

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH at AHMEDABAD  
COURT - 1**

**C.P. (I.B) No.261/9/NCLT/AHM/2019**

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 28.05.2020**

Name of the Company: Shree Nakoda Ispat Ltd  
V/s  
Laxmipati Balaji Infra Pvt Ltd

Section of the Companies Act / I & B Code : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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**ORDER**

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 28th day of May, 2020.

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
INDORE BENCH at AHMEDABAD**

C.P. (I.B.) No. 261/9/NCLT/AHM/2018

**In the matter of:**

**Shree Nakoda Ispat Limited,**

Through its Director Mr. Anant Dave.

Having its addressat:

'Near Railway Crossing,  
Mowa Vidhan Sabha Road,  
PO Saddu Raipur-492014,  
Chhattisgarh.

..... **Petitioner**

**Vs.**

**Laxmipati Balaji Infra Private Limited**

Having its Registered Office at:

204, 2<sup>nd</sup> Floor, Corporate Zone C-21  
Mall Hosangabad Road, Misrod Bhopal  
MP 462026 (India)

.....**Respondent**

**Order delivered on 28.05.2020**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)  
And  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance:**

Mr. Jainish Shah, Advocate, for the Petitioner.  
None appeared for the Respondent.

**[Per: Hon'ble Prasanta Kumar Mohanty, Member (T)]**

The present petition has been preferred by the Operational Creditor, **M/s. Shree Nakoda Ispat Limited**, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (here-in-after referred to as a "Code") seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor Company, namely, **M/s. Laxmipati Balaji Infra Private Limited.**

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1. The Petitioner Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) **-U27109CT2000PLC014186**. The **correspondence address** of the Operational Creditor Petitioner is situated at 'Near Railway Crossing, Mowa Vidhan Sabha Road, PO Saddu Raipur-492014, Chhattisgarh.
2. The Respondent Corporate Debtor, namely, **M/s. Laxmipati Balaji Infra Private Limited** was incorporated **26.03.2015** with **CIN: U70101MP2015PTC034019**. The authorised share capital of the Company is INR.1,01,00,000.00 (Rupees One Crore One Lakh Only) and the paid-up capital is INR. 1,00,000.00 (Rupees One Lakh Only). The registered office of the Corporate Debtor Company is situated at: 204, 2<sup>nd</sup> Floor, Corporate Zone C-21 Mall Hosangabad Road, Misrod Bhopal MP-462026
3. It is submitted by the Petitioner Operational Creditor, that the Respondent Corporate Debtor is indebted to the Petitioner for **INR.43,26,641.00** (Rupees Forty Three Lakhs Twenty Six Thousand Six Hundred Forty One Rupees Only). The Operational Creditor is a Limited Company, **engaged in the business of TMT Bars**. The Corporate Debtor approached the Operational Creditor **to purchase TMT Bars of various sizes**. After due negotiations, **the Respondent placed the purchase orders bearing No. LPB/PO/BH16007/17-18/1086 dated 13.06.2017**, for supply of 126 TMT Bars (Make: Nakoda) of 10 mm, 12mm, 16mm,

20mm and 25mm, **valuing Rs. 45,59,310.00** and another purchase order No. **LPB/PO/BH16007/17-18/1087** dated **13.06.2017** for supply of 34 MT or TMT Bars, Fe-500 Grade (Make Nakoda) of 8mm, 10mm, and 16mm size, **valuing Rs. 12,30,290.00.**

The purchase order specifically provides terms of payment i.e., **45 days from the date of supply to the Respondent.**

4. In this regard various invoices were raised by the Operational Creditor in proportion to the **work carried out** by the Operational Creditor and the same were duly accepted by the Corporate Debtor.

Invoice No.	Date	Amount INR
02337	21.06.2017	7,69,577.00
02338	21.06.2017	4,84,155.00
SB17Y-02545	04.07.2017	7,79,576.00
SB17Y-02547	04.07.2017	10,19,962.00
SB17Y-02548	04.07.2017	4,88,212.00
SB17Y-02603	07.07.2017	7,85,159.00
<b>Total Amount</b>		<b>43,26,641.00</b>

5. It is submitted that pursuant to the request of the Respondent Company, the Applicant has supplied materials worth of Rs. 43,26,641.00 to the Respondent Company from 21.06.2017 to 07.07.2017, which were duly accepted by the Respondent Company.

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6. It is submitted that debt is outstanding since the date of generation of last invoice and no payment has been made against any invoices, raised by the Applicant. Hence, **the Date of Default is 07.07.2017.**
7. It is submitted that the Applicant has raised above various invoices against the sale and supply of the goods which were duly accepted by the Respondent Company.
8. It is stated that the Respondent Company accepted the goods, supplied by the Applicant, without any complaint and received the invoices raised for each transaction.
9. It is submitted that as per the condition or payment, the Respondent Company did not make any payment despite repeated reminders from the Applicant Company, and the Respondent Company failed to respond to all communications including telephonic reminders from the applicant.
10. It is further submitted that in order to delay the recovery of legitimate outstanding dues of the **Applicant, the Respondent had initially issued a cheque bearing no. 00217 dated 31.08.2018 of Rs. 10,00,000.00 as part payment to the Applicant but the cheque was dishonoured and returned with the endorsement of "Account Blocked".** Thereafter, the Respondent provided

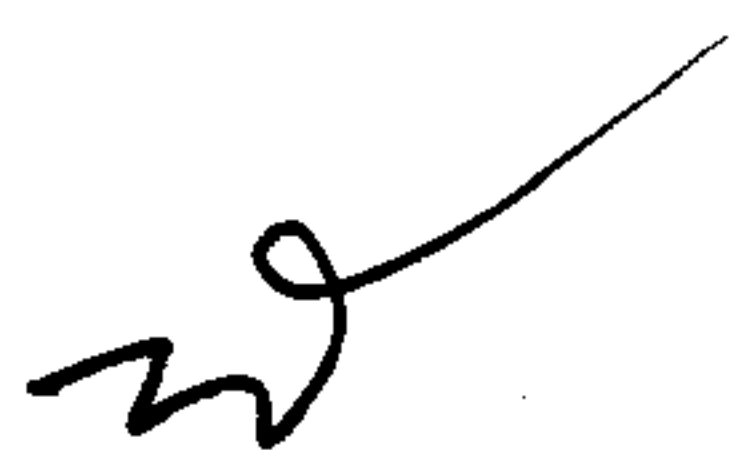
another cheque No. 482467 dated 31.08.2018 for the entire outstanding amount of **Rs. 43,26,641.00** but again the said cheque was dishonoured and returned with the endorsement "Paper Not Received" on 29.11.2018 and thereby the Respondent has miserably failed in payment of the dues against the goods, supplied by the Applicant.  
**(page no 49 and 50 of the Paper book)**

11. It is submitted that in view of the failure and neglect on the part of the Respondent Company for making the payment of the admitted and undisputed debt and liability of an amount of Rs. 43,26,641.00, the entire amount claimed is in default.

12. It is submitted that the **Demand Notice** was dispatched vide registered Post on 05.02.2019 and delivered to the Respondent Company on 07.02.2019 at its registered office. **(page no. 7 of the paper book).**

13. It is submitted that neither any payment of the unpaid operational debt nor any notice was given by the Respondent Company relating to dispute of the unpaid operational debt: A copy of the relevant accounts from the Bank maintaining Applicant's Account, is annexed with the Petition as Annexure 3. **(page no. 53 of the paper book).**

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14. It is submitted that the Respondent Company is liable to pay the Applicant's unpaid Operational Debt of Rs. 43,26,641. 00. Even, otherwise, the Respondent Company has lost its substratum and is not in a stable position to clear its debts and liabilities not only to **the applicant but also to a large body of other creditors.**
15. In response to the present I.B. Petition filed by the Petitioner, **the Respondent has not filed its any objections/replies.**
16. It is submitted that in the light of the abovementioned facts and circumstance the Applicant's Prayer, before this Adjudicating Authority, is to **Cause public announcement of the initiation of Corporate Insolvency Resolution Process** and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 to be admitted and be pleased to pass any further order in the interest of justice.
17. The Petition is filed on 01.04.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.43,26,641.00**

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18. The matter was finally heard on 21.11.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may **be admitted** and an Interim Resolution Professional **appointed in** accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

19. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

### **OBESRVATIONS**

20. The Application has been filed on 01.04.2019 for **operational debt due** and defaulted of **INR. 43,26,641.00** (Rupees Forty Three Lakh Twenty Six Thousand Six Hundred Forty One Only) as per the respective Invoices enclosed. Invoices have been raised between 21.06.2017 to 07.07.2017.

20.1 The instant application first came before this Adjudicating Authority on 25.04.2019 and this Adjudicating Authority directed the Petitioner to file proof

of service and copy of the Petition on Respondent. Thereafter, on 10.07.2019 Petitioner was directed to effect paper publication and the proof of paper publication was filed on 27.08.2019 and again matter was heard on 30.09.2019, 25.10.2019 but neither the Respondent nor its counsel had appeared on any occasion despite sufficient opportunity given to them.

Thereafter, the matter was finally heard by this Adjudicating Authority on 21.11.2019

20.2 The purchase order specifically provides a condition of payment i.e., **45 days from the date of invoice.**

20.3 Application is filed within the limitation period **as the date of default is 07.07.2017 and the date of filing this petition under Section 9 of IBC is 01.04.2019 which is within three years of the default.**

20.4 Existence of prior dispute between the issue of Demand Notice is not observed.

### ORDER

21. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **20, 20.1, 20.2, 20.3 and 20.4** this Adjudicating Authority is **satisfied that, this Application is not barred by Limitation as invoices are of 2017 and the date of default is 07.07.2017 whereas this application is filed on 01.04.2019. Hence, this Adjudicating Authority is satisfied that:**

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21.1 Existence of operational **debt is above Rs. One Lac;**

21.2 **Debt is due;**

21.3 Default has occurred on **07.07.2019**

Petition has been filed within the limitation period as the date of default is 07.07.2019 and the petition has been filed on 01.04.2019.

21.4 Existence of dispute prior to **the notice issued** by the Operational Creditor is not found.

22. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority declares moratorium for prohibiting all of the following, namely: -

1.(a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*

II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*

III. *The provisions of sub-section (1) shall not apply to*

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*(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

23. The Petitioner Operational Creditor has not suggested the name of RP to act as Interim Resolution Professional in the present Petition.

24. **Hence, this Adjudicating Authority hereby appoints Sajjan Kumar Dokania having Insolvency Professional Registration Number IBBI/IPA-003/IP-N000150/2017-2018/11729 having Email-Id: [sajjan\\_suman@hotmail.com](mailto:sajjan_suman@hotmail.com) Address: 25, Globus Fab city, Kolar Road, Chunna Bhatti, Near Suyash Hospital, Bhopal, Madhya Pradesh, 462016 an Interim Resolution Professional.**

**The IRP is advised to file declaration disclosure statement within two days with this Registry.**

25. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Section 13 and 14 and

relevant provisions of the Insolvency and Bankruptcy Code.

26. **The Interim Resolution Professional shall perform all his functions** contemplated, inter-alia, in **Sections 15, 17, 18, 19, 20 & 21** of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that **all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the management** of the Corporate Debtor are under legal obligations **under Section 19** of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by **Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.**

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**27. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.**

**28. Hence, this CP (IB) No. 261/9/NCLT/AHM/2018 is admitted on 28.05.2020 with the above Observations and Directions.**



**(Prasanta Kumar Mohanty),  
Adjudicating Authority  
Member (T)**



**(Harihar Prakash Chaturvedi),  
Adjudicating Authority  
Member (J)**

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