

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V**

CP (IB) No.212/MB-V/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

M/s Kamal Metal Corporation

...Operational Creditor/Applicant

V/s

Shri Vaijanath Industries Private Limited

[CIN: U74900PN2008PTC132227]

...Corporate Debtor/Respondent

Order Dated: 06.06.2023

Coram:

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

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

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Pramodkumar Ladda, Advocate.

For the Respondent(s) : Mr. Jigarkumar Gandhi, Advocate.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. This is an application bearing C.P. (IB) No. 212/MB-V/2021, filed by M/s Kamal Metal Corporation, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against Shri Vaijanath Industries Private Limited, the Corporate Debtor.

2. The Application is filed by Mrs. Kamal Narayan Makam, Proprietor of Operational Creditor, vide its Authority Letter dated 15.12.2020 claiming total outstanding amount of Rs.1,21,73,639/- (Rupees one crore twenty-one lakh seventy-three thousand six hundred thirty-nine only) which includes:
 - 2.1 Principal amount of Rs.1,01,91,061/-; and
 - 2.2 Interest amount of Rs.19,82,578/-
3. The Date of Default is stated to be 11.03.2020 in Part-IV of the Petition. The Petition is filed on 06.01.2021.
4. The Operational Creditor is a Proprietary Firm, engaged in the business of providing Carbon and Alloy Steel Bars in Pune. The case of the Operational Creditor is that:
 - 4.1 The Operational Creditor had provided the above-mentioned goods to the Corporate Debtor. Pursuant to this, the Operational Creditor had raised the outstanding invoices from 08.05.2019 till 10.01.2020, for total amount of Rs.1,07,03,874/-, in which the balance outstanding amount, as on 31.10.2020, was Rs.1,01,91,061/- as per the Ledger Account Statement.
 - 4.2 The Operational Creditor issued a Legal Notice dated 27.09.2020, calling upon the Corporate Debtor to pay the outstanding dues, to the Operational Creditor. The Operational Creditor had also issued Demand Notice in Form-4, dated 31.10.2020, upon the Corporate Debtor, for claiming total outstanding of Rs.1,21,73,639/- to be payable within 10 days from the date of this Demand Notice. The Operational Creditor has filed the NeSL Report dated 28.12.2020.

4.3 The details of outstanding debt are as follows:

Invoice Date	Invoice Amount (in Rs.)	Outstanding Amount (in Rs.)	Due Date	Total Payment Received (in Rs.)	Payment Received Date
08.05.2019	20,60,705	15,47,891	07.06.2019	5,00,000	22.02.2020
25.05.2019	21,48,612	21,48,612	24.06.2019	-	-
20.07.2019	14,23,549	14,23,549	19.08.2019	-	-
26.07.2019	17,13,165	17,13,165	24.09.2019	-	-
30.11.2019	17,04,840	17,04,840	29.01.2020	-	-
10.01.2020	16,53,003	16,53,003	10.03.2020	-	-
Total	1,07,03,874	1,01,91,061		5,00,000	

4.4 The Operational Creditor has filed Ledger Accounts of the Corporate Debtor. The Operational Creditor has also filed the NeSL Report dated 28.12.2020 at pp 145-151 of the Petition.

5. The Corporate Debtor has not filed its reply in the present case before the Bench.

Findings/Observations:

6. We have heard the arguments of the Learned Counsel for the Operational Creditor and perused the records.

6.1 The Operational Creditor has supplied Carbon and Alloy Steel Bars to the Corporate Debtor, in Pune. For the purpose of said supply, the Operational Creditor raised certain invoices upon the Corporate Debtor from 08.05.2019 till 10.01.2020, for an aggregate amount of Rs.1,07,03,874/-. Out of the total outstanding amount, the Corporate Debtor has paid Rs.5,00,000/- to the Operational Creditor on 22.02.2020 and

the balance outstanding amount is defaulted by the Corporate Debtor.

- 6.2 This Bench has also perused the NeSL Report dated 28.12.2020 filed by the Operational Creditor, wherein the Default of Rs.1,21,73,639/- is reflecting as the default amount, which is “due and payable” to Operational Creditor.
- 6.3 On 09.04.2021, the Bench ordered Court Notice to be served upon the Corporate Debtor, by the NCLT Registry, to appear on 01.07.2021 and file its reply in the matter. On 01.07.2021, none appeared on behalf of the Corporate Debtor. However, counsel for the Operational Creditor submitted before the Bench that he had received an Email from the Corporate Debtor side stating that they are looking forward to settling the matter and are in a dialogue with the banker to get financial assistance. Thereafter, the matter was again listed on 13.12.2021. None appeared on behalf of the Corporate Debtor. However, the counsel for the Operational Creditor submitted before the Bench that they have received an Email from the Corporate Debtor acknowledging the liability and offering to settle the outstanding debt.
- 6.4 The matter was listed on 20.09.2022. This Bench ordered Court Notice dated 27.09.2022, to be served by the NCLT Registry, upon the Corporate Debtor to appear on 14.11.2022 and file its reply in the matter. The said Court Notice was delivered upon the Corporate Debtor on 11.10.2022. The matter was listed for hearing on 14.11.2022 and 22.12.2022. Due to paucity of time the matter adjourned to 21.02.2023, wherein Adv. Mr.

Jigarkumar Gandhi appeared on behalf of the Corporate Debtor and undertook to file the reply and vakalatnama on behalf of the Corporate Debtor. The matter was again listed on 17.04.2023 for final hearing. However, none appeared on behalf of the Corporate Debtor. Neither any reply was filed.

- 6.5 The Counsel for the Operational Creditor was heard. On the basis of averments made by the Operational Creditor, which have remained uncontroverted, this Bench is of the opinion that amount of Rs.1,01,91,061/- is “due and payable” by the Corporate Debtor to the Operational Creditor on account of supply of Goods which qualifies as Operational Debt. and this Bench finds no reason not to admitting the claim of the Operational Creditor filed under Section 9 of the Code. Accordingly, this Petition admitted on the following terms:

ORDER

- a. The Application bearing C.P. (IB) No. 212/MB-V/2021 filed by M/s Kamal Metal Corporation, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against Shri Vaijanath Industries Private Limited, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against **Shri Vaijanath Industries Private Limited**.
- b. This Bench hereby appoints **Mr. Vikas Gopichand Khiyani**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-02738/2022-2023/14194, Contact: 9975001490, 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.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.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)