

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No.41/9/NCLT/AHM/2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.01.2021

Name of the Company: Padvaya Alloy.
V/s
Viksun Steel & Alloy Pvt. Ltd.

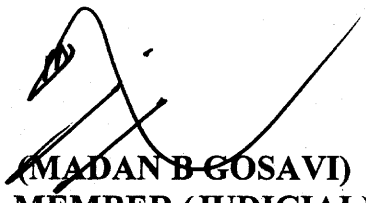
Section: 9 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 27th day of January, 2021.

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

CP (IB) No.41/9/NCLT/AHM/2019

In the matter of:

M/s. Padvaya Alloy
Through its proprietor, M/s Nisha Agarwal,
7, A-One Estate, ASPIAF Mill Compound,
Nr. Keval Kantha,
Rakhiyal,
Ahmedabad – 380023.

... Operational Creditor

V/s.

M/s. Viksun Steel and Alloy Pvt. Ltd.
(CIN: U27106GJ2014PTC078482)
16, Ashish Estate,
Near Jagnath Estate,
Rakhial, Ahmedabad – 380023.

... Corporate Debtor

**Date of Hearing: 12th January, 2021
Date of Pronouncement: 27th January, 2021**

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Learned PCS Mr. Vinod Kumar Shah, for the Operational Creditor.

Learned Counsel Mr. Vinay Bairagra, for the Corporate Debtor.

ORDER

**[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)**

1. M/s. Padvaya Alloy – a proprietary firm through its proprietor Mrs. Nisha Agarwal filed this application under Section 9 of the Insolvency and Bankruptcy Code, 2016, against M/s. Viksun Steel and Alloy Pvt. Ltd, the Corporate Debtor to initiate the Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying operational debt of Rs.34,99,846/-.
2. The Operational Creditor states that, in between 13.05.2015 to 29.09.2017, it had sold and supplied round iron bars to the Corporate Debtor. Since, the Corporate Debtor failed to pay the outstanding amount, the Operational Creditor sent the Corporate Debtor demand notice dated 10.12.2018 under Section 8 of the I.B. Code.
3. It is stated that the Corporate Debtor received the notice raising false defense therein and did not pay the debt. Hence, this application is filed to initiate the CIRP of the Corporate Debtor under Section 9 of the I.B. Code.
4. The notice of this application was duly served to the Corporate Debtor. One of its director Mr. Vivek Kedia filed affidavit in reply. He flatly denied the fact that the

Corporate Debtor is liable to pay any debt to the Operational Creditor. He Contended that in-fact, the Corporate Debtor had supplied the Operational Creditor certain goods worth Rs.43,94,826/- Mr. Anup Agrawal (husband of Mrs.Nisha Agarwal) had issued in favour of the Corporate Debtor, a cheque for this amount. However, that cheque was dishonoured. The Corporate Debtor has filed a complaint under Section 138 of the Negotiable Instrument Act against Mr. Anup Agrawal. According to the Corporate Debtor, the Operational Creditor had filed false complaint against the Director of the Corporate Debtor. After thorough investigation, the Police closed the case having found no substance therein. The Operational Creditor had approached the Hon'ble Gujarat High Court against that order but Hon'ble Gujarat High Court also dismissed the writ-petition by the reply to the admission notice of the Operational Creditor, the Corporate Debtor raised above dispute. He prayed that the application may be rejected.

5. We heard the Learned Counsel Mr. Vinod Kumar Shah for the Operational Creditor and the Learned Counsel Mr. Vinay Bairagra, for the Corporate Debtor at length. We perused the evidences on record.

6. There are two set of facts, wherein, the controversy rests in between parties to -

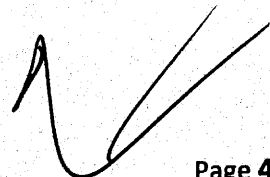
(i) the Operational Creditor supplied goods to the Corporate Debtor and for non-payment of

operational debt and after serving notice under Section 8 of the I.B. Code the Operational Creditor filed this application under Section 9 of the I.B. Code and,

- (ii) Mr. Anup Agrawal - husband of Mrs. Nisha Agarwal - the proprietor of Operational Creditor, had issued in favour of one of the Director of the Corporate Debtor one cheque. It was dishonoured and that director filed a complaint under Section 138 of the Negotiable Instrument's Act.

7. At the outset, we noted that above two facts are not interconnected. If the Operational Creditor's husband had issued any cheque in favour of one of the directors of the Corporate Debtor, for this reason, this proceeding under Section 9 of the I.B. Code does not get affected. However, the Corporate Debtor came out with the defense that the cheque in dispute was issued by the husband of the Corporate Debtor towards the payment of the price of goods supplied by the Corporate Debtor to the Operational Creditor.

8. This defense raised by the Corporate Debtor appears to be false for a simple reason that the Corporate Debtor did not produce on record any invoice to show that so called goods were sold and supplied by the Corporate Debtor to the Operational Creditor.



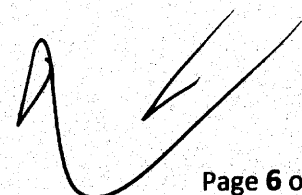
9. The Corporate Debtor produced on record a copy of GST invoice but it does not refer the name of the Operational Creditor at all.
10. We are not concerned with the proceedings under Section 138 of the Negotiable Instrument's Act filed against Mr. Anup Agrawal. That prosecution may be genuine or may be not genuine. But we can certainly hold that the defense raised by the Corporate Debtor on the basis of such dis-honoured cheque is not tenable.
11. Even, the evidence on record shows that in-fact Mrs. Nisha Agrawal had filed a Police complaint against the director of the Corporate Debtor, alleging therein forgery relating to cheque in dispute. The Police did not take cognizance thereof. However, it is proved by the evidence on record that the cheque was not issued by the Operational Creditor at all.
12. The cheque may be towards some other transactions in between the husband of the Operational Creditor and the Director of the Corporate Debtor. We hold with certainty that it has nothing to do with the operational debt, recoverable by the Operational Creditor from the Corporate Debtor.
13. Considering the evidence on record we hold that the Operational Creditor had sold and supplied goods to the

Corporate Debtor. The Corporate Debtor did not pay the debt, in-spite of the receipt of demand notice.

14. The Operational Creditor had filed affidavit stating that the debt claimed has not been received from the Corporate Debtor and thereby complied the provisions of Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016.
15. The Operational Creditor has suggested the name of Insolvency Professional, Mr. Vinod Tarachand Agrawal, Registration No.IBBI/IPA-001/IP-P00641/2017-18/11090, for the appointment of the Interim Resolution Professional. The proposed RP has also given his consent (Annexure-E, Pg.81) and submitted that there are no disciplinary action is pending with IBBI or ICAI.
16. The application is defect free Hence, we admit the Corporate Debtor in the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 by following order:

ORDER

1. The Corporate Debtor, **M/s. Viksun Steel and Alloy Pvt. Ltd.** is hereby admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.



2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - 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 Securitisation and Reconstruction of Financial 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.

3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under subsection (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the

case may be.

4. We hereby appoint **Mr. Vinod Tarachand Agrawal, having registration no. IBBI/IPA-001/IP-P00641/2017-18/11090, email: ca.vinod@gmail.com, Address: 204, Wall Street-1, Nr. Gujarat College, Ellis Bridge, Ahmedabad - 380006** to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:
5. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
6. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate

Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

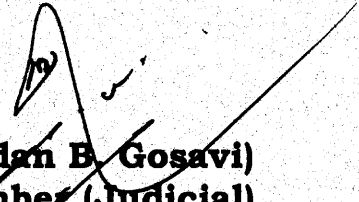
7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks **from the date of this order** for the purpose of smooth conduct of Corporate Insolvency Resolution Process ("CIRP") and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary

formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

10. Accordingly, **CP (IB) No.41/9/NCLT/AHM/2019** stands admitted.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

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