NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-611(ND)2022

IN THE MATTER OF:

Sarda Pipes and Fitting Private Limited
A-01, 4th Floor, 167 Sayed Ebrahim Mansion,
Dr. D B Marge, Grant Road, Lamington Road,
Mumbai, Maharashtra – 400007 **... Petitioner/ Operational Creditor**

VERSUS

SFS Fire and Security Private Limited
Plot No- 293, Kehar Singh Estate,
Westend Marg, Said-ul-Ajab,
New Delhi – 110030 **... Respondent/ Corporate Debtor**

Section: 9 of the IBC, 2016

Order Delivered on: 29.05.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Videh Vaish, Adv. Lalit Mohan, Adv. Aakansha, Adv. Abhay Gupta

For the Respondent : None

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

Stating succinctly, the facts of the case as mentioned in the captioned petition are that Sarda Pipes and Fitting Private Limited (for brevity, the **'Petitioner/Operational Creditor'**) is engaged in the business of supplying pipes and fittings materials. The Operational Creditor preferred the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against SFS Fire and Security Private Limited (for brevity, the **'Respondent/Corporate Debtor'**) which operates its affairs from the registered office and is engaged in the business of providing fire security and solution services.

2. As has been espoused by the Operational Creditor, it supplied various pipe products to the Corporate Debtor during the normal course of business vide various Invoices dated 28.02.2018 to 31.03.2018 which were duly received by the Corporate Debtor. The salient plea espoused by the Operational Creditor is that the Invoice qua the goods purchased by the Corporate Debtor raised by it were not honoured and the Corporate Debtor failed to make the payment of the entire amount of operational debt.

3. The Operational Creditor has given the details of the operational debt defaulted to be paid by the Corporate Debtor, in Part IV of the application, the relevant excerpt of which reads thus:

PART-IV

PARTICULARS OF OPERATIONAL DEBT

1. TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE: -

During the period from 28/02/2018 to 31/03/2018, Sarda Pipes and Fittings Private Limited (hereinafter called "the operational creditor") has made sale and supply of the various pipes to the SFS Fire and Security Private Limited (hereinafter called "the Corporate Debtor") as follows: -

Sr. No	Particulars	Amount (Rs.)
1	Amount Against Invoice No 2146	8,11,995
2	Amount Against Invoice No 2147	8,11,994
3	Amount Against Invoice No 2163	8,40,774
4	Amount Against Invoice No 2164	9,76,270
5	Amount Against Invoice No 2169	9,26,958
6	Amount Against Invoice No 2204	7,68,661
7	Amount Against Invoice No 2205	7,92,278
8	Amount Against Invoice No 2214	5,78,192
9	Amount Against Invoice No 2215	5,88,055
10	Amount Against Invoice No 2220	10,08,100
11	Amount Against Invoice No 2221	14,50,893
12	Amount Against Invoice No 2225	10,74,359
13	Amount Against Invoice No 2226	8,69,962
14	Amount Against Invoice No 2244	8,17,037
15	Amount Against Invoice No 2245	10,29,211
16	Amount Against Invoice No 2246	13,54,523
17	Amount Against Invoice No 2247	11,01,331
18	Amount Against Invoice No 2248	14,36,854
19	Amount Against Invoice No 2249	10,29,307
20	Amount Against Invoice No 2250	8,20,738
21	GROSS DUE (1 to 30)	1,90,86,692
22	Amount Received from Corporate Debtor and other adjustments	37,45,742
23	NET DUE (21 - 22)	1,53,40,950

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED: -

Rs. 1,80,22,500 (Rs 1,53,40,950 is Principal Amount and Rs. 26,81,550 is Interest Amount) and the debt amount is starting due from 28-02-2018.

4. As can be seen from above, the total amount of debt defaulted at the end of Corporate Debtor, prospered by the Operational Creditor is Rs. 1,80,22,500/-. According to the Operational Creditor, the principal amount payable by the Corporate Debtor for the supply of goods made by it to the CD is Rs. 1,53,40,950/-, the remaining amount of Rs. 26,81,550/-, is the amount of interest payable on the principal amount. It is espoused by the Operational Creditor that the Corporate Debtor has committed a default in paying the same.

5. As has been submitted by the Operational Creditor, it served a demand notice dated 24.01.2020, under Section 8 of IBC, 2016 read with Rule 5(1) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016, upon the CD, calling upon it to pay the outstanding amount within 10 days from the date of the receipt of the notice. It is the case of the Operational Creditor that the demand notice (ibid) was served upon the Corporate Debtor on 27.01.2020 by speed post requesting the Corporate Debtor to repay the unpaid operational debt unconditionally. It is further contended by the Operational Creditor that Corporate Debtor has failed to repay the unpaid operational debt in default and no reply to the demand notice was given by it.

6. It is observed that in terms of the order dated 22.12.2022 passed by this Adjudicating Authority, the Operational Creditor was directed to serve notice upon Corporate Debtor through publication. The Operational Creditor filed Affidavit of service of notice upon the Corporate Debtor stating that the service of notice upon CD through speed post and e-mail could not succeed as no e-mail address of CD was available and the notice sent by speed post was returned unserved with remark, "*Left without instructions*". As no one

appeared on behalf of the Corporate Debtor despite service of notice by substituted mode, the Corporate Debtor was proceeded against ex-parte.

7. We heard the Counsel for the Operational Creditor and perused the record. Admittedly, the Operational Creditor and the Corporate Debtor have a business relationship and the Corporate Debtor had contacted the Operational Creditor for purchase order for the supply of M.S. & G.I. Pipes, Surya Make for multiple projects. Copy of 'Purchase Order' and 'Invoices of Goods Supplied' are on record at Annexure A-3. As per the averments made in the application, the Corporate Debtor defaulted in making the payment of outstanding amount of Rs. 1,53,40,950/- fell due against it from 28.02.2018.

8. The Operational Creditor has established the default in payment of debt of such amount as mentioned in Section 4 of IBC, 2016, on part of the Corporate Debtor. The affidavit as required in terms of the provisions of Section 9 (3) (b) of IBC, 2016 has been filed by the Operational Creditor. In the wake of discussions and findings as above and there being no opposition to the plea raised in the petition, we are left with no option but to admit the Corporate Debtor to CIRP. **The Petition stands admitted in terms of the provisions Section 9(5) of the IBC, 2016. Resultantly, moratorium in terms of the provision of Section 13 for the purposes referred to in Section 14 of the IBC, 2016 is declared.** As the Operational Creditor has not proposed name of any Insolvency Professional to be appointed as IRP, in terms of the provisions of Section 13(1)(c) read with Section 16(3)(a) of the IBC, 2016, the Insolvency Professional namely, Mr. Amit Agarwal, having IBBI Registration No. IBBI/IPA-002/IP-N00185/2017-18/10456, email id: amitagcs@gmail.com is appointed as IRP in the matter. The Court

Officer/Registrar of this Tribunal/Adjudicating Authority is directed to inform the IRP about confirmation of his appointment forthwith. The term of the Interim Resolution Professional shall continue till the date of appointment of the Resolution Professional under Section 22 of the IBC, 2016 or the development if any under Section 12A of the Code or otherwise, whichever is earlier. The IRP is directed to act in terms of the provisions 13(1)(b) and Section 13(2) read with Section 15 of the IBC, 2016 immediately. In other words, the IRP shall cause a public announcement of initiation of Corporate Insolvency Process be made qua the Corporate Debtor and call for submission of claim under Section 15 immediately. The public announcement shall contain the information stipulated in Section 15(1) of the IBC, 2016. We are sanguine that the IRP shall act in due deference to the provisions of IBC, 2016, particularly Section 12,15,17,18,20 & 21 thereof as also Regulation 6, 6A, 12A, 13, 14, 16A and 17 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 inter alia. It goes without saying that in the wake of the moratorium, there shall be prohibition of all the following: -

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing off 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 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 corporate debtor.

9. Nevertheless, it is made clear that a license, permit, registration, quota, concession, clearance or similar grant or right (if any) given by the Central Government, State Government, Local Authority, Sectoral Regulator or any Authority constituted under any other law for the time being in force shall not be suspended or terminated qua the Corporate Debtor on the ground of Insolvency, subject to the conditions that there is no default in payment of current dues arising for the use of continuation of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Besides, the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, except where the Corporate Debtor does not pay the dues arising from such supply during the moratorium period or any other explainable situation.

10. The Operational Creditor shall deposit an amount of Rs. 2,00,000/- with the IRP to enable him to meet the expenses to be incurred at the initial stage of the CIRP. The expenses shall be reimbursed by the Committee of Creditors, to the extent the same are ratified by it. The amount of expenses ratified by the Committee of Creditors shall be treated as CIRP cost. It goes without saying that in terms of Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the CoC shall fix the

expenses to be incurred by the IRP/ RP and the expenses shall constitute IRP cost.

11. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Adjudicating Authority. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

Sd/-	**Sd/-**
(L. N. GUPTA)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**