

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No. 3749/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

Khanna Delta Steel Pvt. Ltd.,

205, Windfall Tower,

J. B. Nagar, Andheri, (East),

Mumbai – 400 059.

.... Petitioner

V/s.

Shiv Manufacturing Pipes Pvt. Ltd.

Shop No. 4, Dharti Height,

Plot No. 28, Sector – 21,

Navi Mumbai, Kamothe,

Navi Mumbai – 410209.

.... Corporate Debtor

Order delivered on: 25.10.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Ms. Ruta Shah, i/b Gaurang R. Mehta, Advocates

For the Corporate Debtor: None Present

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This company Petition is filed by Khanna Delta Steel Pvt. Ltd., (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s Shiv Manufacturing Pipes Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 24,35,947/- by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petitioner is a company dealing in iron and steel products particularly H.R. coils Sheets plates etc. In May 2016, pursuant to Respondent Orders, Petitioner had sold, supplied and delivered to Respondent H.R. Coils worth in all Rs. 24,35,947/- inclusive of MVAT @ 5% for which Petitioner had raised and sent to Respondent their Invoices (3 Invoices in all) which are listed below.

Invoice No.	Date	Amount	Due Date
000135	20.05.2016	9,32,941/-	20.05.2016.
000153	28.05.2016	7,53,689/-	28.05.2016.
000159	29.05.2016	7,49,317/-	29.05.2016.
Total		24,35,947/-	

The Petitioner has already paid and deposited the MVAT amounts on the three Invoices mentioned above with the Government Treasury (Sales Tax Department) totaling to Rs. 1,15,998/-.

3. The Petitioner has filed the Tax Invoices raised on the Respondent, ledger account statements, certificates dated 20.05.2016, 28.05.2016, 29.05.2016 issued by M/s. Yogesh Weigh Bridge in connection with goods sold by the petitioner to the Respondent.
4. The Respondent has received the goods in good order and condition and had not raised any dispute relating to the quality, quantity or price thereof. The said Invoices were payable immediately. The Respondent was therefore bound, obliged and liable to make payment of the said Invoices. However, the Respondent failed and neglected to make payment of the said Invoices or any of them on their due dates or even thereafter despite several reminders given to their officers and director namely Mr. Vinod Dhumal.
5. The said Invoices provided, inter-alia, that interest @ 21% p.a. will be charged for delayed payment. In view thereof, the aggregate amount of the said Invoices i.e. Rs. 24,35,947/- is immediately due and payable by the Respondent and petitioner along with interest @ 21% p.a. from the due date of each invoice, till payment.
6. The Respondents failed to pay the outstanding amount of Rs. 24,35,947/- along with the interest at @ 21% per annum. The ledger statement also reveals that the Corporate Debtor is a liable to pay amount of Rs. 24,35,947/- to the Petitioner. The Petitioner enclosed the delivery challans of the goods deliver issued by the carrier to prove the delivery of goods. The petitioner vide letter dated 23.02.2018 requested release of the outstanding dues to the Respondent herein. The Respondent failed to pay the said amounts further the petitioner issued demand notice dated 24.08.2018 demanding payment of unpaid operational debt from the Respondent under the Code. There was no reply received from the Corporate Debtor.

7. The said matter was posted on 05.09.2019, the counsel for the petitioner was present, there was no representation on the side of the Corporate Debtor. The counsel also reported that the petition was served on the Corporate Debtor by speed post on 01.10.2018. The Counsel for the Petitioner was directed to file proof of service and intimate the next date of hearing to the Respondent. The matter was listed on again 19.09.2019, the counsel for the petitioner was again directed to inform the next date of the hearing to the other side and posted the matter 14.10.2019. On 14.10.2019, the counsel for the petitioner produce proof service of deliver of the Petition on 10.09.2019. The counsel also filed an affidavit to that extent. The Counsel for the Petitioner also filed proof of intimation of date of service and the said letter was delivered to the Respondent on 12.10.2019. The Respondent failed to appear on 14.10.2019.
8. The Petitioner also filed Section 9 (3) (b) affidavit stating that no notice of pre-existing and genuine dispute has been received by the petitioner herein in reply to Section 8 notice.
9. This Bench on going through the Form 5 and the annexures thereto and on hearing the submissions made by the Petitioner, is of the view that the Petitioner proved debt and default against the Respondent.
10. One Rajendra Ramnarain Agarwal, residing at 1306, Oberoi Woods Tower B, Mohan Gokhale Road, Goregaon East, Mumbai-400063; having Registration No. IBBI/IPA-001/IP-PO1209/2018-2019/11923 has given his consent in Form No. 2 to act as an Interim Resolution Professional.
11. This Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section

9 of the Insolvency and Bankruptcy Code admits this Petition declaring moratorium with the directions as mentioned below:

- (a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 18.02.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(f) That this Bench hereby appoints Rajendra Ramnarain Agarwal, residing at 1306, Oberoi Woods Tower B, Mohan Gokhale Road, Goregaon East, Mumbai-400063; having Registration No. IBBI/IPA-001/IP-PO1209/2018-2019/11923 as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

12. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)