



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

CP (IB) No.1009/MB-IV/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

AJS Impex Private Limited

[CIN: U74900MH2006PTC161680]

...Financial Creditor/Applicant

V/s

Nyka Steels Private Limited

[CIN: U27109MH1995PTC091072]

...Corporate Debtor/Respondent

Order Dated: 03.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. G. Aniruth Purusothaman,
Advocate.

For the Respondent(s) : Mr. Vrushali Salvi i/b Mr. Ravi
Jadhav, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 1009/MB/C-IV/2020 filed by AJS Impex Private Limited, the Financial Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code)

seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Nyka Steels Private Limited, Corporate Debtor.

2. The Operational Creditor is a Company. The Application is filed by Mr. Ganesh B. Pawar, Manager of Operational Creditor, duly Authorised vide Board Resolution¹ dated 10.02.2020, claiming total default of Rs.4,87,01,363/- (Rupees four crore eighty-seven lakh one thousand three hundred sixty-three only), of which Rs.3,09,42,951/- is the Principal amount and Rs.1,77,58,412/- is the Interest amount.
3. The Invoices raised against supply of goods fell due between the period from 16.02.2018 till 18.08.2018. Accordingly, the Date of Default falls within
4. The Operational Creditor supplied steel products to the Corporate Debtor in the year 2019. Pursuant to the supply of goods (HR Coils), the Operational Creditor raised (31 thirty-one) invoices between the period of 16.12.2017 till 18.06.2018 upon the Corporate Debtor for total outstanding amount² of Rs.3,21,60,135/- (Rupees three crore twenty-one lakh sixty thousand one hundred thirty-five only) against which the Operational Creditor received Rs.17,184/-. Since the total amount outstanding pertain to supply of similar goods, the outstanding under each invoice has been clubbed together.
5. The Operational Creditor has filed an Affidavit³ under section 9 (3) (b) of the Code.

¹ P.17 of the Petition

² P.7 of the Petition

³ Pp 14-15 of Petition

6. The Operational Creditor also filed Ledger⁴ for period of from 01.04.2019 to 20.01.2020. The Operational Creditor has filed written submissions dated 14.01.2023 pleading that Corporate Debtor has nether disputed the amount in default nor has provided reply to the Demand Notice. The Operational Creditor submitted that is has been admitted into CIRP vide order dated 15.07.2022 and is represented by Mr. Atul Jain, IRP.
7. The Corporate Debtor has not filed any Reply in this Application. The Authorised Representative of the Corporate Debtor appeared on few occasions and has not disputed the contents of the Petition.

Findings:

8. We have heard the arguments of the Learned Counsel for Operational Creditor.
9. After perusal of the material on record, this Bench is of considered view that the Operational Creditor has provided the steel material to the Corporate Debtor for which the Corporate Debtor has failed to pay the outstanding dues of the Operational Creditor.
10. It is also observed that the Corporate Debtor has appeared on few occasions in the matter, but has not contested the contents of the Application.
11. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.

⁴ P.79 of the Petition

12. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.
13. The application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.
14. The Operational Creditor has not proposed the name of Insolvency Resolution Professional in the matter.

ORDER

15. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) 1009/MB-IV/2020 filed by AJS Impex Private Limited, the Financial Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Nyka Steels Private Limited, 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;
- (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

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. Hitesh Kothari, registration No. [IBBI/IPA-002/IP-N00324/2017-2018/10929]; Email: hiteshkotharics@gmail.com; Contact: 9702246060 is appointed 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 Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.

- (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/-
Prabhat Kumar
Member (Technical)
03.02.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)