

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP No.3806 (IB)/MB/C-IV/2018

Under Section 9 of the IBC, 2016

In the matter of

ISMT Limited

...Operational Creditor

v/s.

Asmi Metal Products Private limited.

...Corporate Debtor

Order Delivered on 14.10.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: M/s. Dhaval Vussonji & Associates.

For the Respondent: None Present

ORDER

Per: Rajasekhar V. K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by ISMT Limited (CIN: L27109PN1999PLC016417), Company limited by shares ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Asmi Metal Products Private limited ("the Corporate Debtor").
2. The Corporate Debtor is a company incorporated on 27.11.1986 under the Companies Act, 1956, as a private limited company with the Registrar of Companies, Maharashtra, Pune. Its Corporate Identity Number (CIN) is U28991MH1986PTC041696. Its registered office is at Gat No. 110 to 112 and Gat No. 115 to 117, Indrayani Industries

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Estate, Takawe, Pune, 412206. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 23.08.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.54,81,142/- (Rupees Fifty-Four Lakh Eighty-One Thousand One Hundred and Forty-Two only) along with interest of Rs.32,47,764/- (Rupees Thirty-Two Lakh Forty-Seven Thousand Seven Hundred and Sixty-Four only) (**Annexure 'III'** to the petition at p.25).
4. The Operational Creditor states that the Operational Creditor had filed a special summary suit bearing suit No.56/2012 on 21.06.2012 before the Learned VIII Civil Judge Sr. Div. at Pune for recovery of arrears of Rs.54,81,412/- from the Corporate Debtor. The Operational Creditor had supplied goods to the Corporate Debtor and raised invoices accordingly. Further stated that the Corporate Debtor failed to remit the said invoices inspite of several reminder letters and the Corporate Debtor was served with the summons for appearance before the court, but the Corporate Debtor failed to appear. That court passed judgment and decree dated 18.06.2013 (**Annexure 'II'** to the petition at pp.15-24).
5. The total Due amount and interest computation as follows:

Sr. No.	Relevant dates for interest	Due date	Decree Amount (Rs.)	Over due days	Interest rate (p.a.)	Interest amount (Rs.)
1	29.08.2011	21.06.2012	54,81,142/-	297	21%	9,36,600/-

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2	22.06.2012	18.06.2013	54,81,142/-	361	12.50%	6,77,634/-
3	19.06.2013	06.06.2018	54,81,142/-	1813	6%	16,33,530/-
	Total					32,47,764/-
	Total Decree amount					54,81,142/-
	Cost of Legal Fees					1,14,670/-
	Total Amount Due					88,43,576/-

6. The Operational Creditor stated that the Corporate Debtor filed an application bearing No. M.A. No. 774/2014, before the Learned 10th Jt. Civil Judge S.D. at Pune to set aside the judgment and decree dated 18.06.2013 and the same was rejected by that court vide order dated 20.10.2016 (**Annexure 'IV'** to the petition at pp.26-35). Further the Corporate Debtor filed review application bearing No.1179/2016 before the Learned Civil Judge Senior Division, Pune, for reviewing the order dated 20.10.2016 and the same was also rejected by the said court vide order dated 27.04.2018 (**Annexure 'V'** to the petition at pp.36-53).

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7. The Operational Creditor had served a Demand Notice in Form 3 dated 06.06.2018 to the Corporate Debtor (**Annexure 'I'** to the petition at pp.7-14) in terms of section 8 of the IBC. The Operational Creditor also sent Email dated 07.06.2018 demanding Operational Debt to Asmi Metal Products Private Limited (**Annexure 'VII'** to the petition at p.149). Proof of service of Demand Notice has been attached (**Annexure 'VIII'** to the petition at p.150). The Corporate Debtor has not sent a reply to the Demand Notice. The Corporate Debtor has also not filed a reply to the Petition.
8. Since the Corporate Debtor failed to make a payment, the Operational Creditor has filed this Petition on 23.08.2018 before this Adjudicating Authority.
9. We have heard the Learned Counsel for the Operational Creditor and perused the record.
10. The Petition is filed by Rajiv Goel, Chief Financial Officer, of ISMT Limited, duly authorised by the Board Resolution dated 13.11.2013 (**Annexure 'XIII'** to the petition at p.164).
11. It is noticed from the Petition that the Operational Debt arises out of a civil suit whose details have been given in para 4, 5 & 6 supra. There is no pre-existing dispute regarding the unpaid operational debt and the principal amount of Rs.54,81,142/- (Rupees Fifty-Four Lakh Eighty-One Thousand One Hundred and Forty-Two only) along with interest of Rs.32,47,764/- (Rupees Thirty-Two Lakh Forty-Seven Thousand Seven Hundred and Sixty-Four only) and date of default is 29.08.2011. Thus, the existence of both debt and default is established.

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12. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In the view of this, the Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.
13. The Operational Creditor has proposed the name of Mr. Milind Kasodekar, Registration No. IBBI/IPA-002/IP-N00116/2017-18/10285, as Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of the Certificate of Registration (**Annexure 'XI'** to the petition at p.159).
14. It is, accordingly, hereby ordered as follows: -
 - (a) The petition filed by **ISMT Limited** under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the corporate debtor i.e. **Asmi Metal Products Private limited** (CIN: U28991MH1986PTC041696), is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.
- (d) 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.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

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Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr. Milind Kasodekar, Registration No. IBBI/IPA-002/IP-N00116/2017-18/10285**, having address at MRM Associates, Company Secretaries 77, Vijayanagar Colony, 2147, Sadashiv Peth, Pune 411030, Email Id:Milind.kasodekar@mrmcs.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses towards issue of public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email **within two days** from the date of this Order.

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- (j) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days.**

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)
14.10.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)