



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

225. IA/959/2023 IN C.P. (IB)/4632(MB)2019

IN THE MATTER OF

Creative Metal Industries

VS

Chinaar Projects Pvt Ltd

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 06.12.2023

CORAM:

MS. REETA KOHLI
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: None

For the Respondent: None

ORDER

I.A. 959/2023

Vide Order dated 12.09.2023, this Bench was pleased to state as under:

“After having heard the Applicant, it is clear that Operational Creditor initiated the process with an objective to recover its money. In view of the submission made by the RP, the RP is released and the CIRP is closed. Show cause notice be issued to the Operational Creditor under section 65 for initiating the malicious proceedings against the Corporate Debtor.”

Inadvertently, the show cause notice has not been issued till date. Therefore, the

Registry is directed to issue the show cause notice to the Operational Creditor.



The present IA has been preferred by the RP seeking a direction to the Respondent to infuse the funds, towards the CIRP cost and to pass the order to close the CIRP and further to discharge the RP. The Applicant further submits that the application for CIRP was filed by the OC i.e. M/S Creative Metal Industries Under Section 9 of the IBC 2016 and the same was admitted by the Hon'ble Court vide order dated 24.01.2023. The Applicant was appointed as IRP and the said order was received by him on 25.01.2023. On 26.01.2023 the public announcement in 'Form A' was published. The Applicant also sent an E-mail on 25.01.2023 to the Operational Creditor with a request to deposit an amount of Rs. 2,00,000/- with IRP towards the initial CIRP cost as directed by the Hon'ble Court in the order of admission. The Operational Creditor failed to deposit the said amount. Vide E-mail dated 18.02.2023, the Applicant asked the Operational Creditor to submit his claim. The Applicant submits that he had no relevant information with regard to the Corporate Debtor and from the MCA website, he found the particulars and requested them to provide the details of the Financial Institutions maintaining the accounts of the Corporate Debtor. Unfortunately, no relevant information was provided by the Directors of Corporate Debtor. On visiting the registered office of the Corporate Debtor situated at 708, Haware Infotech Park, Plot No. 39/3, Sector No. 30/A, Vashi, Navi Mumbai, Thane-400 706, the Applicant discovered that the business premises was taken on lease by the Corporate Debtor. He was informed that the Corporate Debtor has left the premises a year ago. The same office has now been rented by M/S Fantasia Trade Pvt. Ltd. for its business



purpose. No Financial statements of the Corporate Debtor was ever uploaded on the MCA website. Thus, the Applicant was not able to obtain much information about the Corporate Debtor. It is pertinent to mention that no Claims were received from any of the Creditors. So much so, even the Operational Creditor has failed to file his claim despite emails sent to file the same. Thus, the Applicant could not constitute the CoC. The Directors of the Corporate Debtor are untraceable. No amount of initial CIRP cost has been deposited by the Operational Creditor. The Applicant submitted that he has incurred the expenses of Rs. 18,031/- towards the issuance of advertisement regarding public announcement. The IRP is unable to make any headway in the present CIRP. The total expenses chart tabulated by the IRP is as under:-

Particulars	Total CIRP Cost (in Rs.)
IRP Fee (including GST)	1,18,000/-
Public Announcement	18,031/-
Legal Expenses (including GST)	88,500/-
Total	2,24,531/-

The submission of the applicant is that the last date of completion of CIRP is on 23.07.2023, but due to non-cooperation from both the sides i.e. from Operational Creditor and also the Directors of the Corporate Debtor and in view of the non-



payment on the part of the Operational Creditor towards the initial CIRP Cost, the Applicant is unable to proceed in any manner. Hence the request for discharge and closing of CIRP process.

After having appreciated the above stated facts and circumstances where neither the Operational Creditor has filed any claim nor deposited the initial CIRP cost and the Corporate Debtor is also not available. In addition, there is no information about the assets of the Corporate Debtor. We are of the considered opinion that it's a fit case of discharge of the RP & closing of CIRP. By exercising our jurisdiction under Section 60(5)(1) of IBC, 2016 along with the inherent power under Rule 11 of NCLT 2016, we thus discharge the IRP. In the peculiar situation as enumerates above by the applicant, it is evident that the intention of the Operational Creditor was not for the resolution of insolvency of the Corporate Debtor. The proceedings seem to have been initiated with some malicious intentions. The reference deserves to be made to Section 65 of the Code which makes it abundantly clear in the event of the fraudulent & malicious initiation of proceedings, appropriate penalty be imposed. Section 65(1) of IBC 2016, is reproduced hereunder:

“65. (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating



Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.....”

In view of the above-stated, before imposition of any penalty on the Operational Creditor, we deem it appropriate to direct issuance of a show cause notice under Rule 15 of NCLT 2016, to the Operational Creditor through its director as to, Why penalty as stipulated under Section 65(1) of IBC 2016 be not imposed upon him?

Learned Registrar NCLT Mumbai is directed to issue a show cause notice Under Section 65(1) read with Rule 59 of NCLT Rules 2016 to the Operational Creditor i.e. M/S Creative Metal Industries by giving them 15 days-time to respond; as to why penalty as stipulated Under Section 65(1) of IBC 2016 be not imposed upon them. After issuance of the said show cause notice, Registry is directed to allocate a fresh case number for the proceedings; for which show-cause notice is being issued to the Operational Creditor. List the matter on 07.01.2024. A copy of this order to be also communicated to the Operational Creditor, IRP and also to the IBBI within a period of 10 days from the date of this order.

Posted for **07.01.2024**.

Sd/-
MADHU SINHA
Member (Technical)

Shubham

Sd/-
REETA KOHLI
Member (Judicial)