

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 182/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

- And -

In the matter of:

M/s Aanchal Ispat Limited, a company within the meaning of the Companies Act, 2013 (CIN L27106WB1996PLC076866), having its registered office at J.L. No.5, National Highway No.6, Chamrail, Howrah - 711 114;

... .. **Operational Creditor**

- And -

M/s Salagram Power and Steel Private Limited, a company within the meaning of the Companies Act, 2013 (CIN U31100WB2011PTC168115), having its registered office at 29, Ganesh Chandra Avenue, Kolkata - 700 013.

... .. **Corporate Debtor**

Coram: 1. Madan B. Gosavi, Hon'ble Member (J)

2. Virendra Kumar Gupta, Hon'ble Member (T)

For Operational Creditor:

1. Mrs. Manju Bhuteria, Advocate
2. Ms. Urmila Chakraborty, Advocate
3. Mr. Aasish Choudhury, Advocate

4. Mrs. Aindrila Basu, Advocate

For Corporate Debtor:

1. Mr. Rajarshi Dutta, Advocate

Date of Hearing: 16th January, 2020
Date of Pronouncement of Order: 22. 01. 2020

ORDER

Per Virendra Kumar Gupta (T)

1. This application has been filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, "IBC, 2016") by M/s. Aanchal Ispat Limited - the Operational Creditor for initiation of Corporate Insolvency Resolution Process (in short "CIRP") against M/s. Salagram Power and Steel Private Limited - the Corporate Debtor as the Corporate Debtor has committed default in payment of outstanding debt. The amount claimed in default is Rs.2,51,55,999/- plus interest @ 24% per annum from the date of default till realisation of the dues.
2. The facts, in brief, are that the Operational Creditor is a manufacturer and trader of iron and steel products. In July 2017, there were negotiations between Operational Creditor and Corporate Debtor to supply goods. Based upon this understanding, the Operational Creditor supplied goods from November 2017 to December 2017 which were duly received and acknowledged by the Corporate Debtor. The Corporate Debtor also filed GST Returns wherein purchase of such goods were also shown. The total supplies were worth Rs.2,51,00,000/- approximately. The Operational Creditor issued a demand letter on May 25, 2018 to pay the impugned sum alongwith interest thereon. However, no payment was made. Subsequently, notice under section 8 was issued on August 4, 2018. Thereafter, this petition was filed.


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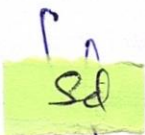
3. The Ld. Counsel appearing on behalf of the Operational Creditor drew our attention to the authority by way of board resolution to file and proceed with the application. The Ld. Counsel drew our attention to tax invoices raised, copies of the same being placed from page 29 to 48 of the Paper Book. She also drew our attention to the GSTR. Thereafter, she drew our attention to the various correspondences between the parties to show that efforts were made to realise the amount. She drew our attention to page 10 & 11 of the reply of the Corporate Debtor to show the outstanding amount and last payments made in June / July and August 2019.
4. The Ld. Counsel for the Corporate Debtor submitted that the settlement negotiations were in process and Rs. 70,00,000/- had been paid in pursuance thereof, hence, this petition was nothing but a pressure tactic. It was also claimed that no interest clause existed and invoices were agreement wherein no such stipulation had been made. Hence, the claim of interest was without any legal basis. It was also contended that there was no specific schedule of payment, hence, debt was not due and payable at the moment.
5. In the rejoinder, it was contended that letter dated August 28, 2019 was a fabricated document and therefore, no reliance could be placed thereon. It was further contended that this settlement claim, in fact, supported the case of the Operational Creditor as it amounted to admission of liability.
6. We have considered the submissions made by both sides and the material on record. It is noted that no agreement to supply exists and supplies have been made based upon the oral understanding. The supplies are not in dispute nor the amount of invoices is in dispute. The invoices contain a clause for payment of interest, hence, the contentions of the Corporate Debtor in this regard are rejected. There does not exist a dispute prior to issue of notice under section 8 of IBC, 2016. Hence, *prima facie*, this application is liable to be admitted. We further find that Corporate Debtor has made payment in part and also claimed that

settlements were being made to make payment which fact shows that the amount has already fallen due for payment. Hence, the claim of the Corporate Debtor that the amount is not due as no period was stipulated is devoid of any merit.

7. The petition is otherwise complete and complies with all the requirements of sections 8 & 9 of IBC, 2016. The name of Insolvency Resolution Professional ("IRP") is not required to be proposed for application under section 9, hence, we will appoint a qualified professional from the panel of IBBI as IRP.
8. We admit this petition and order as under:-

ORDER

- i) The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Salagram Power and Steel Private Limited, is hereby admitted.
- ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:



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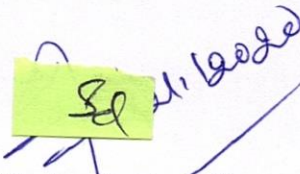
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the corporate 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.


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- x) **Mr. Jitendra Lohia**, IRP Registration No. IBBI/IPA-001/IP-P00170/2017-18/10339, Mob. No: 9874044000, E-mail: jitulohia@knjainco.com, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Financial Creditor to pay sum of Rs. 2,00,000/- (Rupees Two Lakh only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- Xiii) List the matter on 2nd March, 2020 for the filing of the progress report.
- xiii) Registry is hereby directed under section 7(7) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.
- ix) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 22nd day of January, 2020.