

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

(11)


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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 06.09.2019

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL
SHRI ANIL KUMAR B, MEMBER - TECHNICAL

APPLICATION NUMBER :
PETITION NUMBER : CP/1165/IB/2018
NAME OF THE PETITIONER(S) : SHIVAROOPHA ASSOCIATES
NAME OF THE RESPONDENTS : SRI KUMARAN STEELS INDIA PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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	ANIL VISWANATH	ADVOCATE FOR RESPONDENT 9847002600	
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N.C. Ashok Kumar
A.P. Inne Shanmugam

Counsel for Operational
creditor
9976992586





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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

CP/1165/IB/2018 filed under Section 9
of the Insolvency and Bankruptcy Code,
2016 r/w Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

In the matter of *M/s. Sri Kumaran Steels India Pvt. Ltd.*

MR. S. SIVAKUMAR
Proprietor - Shivaroopha Associates

... Operational Creditor

-Vs-

M/s. SRI KUMARAN STEELS INDIA PVT. LTD

... Corporate Debtor

Order delivered on 6th September, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Mr. N.C. Ashok Kumar, Counsel
For Corporate Debtor : Mr. Anil Viswanath, Counsel

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Adjudication is CP/1165/IB/2018 that has
been filed by one *Mr. S. Sivakumar, Proprietor - Shivaroopha*



Associates (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against *M/s. Sri Kumaran Steels India Pvt. Ltd.* (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsels for the Operational Creditor, Corporate Debtor and perused the pleadings including the documents placed on file.

3. The Operational Creditor has claimed an amount of Rs.2,07,38,856/- (Rupees Two Crores Seven Lakhs Thirty Eight Thousand Eight Hundred and Fifty Six Only) as



principal outstanding against the Corporate Debtor, which the Corporate Debtor has failed to pay.

4. The Counsel for the Operational Creditor has submitted that as per the requirement of the Corporate Debtor, the Operational Creditor has supplied the used plant machineries and melting scraps to the Corporate Debtor and raised Invoices, which are placed at pages 36 to 76 of the typed set filed with the Application. The details about the terms and conditions of the payment are provided in the Invoice itself wherein it is mentioned that the interest @ 24% will be charged on overdue payments and the goods once sold will not be taken back under any circumstance.

5. The Counsel for the Operational Creditor has referred to the Ledger Account from 01.04.2015 to 04.01.2018, which is placed at pages 90 to 102 of the typed set filed with the Application, which gives the details of the payments made and the balance shown is as

Rs. 2,07,38,856/- as claimed in the Application.



6. The Operational Creditor has sent notice under Section 8 of the I&B Code, 2016 on 21.03.2018 which is placed at pages 43 to 47 of the additional typed set filed with the Application, wherein the same amount as claimed by the Operational Creditor has been mentioned. The cover containing the notice was returned with an endorsement "*refused to receive*" which is in vernacular and translated by the Court Officer. This Authority takes judicial notice of the same.

7. The Counsel for the Operational Creditor has also complied with Section 9(3)(b) and (c) of the I&B Code, 2016, by placing on record the Additional Reply Affidavit wherein it has been deposed under Para 4 that no notice was given by the Corporate Debtor in relation to the dispute of any unpaid Operational Debt. The Ledger Account is already on record as mentioned hereinabove.



8. The Corporate Debtor has filed the Reply, wherein the details of purchases and payments made are given and specifically it has been stated under Para 6 that the machinery supplied by the Operational Creditor was very old model and unusable and it was not viable for the present market condition, due to which the Corporate Debtor could not start their expansion work, which was informed to the Operational Creditor with a request to take back the materials supplied and the materials were taken back and a debit note was issued by the Operational Creditor for a sum of Rs.1,20,15,170/- during the Financial Year 2016 – 2017.

9. It is also stated by the Corporate Debtor that during the Financial Year i.e. 01.04.2017 to 31.03.2018, as per the opening balance, it had to pay to the Operational Creditor an amount of Rs.2,18,37,684/-. The Ledger statement of the Corporate Debtor is stated to have shown the same amount as due.



10. It is further stated by the Corporate Debtor that as per the 9 (nine) Returned Sales Invoices, on three different dates, the Operational Creditor took back most of the materials which were supplied to the Corporate Debtor, due to which an amount of Rs.74/- only is due from the Corporate Debtor as per its account. In the conclusion, it has been stated by the Corporate Debtor that for the reasons and facts stated in the Counter, the Application is neither maintainable in law nor on facts, as the allegations raised in the Application are false and incorrect statements and the same is denied by the Corporate Debtor.

11. The Counsel for the Corporate Debtor has referred to Para 6 of the Reply wherein it has been stated that the Operational Creditor was informed to take back the materials supplied and which was taken back and a debit note for an amount of Rs.1,20,15,170/- was issued by the Operational Creditor during the Financial year 2016 – 2017. The Counsel for the Corporate Debtor has referred to the Sur-rejoinder wherein at Para 7, it has been stated by the



Corporate Debtor that the goods were taken by the Operational Creditor and no credit note was issued to the Corporate Debtor. The Corporate Debtor has sent an email communication on 13.08.2016 requesting to issue the credit note for the details of the materials attached, which was returned. As per the attachment, the Operational Creditor was required to issue a credit note worth Rs. 1,32,29,579/-.

12. In the Sur-rejoinder it has further been stated by the Corporate Debtor that during September, 2016, between the dates 6 to 18, the Operational Creditor collected goods worth Rs. 2,55,30,016/- from the Corporate Debtor and the same lorries, which were used earlier for taking the materials, were used to transport the collected goods.

13. Based on that, the Corporate Debtor was liable to pay the balance amount of Rs.5,69,738/- which was later settled by the Corporate Debtor. In short, it was asserted by the Corporate Debtor that the Operational Creditor has



defaulted in issuing the credit notes and the Corporate Debtor has to file a Reverse Return before the Sales Tax Department and hence paid VAT.

14. The Counsel for the Operational Creditor has referred to Para 4 of the Rejoinder and stated that after giving credit to the value mentioned in the debit note, for the goods taken back by the Operational Creditor in August, 2016, the value of the goods taken back for delivery in the year 2016 is mentioned as Rs.1,20,15,170/-, but the actual amount is Rs.1,31,23,261/- which is evident from the debit note issued by the Corporate Debtor.

15. In Para 8 of the Rejoinder, it has been mentioned that the Corporate Debtor falsely alleging that the Operational Creditor has taken back certain materials on 28.06.2017, 29.06.2017 and 30.06.2017 and all these are invented allegations and no such machineries have been taken from the Corporate Debtor in June, 2017. The returned invoices are not due and the same are concocted by the Corporate



Debtor for the purpose of the case, which is purely an afterthought.

16. The Counsel for the Operational Creditor has also rebutted the contentions of the Corporate Debtor with regard to the payment of VAT and VAT Returns filed before the Sales Tax authorities on 18.07.2017 for the month of June 2017 i.e. from 01.06.2017 to 30.06.2017 by stating that as per returns there is no transaction in the month of June, 2017.

17. The Counsel for the Operational Creditor has submitted that once the machinery that has been taken back by the Operational Creditor during the year, 2016 with regard to which debit note was raised by the Corporate Debtor, the same machinery has been shown to have been returned in June, 2017 which is completely a concocted story and is an afterthought, as the Corporate Debtor has improved its case after reading the reply statement of the Operational Creditor.



18. The Counsel for the Operational Creditor has referred to the balance sheet as on 31.03.2017 filed by the Corporate Debtor on 15.05.2018, in which at page 32, in the third entry from bottom, the name of the Operational Creditor is reflected, against which an amount of Rs.2,18,37,651/- is mentioned as due and payable, which is a clear evidence of the outstanding amount payable by the Corporate Debtor to the Operational Creditor and the submissions made in the Reply and the Sur - Rejoinder are contrary to the balance sheets filed by the Corporate Debtor.

19. The submissions made by the Counsel for the Operational Creditor are supported with balance sheet of the Corporate Debtor and the dispute raised by the Corporate Debtor is spurious, an afterthought and a mere bluster which stands rejected.



20. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Authority is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

21. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit all of the following, namely :-

- (a) 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;



(b) Transferring, encumbering, alienating or disposing of 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

22. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

23. The Operational Creditor has not proposed the name of IRP, therefore, **Mr. Gopalsamy Ganesh Babu**, is



appointed as IRP, whose name has been mentioned in the Panel of Insolvency Professionals recommended by the IBBI, there is no disciplinary proceedings pending against the IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

24. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

25. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take



charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

26. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the concerned RoC. The address details of the IRP are as follows: -

Mr. Gopalsamy Ganesh Babu,

Reg. No: IBBI/IPA-002/IP-N00246/2017-18/10731,

Email ID: babu@onestepsolution.net

Mobile No. 9940550258

27. Order is dictated and pronounced in open Court in the presence of the Counsels for Operational Creditor and Corporate Debtor.



ANIL KUMAR B
MEMBER (TECHNICAL)

ATHISTAMANI




CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)



Certified to be True Copy

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N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
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29, RAJAJI SALAI, CHENNAI - 600001