

**NATIONAL COMPANY LAW TRIBUNAL,  
COURT-V, MUMBAI BENCH**

**C.P. (IB) No. 1344/IBC/MB/2020**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Agrasen Iron and Steels Private Limited**

Having registered office at:

Ring Road No. 2, Beside Loha Bazar, In front of Kabir Nagar, Raipur- 492001, Chattisgarh, India.

.....Operational Creditor/Petitioner

Vs

**Sebros Steels Private Limited**

Registered office at:

Plot No. W-61, MIDC Hingna, Nagpur-440016, Maharashtra, India.

.....Corporate Debtor

**Date of the order: 17.04.2023**

**Coram:**

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

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

***Appearances (via Video Conferencing):***

**For the Petitioner:** Mr. Amol Bavare, Advocate.

**For the Corporate Debtor:** Mr. Harsh Kesharia, Advocate.

*Per: Kuldip Kumar Kareer, Member (Judicial)*

**ORDER**

1. This Company Petition is filed by **Agrasen Iron and Steels Private Limited** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Sebros Steels Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default as on 30.09.2020 to the extent of Rs. 2,55,88,486/- with regards to the outstanding payments to the Petitioner. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
  
2. In the requisite Form-5, under the head "Particulars of Operational Debt", the amount claimed to be in default is Rs. 2,55,88,486/- which is bifurcated as under:
  - a. Rs. 1,83,83,697/- being the principle amount payable in lieu of the invoices raised on the Corporate Debtor.
  - b. Rs. 72,04,789/- being the interest at the rate of 24% p.a. on delayed payments outstanding on invoices issued.
  
3. The Petition reveals that the Corporate Debtor had approached the Petitioner for supplying products such as "M.S. PLATES, H.R. PLATES, M.S. CHANNELS, M.S. ANGLES, M.S. JOIST, etc. Pursuant to the negotiations and discussions between parties, the Petitioner started supplying the abovementioned products based on the purchase orders raised by the Corporate Debtor from 2017 onwards. The Petitioner has supplied the said Products from time to time and has raised corresponding invoices on the Corporate Debtor, which have been received by the Corporate Debtor without any protest or demur.
  
4. Pursuant to the purchase orders raised to the Corporate Debtor, the Petitioner continued to supply the said Products until July, 2019 and thereby raised the following invoices:

<b>Invoice No.</b>	<b>Date of Invoice</b>	<b>Invoice amount</b>
02	01.04.2019	1701482.00 (However, 1177250.00 Is o/s towards this invoice)
95	08.04.2019	1490725.00
108	09.04.2019	352550.00
216	18.04.2019	1051854.00
225	19.04.2019	760265.00
236	20.04.2019	1747428.00
237	20.04.2019	1806637.00
270	24.04.2019	1732564.00
271	24.04.2019	1812436.00
590	25.05.2019	782070.00
591	25.05.2019	869969.00
624	28.05.2019	678521.00
625	28.05.2019	439034.00
626	28.05.2019	615200.00
1338	25.07.2019	1507541.00
1367	27.07.2019	1559653.00
	<b>Grand Total</b>	<b>18383697.00</b>

However, the Corporate Debtor failed to make regular payments against the invoices as mentioned hereinabove.

- Owing to the abovementioned failure to pay the amounts due under various invoices, the Petitioner was facing shortage of working capital and started requesting the Corporate Debtor to clear off the outstanding payments against the invoices raised. However, the Corporate Debtor on some pretext or the other failed to make payment towards the outstanding invoices. Though the Corporate Debtor made part payments amounting to Rs. 12,00,000/- on 13.12.2019 towards the invoices raised, the Corporate Debtor has not made any payments thereafter.

6. The invoices raised and payments due is admitted by the Corporate Debtor in as much as it has provided a copy of account ledger confirming the balance outstanding reflected therein as on 01.04.2019 and 30.06.2019.
7. In view of the failure on part of the Corporate Debtor to make the outstanding payments despite repeated requests, the Petitioner issued Demand Notice dated 06.02.2020 to the Corporate Debtor and its directors, which was served on 11.02.2020. After receipt of the abovementioned Demand Notice (Form 3), one of the Directors of the Corporate Debtor namely Mr. Gagandeep Sethi visited the office of the Petitioner on 15.03.2020 wherein the abovementioned Director of the Corporate Debtor made repeated assurances to clear off the outstanding dues shortly. However, despite assurances given by the Corporate Debtor in the said meeting, the Corporate Debtor failed to make any payment towards the outstanding amounts. Hence this petition.

**Reply of the Corporate Debtor:**

8. The Corporate Debtor filed their reply denying each and every statement, allegations, averments, contentions and submissions made by the Petitioner.
9. The Corporate Debtor submitted that there is no specific authority in favour of Mr. Nilesh Kumar Agarwal to issue the Demand Notice on behalf of the Petitioner and/or file the relevant proceedings under Section 9 of the Code against the Corporate Debtor. It is pertinent to note that the purported resolution relied by the Petitioner in the present Application is dated as 01-10-2020. However, the Demand Notice has been purportedly issued by the Petitioner on 06-02-2022.
10. The Corporate Debtor further submitted that the Petition filed by the Petitioner is not in prescribed format of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules 2016. Moreover, the Petitioner has failed to attach proof of delivery of the copy of the Petition.

Therefore, the Company Petition is rendered defective and cannot be adjudicated by this Hon'ble Tribunal.

11. Further, the Petitioner in the Company Petition has stated that the Demand Notice is alleged to have been served on the Corporate Debtor on 11-02-2020. However, no Demand Notice has been received by the Corporate Debtor. Further, the Petitioner is put to strict proof that the Demand Notice has been delivered to the Corporate Debtor on 11-02-2020. It is established position of law that a separate petition is to be filed in respect of each and every purchase order. It is submitted that the principal amount of Rs, 1,83,83,697/- is not due in respect of a single purchase order.
12. In view of the above objections raised by the Corporate Debtor in their reply, the Corporate Debtor has prayed for dismissal of this present Petition.

**FINDING:**

13. We have heard the counsel for the parties and gone through the records.
14. During the course of arguments, it has been contended by the counsel for the Petitioner that the Petitioner supplied material to the Corporate Debtor by way of as many as 14 invoices between the period from 01.04.2019 to 27.07.2019. The receipt of the material is not disputed by the Corporate Debtor. It has further been pointed out that the payment due on account of receipt of goods is duly acknowledged by the Corporate Debtor in its Email dated 10<sup>th</sup> October, 2019. The Corporate Debtor has further acknowledged the debt in the Email dated 15.10.2019 (Annexure- 10).
15. The Counsel for the Petitioner has further contended that the last payment of Rs. 12 Lakhs was made by the Corporate Debtor on 13.12.2019 as is evident from the Ledger (Annexure-15). According to the counsel for the Petitioner, the existence of the Operational Debt and its default has been proved on record and, therefore, a strong case of admission of the Petition u/s. 9 is clearly made out.

16. On the other hand, the Counsel for the Corporate Debtor has argued that the Petition is liable to be dismissed on the ground that the Petitioner has failed to prove the service of the Demand Notice. In this regard, the counsel for the Corporate Debtor has pointed out that in its Email dated 3<sup>rd</sup> October, 2020, the Petitioner has claimed that the Demand Notice was served upon the Corporate Debtor on 10<sup>th</sup> February, 2022 whereas the postal receipt placed on record by the Petitioner are dated 11<sup>th</sup> February, 2020. Counsel for the Corporate Debtor has further contended that no document showing delivery of the notice has been placed on record by the Petitioner. Thus, it cannot be said that the Demand Notice u/s 8 of the Code was served upon the Corporate Debtor and the Petition is liable to be dismissed on this ground alone.
17. The Counsel for the Corporate Debtor has further argued that no date of default has been mentioned in Part- 4 of the Petition and on this ground also, the Petition is liable to be dismissed. Counsel for the Corporate Debtor has further argued that the Demand Notice is claimed to have been issued on 10<sup>th</sup> February, 2020 whereas the Board resolution authorizing the filing of the present petition is dated 1<sup>st</sup> October, 2020. Therefore, at the time of issuing the Demand Notice, there was no resolution of the Petitioner and thus the notice was issued without any authorization. Counsel for the Corporate Debtor has further argued that the Form-5 of the Petition is also not as per the prescribed Performa and, therefore, the Petition is bad in law and deserves to be dismissed.
18. We have considered the above contentions raised by the Counsel for the parties and we have carefully perused the records.
19. It is not disputed that vide as many as 14 invoices issued between 01.04.2019 to 27.07.2019, goods were supplied to the Corporate Debtor and the outstanding payment has been duly acknowledged vide the Corporate Debtor in the Email dated 15<sup>th</sup> October, 2019 (Annexure -10). Therefore, *prima facie* the existence of the operational debt stands proved on record. As the Corporate Debtor has failed to make the payment against

the aforesaid supply of goods, a sum of the Rs. 2,55,88,486/- was outstanding at the time of filing of the Petition.

20. The only defence raised on behalf of the Corporate Debtor is that the service of Demand Notice has not been proved nor the notice was received by the Corporate Debtor. In this regard, reference has been made to Demand Notice dated 6<sup>th</sup> February, 2020 which is claimed to have been sent by the Petitioner by way of speed post vide postal receipt dated 11<sup>th</sup> February, 2020. On the contrary, in the Email dated 3<sup>rd</sup> October, 2020, it is mentioned that the notice was served on 10<sup>th</sup> February 2020. It is well settled that once a letter/ article is sent through registered post, it is deemed to have been received by the addressee unless proved otherwise. There is a presumption that an article sent by registered post is deemed to have been delivered and onus to rebut the same presumption is on the person who claims that the article has not been delivered. Therefore, the onus to prove that Demand Notice was not received by the Corporate Debtor was not on the Petitioner as the notice was duly sent through registered post and it can be safely presumed that the same must have been received by the Corporate Debtor. Simply because in the Email dated 3<sup>rd</sup> October, 2020, it is stated that the notice was served upon the Corporate Debtor on 10<sup>th</sup> February, 2020, it cannot be presumed that the notice was not served nor on this ground any adverse inference can be drawn against the Petitioner.
21. As regards the second contention raised on behalf of the Corporate Debtor that no date of default is mentioned in the Petition, it is pointed that the date of default is duly mentioned in the Part-4 of the Petition as 1<sup>st</sup> January, 2019 which is stated to be the initial date of default. Therefore, it cannot be said that the Petition is bad for non-mentioning of the date of default.
22. Further, the argument raised by the Counsel for the Corporate Debtor that the Demand Notice dated 6<sup>th</sup> February, 2020 is without any authorization is also not tenable. There is no requirement under the law that the director/ employee of the company cannot issue the Demand Notice u/s. 8 of the Code without authorization. Therefore, simply because the resolution for

filing the present Petition was passed on 1<sup>st</sup> October, 2020 does not by itself render the notice illegal or unauthorized.

23. Lastly, it has been argued that the Form- 5 of the Petition is not on the prescribed Performa. Even this contention raised on behalf of the Corporate Debtor is not sustainable considering the fact that the entire requisite information has been given in the Petition and the Counsel for the Corporate Debtor has not been able to point out as to what vital information has been left out on the basis of which can it be said that the Petition is incomplete. Therefore, this contention raised on behalf of the Corporate Debtor is also liable to be repelled.
24. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is evident that the Corporate Debtor has defaulted in repayment of Operational Debt to the tune of Rs. 2,55,88,486/- giving a cause of action to the Petitioner to invoke the provisions of Section 9 of the Code. Therefore, we are of the considered view that this Petition deserves to be admitted. It is ordered accordingly in following terms:

**ORDER**

- a. The above Company Petition No. 1344/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sebros Steels Private Limited.**
- b. **Mr. Amit Chandrashekhar Poddar**, having registration No. IBBI/IPA-001/IP-P00449/2017-2018/10792, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 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.

- 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, CP (IB) No. 1344 of 2020 is **admitted**.

SD/-

**Anuradha Sanjay Bhatia**  
**Member (Technical)**

SD/-

**Kuldip Kumar Kareer**  
**Member (Judicial)**