

**IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI**  
**COURT-III**

**IB-622/ND/2018** filed under **Section 9** of the IBC, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

**In The Matter Of Rajat Wires Private Limited**

**Sunflag Iron and steel Company**  
Versus  
**Rajat wires Private Limited**

....Operational Creditor

....Corporate Debtor

Order delivered on 14<sup>th</sup> February, 2020

**CORAM:**

CH. MOHD. SHARIEF TARIQ  
Member (Judicial)

*For Operational Creditor: Mr. Ankur S Kulkarni, Mr. Nirnimesh Dube*

*For Corporate Debtor: Mr. K. B Sachdeva, M.D. (In person)*

**ORDER**

1. The Counsel for the Operational Creditor is present. Representative for the Corporate Debtor, who is one of the Directors, is present. As seen from the record a number of opportunities were provided to the Corporate Debtor for settlement, if any. However, till date the Corporate Debtor has been seeking adjournments but no concrete step has been taken for settlement of the dues claimed by the Operational Creditor.

2. Under Consideration is an Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") for initiating Corporate Insolvency Resolution Process (hereinafter referred as

“CIRP”) against the Corporate Debtor, declaring moratorium and appointing Interim Resolution Professional (hereinafter referred as “IRP”).

3. It is submitted by the Counsel for the Operational Creditor that an amount of Rs.1,31,62,909/- along with interest is outstanding which the Corporate Debtor has failed to pay. The background of the claim is that the Operational Creditor is engaged in the business of manufacturing and sale of special steel and alloy steel and is supplying the material to the entities for their business purpose, and pursuant to which the Corporate Debtor has supplied the material and the invoices were raised for the same from time to time. The copies of the invoices are placed on record from pages 18 to 24 of the typed set filed with the Petition. The Ld. Counsel for the Operational Creditor also filed a separate compilation of the invoices on 29.05.2019, which is placed on record and shall form part of this Application.

4. It is submitted by the Counsel for the operational Creditor that part payments were made by the Corporate Debtor. Thereafter, the Corporate Debtor a stopped payment on 28.03.2018 and e-mail communication was sent by the Corporate Debtor to the Operational Creditor assuring therein that the amount due will be paid by April/May, 2018. However, the total outstanding has not been paid.

5. The Operational Creditor has sent notice dated 28.03.2018 in Form-3, placed at page 32 of the typed set filed with the Petition, wherein the details of the outstanding amount are given, to which no reply has been given by the Corporate Debtor. The Operational Creditor has also complied with the provisions of Section 9(3) (b) & (c) by placing on record an affidavit which is placed at page 55 of the typed set filed with the Petition and in para 2 of the

affidavit it is recorded that no notice was given by the Corporate Debtor relating to a dispute of the unpaid operational debt. The statement of outstanding, interest calculation as on 28.03.2018 is placed on record. In short, the Operational Creditor has complied with the requirements of Sections 8 and 9 of the Code.

6. The Corporate Debtor has filed a reply on 9.04.2018 stating that the notice contemplated under Section 8 of the Code is not valid and is not maintainable. It is also stated that there is no compliance of Section 9(3) (b) & (c) of the Code and the Application has been filed without due authority and the Operational Creditor is charging interest at unreasonable rate and the interest did not qualify as an operational debt under the Code, the slap of the interest upon the Corporate Debtor is exceedingly unfair and the Corporate Debtor is taken by surprise. It is further submitted in the reply that the Application filed under Section 9 suffers from deficiency that goes to the root of the matter and the Operational Creditor has filed the present Application in disregard of the statutory description of the Code and prayed to dismiss the same. The representative of the Corporate Debtor who is one of the Directors has been given an opportunity to raise any further defence. However, he pleaded that the Corporate Debtor has the intention to settle the matter but there does not appear any concrete step for the settlement. The plea is taken to buy the time.

7. The Ld. Counsel for the Operational Creditor in rebuttal has submitted that there is compliance of Section 9(3)(C) as laid down by the Apex Court in the matter of *Macquarie Bank Limited vs. Shilpi Cable Technologies Ltd.* *reported in (2018) 2 SCC 674* (para 19). As to the Authority for filing the Petition, Para 7 of the rejoinder provides that the claim of the Corporate Debtor is denied being baseless as the Power of Attorney authorizing the representative of the Operational Creditor was executed by the Chairman and Managing Director of the Operational Creditor being supported by the Board Resolution dated 21.05.2014. The Ld. Counsel for the Operational Creditor has shown the certified true copy of the Board Resolution in the open court on the basis of which the Power of Attorney was given by the Managing Director of the Company in favour of Mr. Pavan Kumar, who has signed the present Petition. Therefore, the issue raised by the Corporate Debtor stands rejected. Further, the requirement of Section 9 (3) (b) has also been met by the Operational Creditor.

8. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. Therefore, Application is **admitted** in terms of Section 9(5) of the IBC, 2016 and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.

9. The moratorium is declared which shall have effect from the date of this Order until the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- (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 (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.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

11. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as IRP. Therefore, this Bench based on the list provided by the IBBI hereby appoints Mr. Kanti Mohan Rustagi, as an IRP subject to the condition that no disciplinary proceedings are pending against the IRP. The IRP is directed to take charge of the Respondent Corporate

Debtor's management immediately. He is directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed. The details of IRP are as under:

Name: Mr. Kanti Mohan Rustagi

Registration number: IBBI/IPA-002/IP-N00097/2017-18/10240

E-mail: kanti.rustagi@patanjaliassociates.com

Mobile No.: 9871306829

12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the IBC, 2016.

13. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

14. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor with immediate effect.

15. The Order is dictated and pronounced in the open court in the presence of the Ld. Counsel for the Operational Creditor and representative of the Corporate Debtor.

Sd-

(CH. MOHD. SHARIEF TARIQ)

MEMBER (JUDICIAL)

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