



**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)**

IA No. 1625/2022

And

CP (IB) No. 182/Chd/HP/2019

**Under Sections 9 & 60(5) of
Insolvency and Bankruptcy Code,
2016.**

In the matter of:

Bhagwati Steel Sales

having its registered office at
Village Haripur, Hindua,
Barwala Road, Derabassi,
Punjab-140507

...Petitioner-Operational Creditor

Vs.

HIM MEC TEC Private Limited

having its registered office at
Barotiwala, Khasra No. 297,
Village Dassomajra,
PO-Bhud Baddi Solan,
Himachal Pradesh-173205
CIN No. U28939HP2017PTC006600

...Respondent-Corporate Debtor

Judgement delivered on: 14.12.2022

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

For the Petitioner-operational : Mr. Rishabh Jain, Advocate,
creditor in main petition and for proxy counsel for Mr.
applicant in IA No. 1625/2022 Shubham Jain, Advocate

IA No. 1625/2022

And

CP (IB) No. 182/Chd/HP/2019



For respondent-corporate debtor : Proceeded *ex parte* vide
in main petition order dated 31.10.2022

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

IA No. 1625/2022

The present application has been filed by applicant for proposing the name of Interim Resolution Professional Mr. Prashant Gupta alongwith the written consent and AFA Certificate. Keeping in view the facts and circumstances mentioned in the application and in the interest of justice, IA No. 1625/2022 is allowed and the aforesaid documents are taken on record. IA No. 1625/2022 is disposed of accordingly.

CP (IB) No. 182/Chd/HP/2019

2. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Bhagwati Steel Sales (for brevity 'Operational Creditor' / 'Petitioner')**, represented through its Partner, Pawan Mangla, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **HIM MEC TEC Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

3. The Corporate Debtor, namely, HIM MEC TEC Private Limited, is a Company incorporated on 15.05.2017 under the provisions of Companies Act, 2013 with CIN No. U28939HP2017PTC006600 with its registered office at Barotiwala, Khasra No. 297, Village Dassomajra, PO-Bhud Baddi Solan, Himachal Pradesh-173205. Hence, the territorial jurisdiction lies with this



Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure P-14.

4. The facts of the case, briefly, as stated in the petition are that the corporate debtor issued various purchase orders for supply of GA Sheets, GPSP Sheet and Almnzinc Sheet total amounting to Rs. 21,43,123/- alongwith interest @ 15% per annum i.e. Rs. 2,29,615/-. The corporate debtor after making partial payment of invoices started defaulting in making payments. After multiple rounds of negotiation, parties decided to settle the matter and the operational creditor was assured that full and final payment will be made within one month i.e. in January 2019. The corporate debtor made partial payment of Rs. 1,75,000/- on 14.01.2019. Thereafter, despite repeated reminders, the corporate debtor kept on delaying the release of outstanding dues and demand notice dated 08.03.2019 for default amount of Rs. 21,43,123/- with interest @ 15% per annum was sent.

5. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 21,43,123/- (Rupees Twenty One Lakh Forty Three Thousand One Hundred and Twenty Three Only) plus 15% interest p.a. and default occurred on 22.09.2018 i.e. the date when corporate debtor after making partial payment of the invoices started defaulting in making payment towards invoices submitted by operational creditor. Copy of balance amount (Annexure P-1), statement of account (Annexure P-2), invoices (Annexure P-9), CA Certificate and Bank Statement (Annexure P-11) and balance-sheet (Annexure P-15) are attached with the main petition.



6. A demand notice in Form 4 is stated to be issued by the operational creditor on 08.03.2019 through registered post, tracking report shows that the same was refused to be accepted by one of the Directors of the Corporate Debtor and through e-mails dated 12.03.2019 and 07.03.2019 (Annexure P-7).

7. Accordingly, vide order dated 10.05.2019 notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavits of service were filed vide Diary No.3681 dated 26.07.2019 and 00548/1 dated 14.03.2022. The corporate debtor filed reply vide diary No.7404 dated 27.12.2019, wherein it is stated that the amount claimed by the operational creditor is without reconciliation of the account maintained by the parties. The statement of account and balance sheet produced by the operational creditor are not as per actual transaction between the parties. The copy of CA Certificate is without reconciliation with the account books maintained by the respondent. There was no representation on behalf of the respondent corporate debtor on 31.10.2022. So, it appeared that respondent corporate debtor was not interested in defending the said petition, therefore, respondent-corporate debtor proceeded ex-parte vide order dated 31.10.2022 of this Adjudicating Authority. The short written submissions were filed by operational creditor vide Diary No. 00548/2 dated 19.10.2022.

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

9. The first issue for consideration is whether the demand notice in Form 4 dated 08.03.2019 sent by the corporate debtor through registered



post, tracking report shows that the same was refused to be accepted by one of the Directors of the Corporate Debtor and through e-mails dated 12.03.2019 and 07.03.2019 (Annexure P-7). Therefore, demand notice was duly served.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by the petitioner vide Diary No. 00548/3 dated 14.11.2022, wherein it is stated that there was no pre-existing dispute between the operational creditor and corporate debtor. The operational creditor/applicant affirms that there was no notice given by the corporate debtor relating to a dispute of the unpaid operational debt after service of demand notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which was sent by the operational creditor. Therefore, the operational debt was not disputed by the corporate debtor.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 08.03.2019 in Form 4 attached as Annexure P-6. Therefore, the period of limitation would begin from the date of default i.e. 22.09.2018 i.e. the date when the corporate debtor after making partial payment of the invoices started defaulting in making payment towards invoices submitted by the operational creditor. Copy of balance amount (Annexure P-1), statement of account (Annexure P-2), invoices (Annexure P-9), CA Certificate and Bank Statement (Annexure P-11) and balance-sheet (Annexure P-15) are attached with the main petition. This application was filed on 20.03.2019 vide Diary No. 1401.



Therefore, this Adjudicating Authority finds that this application is 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 Rs. Rs. 21,43,123/- (Rupees Twenty One Lakh Forty Three Thousand One Hundred and Twenty Three Only) plus 15% interest p.a. The corporate debtor issued various purchase orders for supply of GA Sheets, GPSP Sheet and Almnzinc Sheet. Copy of balance amount (Annexure P-1), statement of account (Annexure P-2), invoices (Annexure P-9), CA Certificate and Bank Statement (Annexure P-11) and balance-sheet (Annexure P-15) are attached with the main petition. Although, respondent-corporate debtor in his reply stated that amount claimed by operational creditor is without reconciliation of accounts but there is no evidence to that effect because corporate debtor chose not to appear and proceeded against ex parte, claim remained rebutted. 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 above mentioned 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 the petitioner is complete in all respects. 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, HIM MEC TEC Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner however, vide IA No. 1625/2022, Mr. Prashant Gupta has been proposed as IRP alongwith the written consent dated 17.11.2022 in Form AA, Form B dated 07.11.2022 and Certificate of Registration issued by Insolvency and Bankruptcy Board of India (IBBI). The Law Research Associate of this Tribunal has checked the credentials of Mr. Prashant Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Prashant Gupta, Registration No. IBBI/IPA-001/IP-P-02471/2021-2022/13868, E-mail: pgupta.rp@gmail.com , Mobile No. 9815993315 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Prashant Gupta shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;



ii.) 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;

iii.) 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;

iv.) 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;

v.) 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;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they



are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed



to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) 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

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

16. 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, 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.

18. 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.

19. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty 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 a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

December 14, 2022
YP/TB