021.

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by M/s Somal Pipes Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its Manager Mr. Amandeep Kumar, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/S Mahajan Steel Furnace Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, M/s Mahajan Steel Furnace Private Limited, is a Company incorporated on 06.05.2011 under the provisions of Companies Act, 1956 with CIN No. U27320PB2011PTC035035 with its registered office at opposite Dhandari Kalan Railway Station, adjoining R.V. International, G.T. Road, Dhandari Kalan, Ludhiana, Punjab-141010. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with main petition and marked as Annexure-A2.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for supply of Bottom Pouring Sets and various invoices were raised which were duly received and acknowledged.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 10,43,405/- (which is inclusive of 24% interest p.a. i.e. of Rs.1,60,130/- on account of sale of goods as on 29.07.2019) and the default occurred on various dates between 03.09.2018 to 09.01.2019 as

per the invoices. Copy of bank statement of accounts for the relevant period is attached with the main petition and marked as Annexure A-9. Copy of bank Computation sheet is attached with the main petition and marked as Annexure A-8.

5. A demand notice in Form 3 dated 29.07.2019 is stated to be issued to the operational creditor by registered post.

6. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Prem Chand Goyal, Insolvency Resolution Professional from the list provided by IBBI.

7. Accordingly, order dated 30.01.2020, notice of this petition issued to the corporate debtor to show cause as why this petition be not admitted. As per order dated 22.12.2021 of this Tribunal, affidavit of service vide Diary No. 00272/1 dated 02.12.2021 has been placed on record wherein it is stated that the order was sent to the corporate debtor vide speed post on 12.11.2021 at the registered address of the corporate debtor available on the master data but same was returned with the report that 'left without instructions' but it is noted that service has already been effected on respondent-corporate debtor through substituted service in two daily newspapers i.e. 'The Pioneer' (English) and 'Ajit Smachar' (Hindi) but none has appeared on behalf of respondent. In these circumstances, this Adjudication Authority is constrained to proceed with the matter and the respondent is set *ex parte*.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 29.07.2019 was properly served. It is already stated above that the service not received and publication has been done to that effect.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of corporate debtor despite repeated service and is set ex parte vide order dated 22.12.2021.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 15.11.2019 vide Diary No. 6358. Therefore, this Adjudicating Authority finds that this application was filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹ 8,83,275(Principal Amount). The operational creditor has supplied goods to the corporate debtor and raised invoices attached as Annexure A-4. Ledger accounts maintained by the operational creditor have been attached at Annexure A-4. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the abovementioned facts that the liability of the corporate debtor is

undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by petitioner is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s Mahajan Steel Furnace Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

16. 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. 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. 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.

18. The Law Research Associate of this Tribunal has checked the credentials of Mr. Prem Chand Goyal and there is nothing adverse against him. In view of the above, we appoint Mr. Prem Chand Goyal, Registration No. IBBI/IPA-001/IPP01780/2019-2020/12710, E-mail: pcg47758@gmail.com, Mobile No. 9813621782 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Prem Chand Goyal shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) The Interim Resolution Professional, Mr. Prem Chand Goyal is directed to file his written consent in Form-2 within one week of this order.
- iii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iv.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his

profession and as an Insolvency Professional with high standards of ethics and moral;

- v.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- vi.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational 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 filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

19. The petitioner is directed to deposit an amount of ₹50,000/- (Rupees Fifty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order 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 email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

May 25, 2022
HM/ASH