

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB) No. 2036 /KB/2019

In the matter of:

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Chaitanya Alloys Private Limited (CIN U27310WB1995PTC071299), a Company incorporated under the Companies Act, 1956, having its registered office at 1, British Indian Street Kolkata, Kolkata – 700069, West Bengal.

... Operational Creditor

-Versus-

Subhlabh Steels Private Limited (CIN U27109WB1991PTC052566), a Company incorporated under the Companies Act, 1956, having its registered office at Room No. 202, 1, British Indian Street Kolkata, Kolkata – 700069, West Bengal.

... Corporate Debtor

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conferencing):

For the Operational Creditor : Ms. Sweta Mohanty, Advocate.

For the Corporate Debtor: Mr.Ramendu Agarwal, Advocate.

Date of Hearing: 03.12.2021

Date of pronouncing the order: 09.12.2021

ORDER

Per : Harish Chander Suri, Member (Technical):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by Chaitanya Alloys Private Limited (“Operational Creditor”), a Company incorporated under the Companies Act, 1956, having its registered office at 1, British Indian Street Kolkata, Kolkata – 700069, West Bengal. This Petition has been filed by by Rahul Parasrampur, Practising Company Secretary, authorised by a Board Resulition dated 06.11.2019, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Subhlabh Steels Private Limited (CIN U27109WB1991PTC052566), a Company incorporated under the Companies Act, 1956, having its registered office at Room No. 202, 1, British Indian Street Kolkata, Kolkata – 700069, West Bengal (“Corporate Debtor”).
3. The present petition was filed on 22.11.2019, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 4,95,29,083/- (Rupees Four Crore Ninty Five Lakh Twenty Nine Thousand eighty Three only) as on 06.04.2018, which is stated to be the date of default.
4. ***Submission of the learned Counsel for the Operational Creditor***
 - (i) The case of the Operational Creditor is that the Corporate Debtor had engaged the Operational Creditor for supplying the TMT Bars and *Tax Invoice Cum Challans* were generated time to time against the Corporate Debtor¹.
 - (ii) The Ledger Statement of the Operational Creditor for the Financial Years 2016 – 2017, 2017 – 2018, 2018 – 2019 and till October 2019 reflects that

¹ Annexure A, Pages – 18 – 70 of CP (IB) No. 2036/KB/2019.

part payments were made by the Corporate Debtor against the *Tax Invoice Cum Challans* generated by the Operational Creditor². However, the last part payments made for a sum of Rs. 1,40,000/- (Rupees One Lakh Forty Thousand only) was on 06.12.2018 by the Corporate Debtor³.

(iii) On 14.03.2017, 05.01.2018 and lastly on 02.11.2018 letters were sent by the Operational Creditor to the Corporate Debtor requesting to clear the outstanding dues of Rs. 3,86,16,900.86 (Rupees Three Crores Eighty Six Lakhs Sixteen Thousand Nine Hundred Eighty Six Paise only) and the same were accepted by the Corporate Debtor *vide* letters dated 17.08.2017 and 15.01.2019, whereas, in letter dated 15.01.2019⁴ the Corporate Debtor has precisely stated that:

“We admit that there is an amount of Rs. 3,86,16,900.86 (Rupees Three Crores Eighty Six Lakhs Sixteen Thousand Nine Hundred Eighty Six Paise only) which is due from our part.

*We request you to grant us some time to make the payment. **Due to bad market conditions there is delay in payment of outstanding dues from our part (Emphasis Implied)**”.*

(iv) The Operational Creditor issued a statutory demand notice under section 8⁵ of the Insolvency and Bankruptcy Code, 2016 on 06.08.2019 seeking release of the Principal amount of Rs. 3,86,16,900.86 (Rupees Three Crores Eighty Six Lakhs Sixteen Thousand Nine Hundred Eighty Six Paise only) [excluding interest]

(v) That the Operational Creditor is entitled to a sum of Rs. 4,95,29,083/- (Rupees Four Crores Ninty Five Lakh Twenty Nine Thousand Eighty Three

² Annexure B, Pages 71 – 75 of CP (IB) No. 2036/KB/2019.

³ Annexure C, Page 76 of CP (IB) No. 2036/KB/2019.

⁴ Page 87 of CP (IB) No. 2036/KB/2019

⁵ Annexure F, Page 88 – 94 of CP (IB) No. 2036/KB/2019

only) comprising of the outstanding Principal sum of Rs. 3,86,16,900.86/- (Rupees Three Crores Eighty Six Lakh Sixteen Thousand Nine Hundred Eighty Six Paise only) and interest amounting to Rs. 1,09,12,184/- (Rupees One Crore Nine Lakh Twelve Thousand One Hundred Eighty Four only) calculated on the principal sum @18% per annum.

5. *Submissions of the learned Counsel appearing on behalf of the Corporate Debtor*

- (i) Learned Counsel on behalf of the Corporate Debtor submits that the Application filed by the Operational Creditor is not maintainable in law and there is no cause of action for the Application.
- (ii) It also submits that the Application is replete with factual perversity and contains misconceived submissions and thr Application for initiation of insolvency process being in Form – 5 is undated and the same is not in format of Form - 5, which is mandatory to be in acordance with Form – 5.
- (iii) It further submits that the heading of Form 5, Chapter II of Part II of the Code 2016 is mentioned, whereas in Coloumn 8, Part II of the Code, it is mentioned as Champter IV of Part II of the Code. This also shows that the Operational Creditor does not know under which provision the instant application had been filed.
- (iv) The Corporated Debtor has also aasserted that the Application is not complete and there is a pre-existing dispute regarding the goods being provided by the Operational Creditor and in the light of the judgement passed by the Hon’ble Supreme Court in *Mobilox Innovations Private Limited*, the Adjudicating Authority should reject the Application.

6. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and have perused the records and the concerned documents annexed to the Petition.
7. It is pertinent to mention that though the Corporate Debtor has taken the plea of '*disputed debt*' in their reply but no such grounds were taken by the Corporate Debtor in their letters dated 17.08.2017 and 15.01.2019, wherein they have admittedly agreed of the outstanding dues, irrespective of any disputes. Further, despite receipt of the demand notice under section 8 of the Code, the Corporate Debtor did not reply and/or raise any disputes. Hence, the contention of the Corporate Debtor that there was a pre-existing of debt does not hold water. A Corporate Debtor if he is so sure of having any pre-existing dispute, must avail himself of the golden opportunity provided under section 8, by replying to the notice within 10 of its receipt in this matter, the Corporate Debtor has missed the bus.
8. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.
9. It is, accordingly, hereby ordered as follows:-
 - a. The application bearing CP (IB) No. 2036/KB/2019 filed by Chaitanya Alloys Private Limited, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Subhlabh Steels Private Limited, the Corporate Debtor, is **admitted**.

- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. Mr. Netai Basak, registration number IBBI/IPA-003/00327/2020-2021/13421, email: nbasak2002@yahoo.co.in, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. 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 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

- h. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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).
- i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

10. **CP (IB) No. 2036/KB/2019** to come up on **18.02.2022** for filing the periodical report.

11. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)

Member (Technical)

(Rohit Kapoor)

Member (Judicial)

Order dated December 09, 2021

SA, LRA