IN NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT- V

CP (IB) No. 634 of 2021

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

Precise Alloys Private Limited,

(CIN No.: U28991MH1989PTC054184)

G 20/2, MIDC, Tarapur, Dist. Thane 401506.

..... Operational Creditor

Vs

Mahalaxmi Fasteners Pvt Ltd.,

(CIN No.: U28991PN2009PTC134389)

Karbhari Complex Ring Road Kasaba Baramati.

..... Corporate Debtor

Order Dated: 12.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Operational Creditor: Mr. Nithish Bangera, PCS
For the Corporate Debtor: None

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by Precise Alloys Private Limited, (hereinafter called as the "**Operational Creditor**"), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Mahalaxmi Fasteners Private Limited (hereinafter referred to as the "**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,75,68,734/- which includes Rs. 1,52,44,029/- towards principal outstanding and Interest of Rs. 23,24,705/-.

FACTS OF THE CASE

2. The Petitioner is incorporated under the Companies Act, 1956 and engaged in the business of manufacturing and exporting of Umbrella Rib Wire, Fan Guard Wire, Industrial Metal Wire and Stainless Steel Spoke Wire. The Corporate Debtor is incorporated under the Companies Act, 1956 and engaged in the business of manufacturing of high tensile fasteners.

3. Pursuant to the purchase orders, the Operational Creditor supplied A S Wires to the Corporate Debtor and issued sales invoices between the period from 29.10.2018 to 14.04.2021.

4. The Operational Creditor has submitted that the Corporate Debtor on 13.12.2020 has agreed to pay the entire outstanding amount.

5. The Operational Creditor has submitted that on 30.03.2021, the Corporate Debtor has acknowledged the receipts of invoices raised during the above referred period.

6. Since the Corporate Debtor did not make the payment of the invoices, on 02.06.2021, the Operational Creditor issued a Demand Notice in Form 3 under the Code for the outstanding amount of Rs. 1,75,68,734/.

7. The Corporate Debtor neither filed any reply to the Statutory Demand Notice dated 02.06.2021 nor made the payment, this necessitated the Operational Creditor to file the present Petition under Section 9 of the Code.

FINDINGS

8. We have heard the Ld. Counsel appeared for the Petitioner and perused the records.

9. The present Company Petition has been filed by the Operational Creditor seeking for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for an aggregate amount of Rs. 1,75,68,734/- which includes Rs. 1,52,44,029/- towards principal outstanding and Interest Rs. 23,24,705/-.

10. It has been submitted that the Operational Creditor, pursuant to the purchase orders placed by the Corporate Debtor, had supplied A S Wires to the Corporate Debtor and issued invoices between the period from 29.10.2018 to 14.04.2021. It has been further submitted that the Corporate Debtor has failed to repay an outstanding amount of Rs. 1,75,68,734/- which includes an interest of Rs. 23,24,705/- at the rate of 24% from the date of default. The purchase orders and invoices have been

annexed with the petition under “Exhibit 2”. The copy of ledger statement reflecting the outstanding amount is also annexed with the petition under “Exhibit 4”.

11. As the Corporate Debtor was unable to make the payment of the outstanding amount, the Operational Creditor issued a Statutory Demand Notice dated 02.06.2021 under Section 8 of the Code, in Form 3 demanding the said outstanding amount. No reply has been received by the Operational Creditor from the Corporate Debtor nor any default has been raised with regards disposing its liability to pay the claimed amount.

12. It is pertinent to note that on 13.12.2020, a meeting was held between the Operational Creditor and the Corporate Debtor, wherein the Corporate Debtor has confirmed the outstanding amount and agreed to repay the outstanding amount by the end of January 2021. The minutes of the meeting have been annexed with the petition.

13. It is also noteworthy that the Corporate Debtor vide its letter dated 30.05.2021 has acknowledged the outstanding debt and assured to clear the dues in the given financial year.

14. Despite receiving the court notices, the Corporate Debtor has not appeared before the court to contest the matter through himself or through its director. Resultantly, no reply has been filed by the Corporate Debtor in order to prove its stand. Therefore, without any plea raised on behalf of the Corporate Debtor, it cannot be said that there was a pre-existing dispute between the parties justifying no payment of the outstanding dues.

15. From the above discussion, it flows that Petitioner has been able to establish that there has been an operational debt in respect of which the default has been committed by the Corporate Debtor. Even otherwise, the averments made in the petition have not be controverted as the Corporate Debtor has not chosen to contest the petition nor any reply on its behalf

has also been filed. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

A. The above Company Petition No. (IB) 634 of 2021 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Mahalaxmi Fasteners Pvt Ltd.**

B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Ms. Rekha Kantilal Shah, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00776/2017-2018/11349,** 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. Two Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

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, the **C.P.(IB) 634 of 2021** is **admitted**.

L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	Sd/-
PRABHAT KUMAR	**KULDIP KUMAR KAREER,**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**