BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

CP (IB) NO. 502/MB/2022

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016)

In the matter of

National Steel and Agro Industries Limited
Registered Office: 621, Tulsiani Chambers, Nariman Point, Mumbai - 400021
.... Operational Creditor

Versus

Toptrade Mercantiles Private Limited
CIN: U51109MH2007PTC169563
Registered Office at: 205, Sujata Chambers, 2nd Floor, 1/3 Abhichand Gandhi Marg Off Katha Bazar Masjid (W), Mumbai- 400009

.... Corporate Debtor

Order reserved on: **13.01.2023**

Order pronounced on: **25.01.2023**

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Ms. Madhu Sinha, Member (Technical)
Appearance:

For the Petitioner: Mr. Nausher Kohli, Advocate

For the Respondent: None present

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by *National Steel and Agro Industries Limited* (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against *Toptrade Mercantiles Private Limited* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved "Operational Debt of Rs. 13,72,34,447/- (Rupees Thirteen Crores Seventy-Two Lakhs Thirty-Four Thousand Four Hundred and Forty-Seven).
2. The Operational Creditor submits that the Corporate Debtor on several occasions has acknowledged and confirmed the aforesaid debt and has agreed to pay the same. Despite several assurances given by the Corporate Debtor, the Corporate Debtor has failed to pay the aforesaid debt amount. The correspondences exchanged between the Operational Creditor and Corporate Debtor wherein, the Corporate Debtor has not only confirmed the debt but has also assured to pay the same.
3. The Operational Creditor has issued the aforesaid Demand Notice to the Corporate Debtor on January 2, 2021 by speed post, which was duly received by the Corporate Debtor on the January 5, 2021. Despite receiving the said notice, the Corporate Debtor has failed to either respond to it and/or make payment of the debt amount mentioned therein within 10 days of receipt thereof and even after the expiry of such 10 days. Hence this petition.
4. The matter has been listed from time to time on board. On 03.10.2022, the Registry as well as Operational Creditor was directed to issue notice to the Corporate Debtor intimating the next date of hearing and file service affidavit and the matter was posted to 22.11.2022. on

22.11.2022, the bench notes that as per service affidavit filed by the Operational Creditor the notice sent to the Corporate Debtor was returned with an endorsement "Door locked". However, the notice sent to the Corporate Debtor through Registry was returned with an endorsement "unclaimed" which is a deemed service as per the law laid down by various courts. Hence, the service of notice on the Corporate Debtor is held sufficient and corporate debtor was set ex-parte on 22.11.2022.

5. Heard Mr. Nausher Kohli, counsel appearing for the Operational Creditor and perused the material available on record.
6. The counsel appearing for the Operational Creditor invited the attention of this tribunal to the invoices dated 08.03.2017 to 09.03.2017 which is annexed at Annexure 'B' to the Company Petition basing on which the above Company Petition is filed.
7. The Operational Creditor further invited the attention of this Tribunal to the following correspondence addressed between the parties which are reproduced hereinbelow:

<u>Letter dated 04.05.2018</u>

To,

Topritrade Mercantiles Private Limited,
205, Sujata Chamber, IInd Floor,
1/3, Abhichandra Gandhi Marg,
Off Katha Bazar Masjid, Mumbai 400009

Sub: Request for payment of outstanding Balance of Rs. 17.98 Cr due as on 30.04.2018

Dear Sir,

With reference to the captioned subject we wish to bring to your kind attention that after our several reminders to reduce the outstanding dues, we have still not received our payment. The outstanding dues as on 30.04.2018 is Rs. 17.98 crores. We would *be really thankfull to you if you could settle some dues at the earliest. Kindly do the needful at the earliest. Hope to get a prompt reply from you.*

Thanking you,

Yours faithfully,

For National Steel & Agro Industries Ltd.

8. Letter dated 12.06.2018 addressed by the Corporate Debtor to the Operational Creditor in response to the letter dated 04.05.2018 which is reproduced hereinbelow:

To,

M/s National Steel & Agro Industries Limited
621, Tulsiani Chambers, Nariman Point, Mumbai 400021

Sub: Regarding payments of your outstanding dues.

Ref: Your letter dated 04.05.2018

Dear Sir/Madam,

With reference to your letter dated 04.05.2018 regarding payment of outstanding due of Rs. 17,98,39,286/-. As our company restarted its business operations after long time and it will take some time to generate cash inflow, therefore you are requested to kindly bear with us.

We are trying out best to clear your all outstanding at the earliest.

Thanking you.

For Toptrade Mercantile Pvt. Ltd.

9. The counsel appearing for the Operational Creditor also invited the attention of this Tribunal to the letter dated 12.07.2019 addressed by the Corporate Debtor to the Operational Creditor whereunder the Corporate Debtor accepted to pay the outstanding dues which is reproduced hereinbelow:

To,

The Board Members,

M/s National Steel and Agro Industries Limited,

621, Tulsiani Chambers, Nariman Point,

Mumbai- 400021

Subject: Settlement of outstanding debts

Respected Sir,

This has reference to above and to all the earlier letters and legal notices served by your company in order to repay your debts in full. We would like to bring your kind attention that we trying every possible alternative to fulfill our obligations. However, we are not able to repay the whole amount at once. Therefore, we request you to allow us to repay the amount in installments, the schedule of which will be decided by the authorized persons of the parties.

Further, we request you to stop all the legal proceedings initiated against the company.

10. The Operational Creditor has also invited the attention of this Tribunal to the letters dated 14.11.2018, 17.02.2019 and 17.04.2019 annexed to the company petition whereunder the Corporate Debtor while admitting the liability requested some time to the Operational Creditor for making repayment. The Operational Creditor also got issued legal notice dated 14.02.2019 through their advocate Mr. Sabir. The Operational Creditor also sent Demand Notice dated 02.01.2021 calling upon the Corporate Debtor to pay their outstanding dues for which there was no response from the Corporate Debtor.

11. The Operational Creditor also invited the attention of this Tribunal to their ledger account covering the period from 01.04.2018 to 31.12.2020 whereunder an amount of Rs. 20 lacs was credited from the Corporate Debtor through RTGS on 05.12.2019.

12. After hearing the submission of counsel appearing for the Petitioner and upon perusing the above documents, this Tribunal is of the considered opinion that the Corporate Debtor has clearly admitted the "debt" and "default" in this case and the above company petition being filed on 11.08.2022 is within three years from the date of the last payment as well as various letters of admission sent by the Corporate Debtor. The Operational Creditor also suggested the name of the IRP along with his consent letter. Thus, the present company satisfies with all necessary legal requirements for admission. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -502(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Toptrade Mercantile Private Limited.
b. This Bench hereby appoints **Navin Khandelwal**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00703/2017-2018/11301 having registered office at : 206, Navneet Plaza 5/2, Old Palasia, Indore (MP) as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
c. The Operational Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses only and not towards fee till his fees is decided by COC.
d. 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.

e. 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.
f. 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.
g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, this Petition is admitted.

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

Sd/-	**Sd/-**
MADHU SINHA	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**