



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1193/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

Mr. Amit Mittal

carrying on business as a sole proprietor
under the name and style of-

M/s. Shyam Udyog

...Operational Creditor

v/s.

M/s. VIJAY ENGIFAB INDIA
PRIVATE LIMITED

[CIN: U28939PN2013PTC146546]

...Corporate Debtor

Order Delivered on: 24.03.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Girish Kedia, Ld. Counsel

For the Respondent:

None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)



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1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) Mr. Amit Mittal [carrying on business as a sole proprietor under the name and style of] M/s. Shyam Udyog, (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Vijay Engifab India Pvt. Ltd, (“the Corporate Debtor”).

1.1.The petition is filed on 27.08.2020 claiming an amount of Rs.1,03,37,635/- is due which includes interest @ 24 % p.a. on the principal amount of Rs. 84,19,041/- from the date of default, i.e. 21.09.2019 (as per the last date of invoice), of each invoice till 15.08.2020 along with further interest of 24 % p.a. till the payment and/or realization.

2. The Operational Creditor/Applicant is engaged in the business of dealing in various kinds of steel materials.

2.1.The Operational Creditor sold and delivered steel materials to the Corporate Debtor under 13 invoices raised from 01.08.2019 till 19.09.2019. As per the terms of payments in invoices, the payment was to be made within 60 days from the date of invoices failing which the Corporate Debtor was bound and liable to pay 24% interest for the delayed payment to the Operational Creditor.

2.2.The Operational Creditor further submits that, the Corporate Debtor made a part payment of Rs.10,60,288/- on 14.10.2019 and Rs. 10,98,639 on 01.11.2019 through RTGS /NEFT.



2.3. The Operational Creditor has raised a Debit Note dated 15.08.2020 for Rs.19,18,594/- towards delayed interest payment on which the GST has been deposited by the Operational Creditor.

2.4. In spite of repeated requests and reminders, the Corporate Debtor failed and neglected to release the outstanding payment, consequently, a statutory Demand notice dated 25.01.2020 in form 3 was issued u/s 8 of the IBC, 2016 and the same was not replied by the Corporate Debtor.

3. The Corporate Debtor didn't file reply to the present application. Therefore, the right of Corporate Debtor to file reply was forfeited vide order dated 11.01.2022. The Corporate Debtor has neither filed any reply thereafter also and nor prayed for recall of order dated 11.01.2022.

Findings

4. We have heard the submissions made by the counsel representing the Applicant and perused the records.

4.1. This bench notices that as per the above narrated facts and material placed on record, no dispute has been raised with regards to the existence of Debt due to the Operational Creditor.

4.2. It is observed that the Applicant has filed this Application u/s 9 of the Code claiming default of Rs. 1,03,37,635 of which the principal amount is Rs. 84,19,041/- and Interest amount is Rs.19,18,594/-. However, in the case of SS Polymers vs. Kanodia Technoplast Limited in Company Petition 121/ND/2019, "*not every interest can be treated as debt. If in terms of the agreement, interest is payable to the Operational and financial Creditor; then the debt will include the interest; otherwise the principal amount is to be treated as a debt*



which is the liability in respect of the claim that can be made from the Corporate Debtor". This decision lays down that the interest is part of debt, if there is statement for levy of interest in the agreement or purchase order or invoice. Accordingly, we feel that interest is includible in the amount of debt due and in default in this case as the same is stated expressly on the invoice. The corporate debtor has not filed any response. The issuance of GST invoice for interest amount claimed in this application confirms the fact that the Corporate Debtor has notice of such levy also, as such GST invoice is reflected in its Input Tax Credit Statement in form 2A available on GST portal. Hence, we feel that the interest qualifies as debt and interest and principal amount taken together exceeds the threshold limit, specified in section 4 of the Code.

4.3. On perusal of the documents submitted by the Applicant, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Therefore, the Application filed by the Operational Creditor is liable to be admitted.

4.4. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.



ORDER

5. The petition bearing CP (IB) No.1193/MB-IV/2020 filed by Mr. Amit Mittal [carrying on business as a sole proprietor under the name and style of] M/s. Shyam Udyog, (“the Operational Creditor”), under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. Vijay Engifab India Pvt. Ltd, (“the Corporate Debtor”) is **Admitted**.

I. That this Bench as a result of this prohibits:

- 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 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 the moratorium period.



- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. The bench hereby appoints Mr. Kanhaiya Maheshwari, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01291/2018-2019/12005 Email: kanhaiya_maheshwarica@yahoo.com Mb No 9423119119. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the



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- IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
24.03.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)