

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI

IB-2013/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Yogesh Gopalakrishana Nayak**  
Proprietor of Vinayaka Enterprises  
D/24, Shanti Campus,  
MMM Road, Nahur, Mulund(W)  
Mumbai-40080.

...Applicant

**Versus**

**Solo Metals Private Limited**  
PU-108, Pitampura,  
New Delhi-110034.

...Respondent

**Coram:**

**DR. P.S.N. PRASAD**  
Hon'ble Member (Judicial)

**DR. V.K. SUBBURAJ**  
Hon'ble Member (Technical)



Counsel for Applicant: Mr. Sanajay Kumar Yadav, Advocate  
Counsel for the Respondent: Maneesh Gambhir, Advocate

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C.P. IB-2013/ND/2019  
Yogesh Gopalakrishana Nayak vs. Solo Metals P. Ltd.

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24/12/2019

## ORDER

Date:17.12.2019

1. This is an application filed by the Applicant Shri Yogesh Gopalakrishana Nayak, proprietor of M/s Vinayaka Enterprises seeking to initiate corporate insolvency resolution professional ("CIRP") of the Respondent M/s Solo Metals (P) Limited, under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 56,25,128/- towards the supply of scrap materials to the Respondent. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Respondent who is involved in the business of manufacturing of mild steel billets approached the Applicant for the supply of M.S.Scrap and wire rope/goods by the Applicant to the Respondent. The Respondent represented to the Applicant that they have a considerable reputation in the market and have a good business sense and that all the terms and conditions will be complied with and the payments will be timely made.
- ii. Believing the aforesaid representation, the Applicant started supplying various goods/material to the Respondent from



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17.08.2018 until 29.03.2019. As on 29.03.2019, the Applicant had supplied goods worth Rs. 1,14,28,534.86/- for which the Respondent made a payment of Rs. 62,98,911/- and Rs. 51,29,632/- were outstanding.

- iii. On 25.04.2019 the Respondent was obliged to pay a sum of Rs. 50,26,000/- without interest and despite assuring the Applicant of making timely payments, the Respondent committed default in paying the outstanding amount. And, as on the aforesaid date Rs. 50,26,000/- (excluding interest) was due towards the Applicant.
- iv. The Applicant had sent a Form of Demand/Invoice of Demanding payment under the Code in Form 3 dated 29.07.2019, which was received by the Respondent.
- v. The Respondent after receiving the aforesaid demand notice replied vide letter dated 5th August, 2019 and has not raised any dispute on the default committed by them and requested the Applicant to grant some more time to them on the pretext that their financial condition is in crisis. However, the Applicant has reasons to believe that the Respondent is making false representation and is deliberately trying to avoid the payment.



2. Consequent to the issuing of notices by the Applicant as well as by this Tribunal the Respondent filed its reply on 19.09.2019 in which the Respondent has contended as follows:

- i. Last year the Respondent suffered heavy losses but continued running the affairs of the company in a hope of revival of the company.
- ii. On 28.08.2019, State Bank of India declared account of the Respondent as non-performing assets ("NPA").
- iii. Presently the Respondent has no any resources to repay the debt of the Applicant because the account of the Respondent has been declared NPA.

3. We have perused the documents filed by both the parties and heard the arguments made by the counsel for both the parties. In the replies given by the Respondent to the application filed by the Applicant as well as to the statutory notice under Section 8 of the Code sent by the Applicant, the Respondent has clearly admitted the debt and expressed its inability to settle the claim due to financial crisis faced by the Respondent. In view of the clear admission made by the Respondent this Tribunal comes to the conclusion that the Applicant has established the existence of debt and default on part of the



Respondent in a very clear manner. In view of the above reasoning this Tribunal initiates CIRP of the Respondent with immediate effect.

4. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.



- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) 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.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”
5. The interim resolution professional (“IRP”) named in the list provided by IBBI is Tarun Jaggi (e-mail – [tarunjaggi@gmail.com](mailto:tarunjaggi@gmail.com)) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.



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**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

Deepak

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**(Dr. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**