

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) 2131/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of
Mehsons Steel Private Limited
[U74999MH2017PTC302551]
...Operational Creditor
Versus

Shree Oshiya Ferro Alloys Private
Limited
[CIN: U52100MH2012PTC225753]
Corporate Debtor

Order Delivered on 16.01.2020

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr. Manoj Kumar Mishra,
Advocate
For the Corporate Debtor : Mr. Rishabh Mishra

ORDER

Per: Ravikumar Duraisamy, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mehsons Steel Private Limited (the Operational Creditor"), a Company within the meaning of section 2(20) of the Companies Act, 2013, having CIN



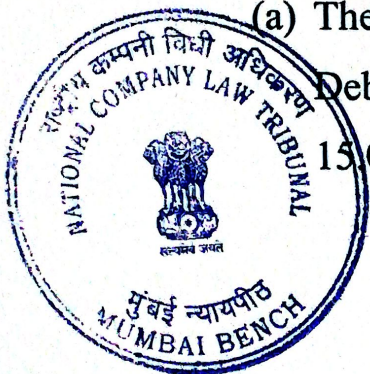
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U74999MH2017PTC302551, and represented by its Director, Mr. Ashish Mehta, on the basis of Board Resolution dated 10.05.2019 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Shree Oshiya Ferro Alloys Private Limited ("the Corporate Debtor"). A copy of the Board Resolution has been placed at Annexure '1' p.1 of the Petition.

2. The Corporate Debtor is a private company limited by shares and incorporated on 05.01.2012 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U52100MH2012PLC225753. Its registered office is at Office No. A/402, Floor No. 4, Pranik Chamber Owner Co-operative Prem Society Limited, Saki Vihar Road, Andheri East, Mumbai-400072, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 04.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of ₹ 25,15,817.00 (Rupees twenty-five lakh fifteen thousand eight hundred and seventeen only) as the principal amount. This is the amount claimed as per p. P-7 of the petition.
4. The case of the Operational Creditor is as follows: -

(a) The Operational Creditor supplied TMT Bar to the Corporate Debtor in terms of a Purchase Order No. 19-20/008 dated 15.02.2018 of the value of ₹ 1,12,18,968.00 (Rupees one crore



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twelve lakh eighteen thousand nine hundred sixty-eight only). As per the goods provided by Operational Creditor, the Operational Creditor raised eleven invoices as follows: (at page 3-13 of the Petition):

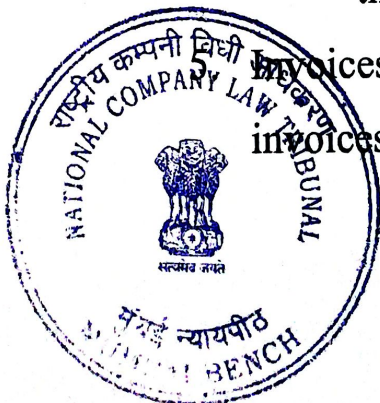
- (1) Invoice No. 29 dated 25.02.2019 for a sum of ₹ 10,55,469.00. Invoice copy is at p. 3;
- (2) Invoice No. 30 dated 25.02.2019 for ₹ 8,96,041.00 Invoice copy is at p.4;
- (3) Invoice No. 31 dated 25.02.2019 for ₹ 11,16,484.00 Invoice copy is at p.5;
- (4) Invoice No. 32 dated 25.02.2019 for ₹ 10,22,501.00 Invoice copy is at p.6;
- (5) Invoice No.33 dated 25.02.2019 for ₹ 10,90,405.00 Invoice copy is at p.7;
- (6) Invoice No.34 dated 25.02.2019 for ₹ 8,60,121.00 Invoice copy is at p.8;
- (7) Invoice No.35 dated 25.02.2019 for ₹ 9,72,311.00 Invoice copy is at p.9;
- (8) Invoice No.36 dated 25.02.2019 for ₹ 10,04,294.00 Invoice copy is at p.10;
- (9) Invoice No.37 dated 25.02.2019 for ₹ 9,90,025.00 Invoice copy is at p.11;
- (10) Invoice No.38 dated 25.02.2019 for ₹ 11,48,468.00 Invoice copy is at p.12;



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- (11) Invoice No.39 dated 25.02.2019 for ₹ 10,50,056.00 Invoice copy is at p.13;
- (b) The date of default is stated to be 28.03.2019 at p. P-8 of the Petition
- (c) The Operational Creditor had raised 11 invoices for supply of TMT Bars for a total value of Rs. 1,12,06,175/- (Rupees one crore twelve lakh six thousand one hundred seventy-five only) during February, 2019. (pp. P-5 & P-6 of the Petition)
- (d) Out of the total amount, following four payments were made as an advance:
- ₹ 16,45,257.00 dated 14.12.2018
 - ₹ 10,00,000.00 dated 14.12.2018
 - ₹ 40,00,000.00 dated 15.12.2018
 - ₹ 10,00,000.00 dated 15.12.2018
- (e) Another three payments were done on 28.03.2019 totalling to ₹ 10,45,101.00 (Rupees ten lakh forty-five thousand one hundred one only) by the Corporate Debtor. (at P-6 of the Petition)
- (f) Total: ₹ 86,90,358.00,45,257.00 (Rupees eighty-six lakh ninety thousand three hundred fifty-eight only)



invoices have been placed on record as Annexure '3' at pp.3-13. The invoices do not provide provision for interest in case of delayed

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payments. The total debt due and payable to the Operational Creditor is ₹ 25,15,817.00 (Rupees twenty-five lakh fifteen thousand eight hundred seventeen only), as mentioned at P-5 of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 15.05.2019 to the Corporate Debtor (**Annexure '6'**, pp.19-22) in terms of section 8 of the IBC. The said Demand Notice was served on the Corporate Debtor by hand delivery on 17.05.2019. The Corporate Debtor has not replied to the said Demand Notice.
7. The Operational Creditor has submitted the copy of Purchase Order dated 05.12.2018, bearing PO No. 19-20/2008, for total amount of ₹ 1,12,18,968.00 (Rupees one crore twelve lakh eighteen thousand nine hundred sixty-eight only) duly signed by the Authorised Signatory of the Corporate Debtor, which is placed at **Annexure '5'** p. 18 of the Petition.
8. The Operational Creditor further submitted the copy of the Confirmation of Accounts dated 01.04.2019 for the year 01.12.2018 to 31.03.2019 which was duly acknowledged by the Corporate Debtor is placed at **Annexure '2'**, p. 2 of the Petition.
9. The Financial Creditor submitted copy of Bank statement of Axis Bank for the period of 01.12.2018 to 30.04.2019 stating the non-payment of ₹ 25,15,817/- to the Operational Creditor. (**Annexure '4'** to the petition at pp. 14-17).



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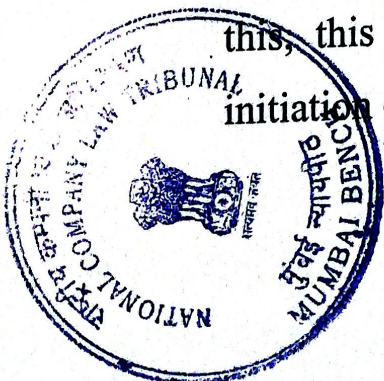
10. The Operational Creditor has filed an affidavit under section 9(3)(b) of the IBC to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Further the Operational Creditor stated that there is no dispute with respect to operational debt. (at pp. P-12 & P-13 of the petition).
11. Mr. Rishabh Mishra, learned counsel for the Corporate Debtor appeared and made his submissions.
12. The Corporate Debtor filed affidavit in reply dated 12.09.2019 and made following submission:
 - a) The Corporate Debtor has paid a payment of ₹ 86,90,358.00 (Rupees eighty-six lakh ninety thousand three hundred fifty-eight only) out of the total amount of ₹ 1,12,06,175 (Rupees one crore twelve lakh six thousand one hundred seventy-five only). However, ₹ 25,15,817.00 is due to Corporate Debtor. (at para 3-4, p. 2 of the Reply)
 - b) The terms of invoices were on immediate terms and due to certain unprecedented economic scenario, the payment of the Corporate Debtor's Company got stuck, and hence the dues of the Operational Creditor could not be cleared. (at para 5, p. 2 of the Reply)
 - c) The Corporate Debtor committed that the payment shall be made within a period of 15 days. On default of the same the Adjudicating



Authority can proceed with the admission. (at para 8, p. 3 of the Petition)

Findings

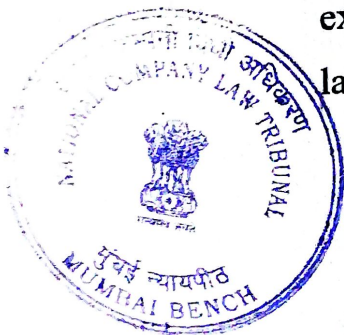
13. We have heard the arguments of both the sides and perused the records.
14. It is observed that the Corporate Debtor has admitted the liability in its reply dated 12.09.2019 and further submitted that if the Corporate Debtor fails to pay the debt amount, the Adjudicating Authority can proceed with the admission of the Petition. (at p. 3 of the Reply)
15. During the hearing held on 13.09.2019, the Learned Counsel for Corporate Debtor appeared and reiterated that the Corporate Debtor shall make payment within 15 days. Again on 11.10.2019 it is observed that the Corporate Debtor has failed to settle the dues as per its commitment made under para 8 of its reply.
16. 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 view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.



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17. It is noticed from the petition that-
- a) There is unequivocal admission of liability on the part of the Corporate Debtor in its Reply dated 12.09.2019.
 - b) The date of default is 28.03.2019;
18. The Operational Creditor has proposed Mr. Rajkumar Mahto Registration No. **IBBI/IPA-002/IP-N003723/2018-19/12209** as Interim Resolution Professional (IRP) in the matter.
19. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB) 4736/MB-IV/2018** filed by **Mehsons Steel Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6 (1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Shree Oshiya Ferro Alloys Private Limited [CIN: U52100MH2012PTC225753]**, the Corporate Debtor, 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;



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- (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 or suspended or interrupted during the moratorium period;
 - (ii) That 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 Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or



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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 Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Rajkumar Mahto, registration No. IBBI/IPA-002/IP-N003723/2018-19/12209**, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations /Circulars /Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 ₹ 1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising



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out of issuing 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 immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

16.01.2020

SD/-

RAJASEKHAR V.K.
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 17.01.2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench