

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

CP (IB) 1800/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Indian Steel Corporation Limited

[CIN: U27100MH2004PLC144559]

...Operational Creditor

Versus

Windcastle Exports Private Limited

[CIN: U51900MH1996PTC101756]

... Corporate Debtor

Order Delivered on 08.11.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Ms Prachi Wazalwar a/w Ms
Heena Vichare, Advocate

For the Corporate Debtor : Mr Karan Vyas, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Indian Steel Corporation Limited [CIN: U27100MH2004PLC144559] ("the Operational Creditor"), an unlisted public company incorporated on 16.02.2004 under the Companies Act, 1956, represented by its Assistant Manager (Accounts), Mr. Abhijeet Sharma, on the basis of a Board Resolution dated 08.03.2019, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Windcastle Exports Private Limited ("the Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares incorporated on 08.08.1996 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U51900MH1996PTC101756. Its registered office is at No.7-A, Giriraj Building (Ground Floor), No.73, Sant Tukaram Road, Iron Market, Masjid Station (East), Mumbai 400009. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 22.04.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.40,74,97,623.00 (Rupees forty crore seventy-four lakh ninety-seven thousand six hundred and twenty-three only) as on 30.03.2016, which is the date of

default. The Operational Creditor is not claiming any interest on the said principal sum.

4. The case of the Operational Creditor is that the Operational Creditor sold/supplied Steel Products and Agro Commodities, between 29.10.2014 to 11.11.2015 (para 1 of Part-IV of the Particulars of Operational Debt at pages 7-8 of the Petition).
5. A total of 271 invoices have been raised on the Corporate Debtor. The invoices have been placed on record as part of **Exhibit 'D'** at pp.335-340. The invoices do not provide for interest in case of delayed payments. Bank statements are also attached as **Exhibit 'C'** at page 21. The total debt due and payable to the Operational Creditor is Rs.40,74,97,623.00 (Rupees forty crore seventy-four lakh ninety-seven thousand six hundred and twenty-three only), as mentioned at page-7 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 19.03.2019 to the Corporate Debtor (**Exhibit 'D'**, pp.22) in terms of section 8 of the IBC. Proof of service has been placed as **Exhibit "E"** at pp. 302-305. The Corporate Debtor has not replied to the Demand Notice. Affidavit regarding No Notice of Dispute as provided under section 9(3)(b) of the IBC has been placed on record at pp.346-347 of the Petition.
7. The Corporate Debtor has unequivocally acknowledged the debt *vide* its letter dated 18.11.2016, as seen from the Petition at p.320.

8. Court Notice dated 20.08.2019 has been served on the Corporate Debtor on 22.08.2019. The affidavit of service filed in this behalf by the counsel for the Operational Creditor is taken on record.
9. Mr Karan Vyas, Learned Advocate appeared on behalf of the Corporate Debtor and made his submissions.
10. In its reply dated 16.09.2019, the Corporate Debtor has stated as follows:-
 - (a) The Corporate Debtor is facing heavy losses in business due to the recession in the market, due to which a lot of money of the Corporate Debtor is stuck in the market. Large sums of money are pending from other third-party purchasers of the respondent.
 - (b) The Corporate Debtor submitted that steel industry has been suffering due to recessions in market in particular. As a result, the Respondent is in grave financial crisis and is not in a position to repay the amount to the petitioner (para 4 at pp.2-3 of the Affidavit in reply of the Corporate Debtor).
 - (c) The Corporate Debtor has always been ready and willing to pay the amount. However, due to financial crisis, it requires some reasonable amount of time and repayment schedule to clear the dues of the petitioner (para 5 at page 3 of the Affidavit in reply of the Corporate Debtor).

(d) The Corporate Debtor has requested the Operational Creditor for the same so as to settle the dispute amicably. However, no settlement was reached with the petitioner (para 5 of the Affidavit in reply of the Corporate Debtor).

11. We have heard the arguments of both sides and perused the records.
12. It is noted that the Corporate Debtor has admitted the liability by the letter dated 18.11.2016, at p.320. The affidavit in reply dated 16.09.2019 of the Corporate Debtor, also admits the liability and states that the Corporate Debtor is not in position to repay the debt. This establishes the existence of debt and default.
13. There is clear cut admission on the part of the Corporate Debtor about its inability to clear the Operational debt, in terms of the letter dated 18.11.2016. Further, in the reply dated 16.09.2019 also, the Corporate Debtor has stated categorically in para 4 at p.2 thereof, that the Respondent is in grave financial crisis and is not in a position to repay the amount to the Petitioner.
14. The Operational Creditor has proposed the name of **Mr. Pranav Damania** [Reg. No.IBBI/IPA-001/IP-P00079/2016-17/10164] as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

15. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
16. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB) 1800/MB/C-IV/2019** filed by **Indian Steel Corporation Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Windcastle Exports Private Limited [CIN: U51900MH1996PTC101756]**, the 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 Adjudicating Authority 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. Pranav Damania** [Registration No.IBBI/IPA-001/IP-P00079/2016-17/10164], having address at No.407, Sanjar Enclave, Above Mahindra Showroom, Opposite to Milap Cinema, SV Road, Kandivali (West), Mumbai 400 067 [Email: pranav@winadvisors.co.in, Phone: 022-28089683, 240110641, 9820469825], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 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

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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.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (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/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

RAJASEKHAR V.K.
Member (Judicial)

Pratiksha/08.11.2019