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

**CP 4505(IB)/MB/2019**
Under Section 9 of the I&B Code, 2016
In the matter of
**NBS Engineering Solutions Pvt. Ltd.**
…Operational Creditor/ Applicant
v/s
**Purvi Metals Pvt. Ltd**
...Corporate Debtor

**Order Dated: 17.02.2020**

**Coram**: Hon'ble Shri. Chandra Bhan Singh, Member (Technical)
Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

**For the Applicant**: Adv. Manoj Kumar Mishra
**For the Respondent**: Adv. S R Venunath

*Per: Chandra Bhan Singh, Member (Technical)*

**ORDER**

1. This Application number CP 4505/2019 has been filed by NBS Engineering Solutions Pvt. Ltd., Operational Creditor, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against Purvi Metals Pvt. Ltd., Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Applicant is a Private Limited Company registered under the Companies Act, 2013. This Application is filed by Mr. Bhupendra

Pratap Singh, Director of the NBS Engineering Solutions Pvt. Ltd. duly authorised to file the present Application.

3. The Applicant has claimed an amount of ₹24,97,000/-, from the Corporate Debtor. The claim of the Applicant is based upon the Agreement between the parties dated 04.04.2017.

4. A brief history of the transaction between the Petitioner and the Corporate Debtor is as follows: -

   a. The Petitioner is engaged in the business of manufacturing special purpose machineries and their parts. The Corporate Debtor approached the Petitioner with a request of supply of "Terminal Equipment for Slitter line". They entered into a "Agreement for the supply of Equipment" on 04.04.2017. The copy of the agreement is annexed to the petition.
   b. As per the terms of the Agreement the Petitioner was supposed to supply the equipment to the Corporate Debtor within a period of 90 days. The purchaser also within 90 days of the supply of material would make the entire payment of the amount.
   c. The Petitioner supplied the material within 90 days as per the terms of the agreement and the Petitioner raised the proforma invoice on the Corporate Debtor. But the Corporate Debtor failed to make the payment within the stipulated time. The Petitioner annexed the delivery challan dated 29.06.2017 which was received by the Corporate Debtor. The Delivery challan dated 29.06.2017 include captained that MVAT @13.5% was payable on the invoice value. The Petitioner has in his petition annexed a copy of the Delivery Challan regarding goods supplied of Rs.22,00,000/- with MVAT amount of 13.5% making the total value of goods supplied Rs.24,97,000/-. The

delivery challan has been duly received by the Corporate Debtor.

d. The Petitioner in confirmation of debt has put on record NESL record of financial information-Form C which comprises a total debt of Rs.24,97,000/-.

5. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues, on 22.09.2019, the Petitioner issued Demand Notice, under Section 8 of the Code, demanding a sum of ₹24,97,000/-. However, there was no reply from the Corporate Debtor for the Demand Notice.

6. The Applicant has filed its statement of accounts for the period from 01.12.2018 to 01.12.2019 to show that no money is received from the Corporate Debtor.

7. The Corporate Debtor filed its reply and submits that the Corporate Debtor is in the financial difficulty because of which company was not able to make payment of the Petitioner.

8. The outstanding debt of ₹24,97,000/- is due and payable against the Corporate Debtor and Corporate Debtor has committed default in making the payment.

9. On 03.02.2020, heard both sides. The Corporate Debtor accepted the liability as well as the default hence this petition deserves admission.

10. The application filed by the Operational Creditor is in proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.

11. The Applicant has proposed name of Mr. Rajkumar Mahto, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00723/2018-19/12209] as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

12. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Operational Creditor for initiation of CIRP in prescribed Form 5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of ₹24,97,000/- against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

13. This application is filed under Section 9 of I&B Code, 2016, filed by **NBS Engineering Solutions Pvt. Ltd**, against **Purvi Metals Pvt. Ltd.**, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

    I. That this Bench as a result of this prohibits:

        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 activity 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 possession of the corporate debtor.

II. That 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.

III. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

IV. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

V. That this Bench at this moment appoints Mr. Rajkumar Mahto, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00723/2018-19/12209] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VI. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth. Institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. is prohibited after the declaration of morarorium. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

VII. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

VIII. The appointed IRP shall also comply to the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

IX. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **Chandra Bhan Singh** | **Suchitra Kanuparthi** |
| Member (Technical) | Member (Judicial) |

**Date: 17.02.2020**