



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
KOLKATA

CP (IB) No. 346/KB/2021

A petition 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:

Subhadra Commercial Private Limited
[CIN: U51900WB2001PTC093207]

...Operational Creditor

Versus

Purulia Metal Casting Private Limited
[CIN: U27109WB2004PTC099785]

...Corporate Debtor

Order pronounced on: 18.10.2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Operational Creditor : Mr. Shaunak Mitra, Advocate
Mr. Saurav Jain, Advocate
For the Corporate Debtor : Mr. S. K. Tiwari, Advocate
Mr. Jayesh Kr. Choradia, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Subhadra Commercial Private Limited (“Operational Creditor”), a company incorporated under the provisions of Companies Act, 1956 and represented by Mr. Shankar

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Chandra Nag, authorized by a Board Resolution dated 01 October 2021¹, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Purulia Metal Casting Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a company limited by shares incorporated on 14 September 2004, having CIN: U27109WB2004PTC099785, incorporated under the Companies Act, 1956 with the Registrar of Companies, West Bengal. Therefore, this Adjudicating Authority has jurisdiction to deal with this petition.
4. The present petition was filed on 03 November 2021 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.1,62,84,182.31 (Rupees One Crore Sixty Two Lakh Eighty Four Thousand One Hundred and Eighty Two and Thirty One Paise only) being Rs.1,18,57,172/- (Rupees One Crore Eighteen Lakh Fifty Seven Thousand One Hundred and Seventy Two only) for invoices raised from 02 September 2019 to 21 November 2019 and Rs.38,471/- (Rupees Thirty Eight Thousand Four Hundred and Seventy One only) for invoices raised during 12 February 2020 to 19 February 2020 along with interest amounting to Rs.43,88,539.31 (Rupees Forty Three Lakh Eighty Eight Thousand Five Hundred and Thirty Nine and Thirty One Paise only) calculated at 18% per annum till 30 September 2021.
5. *Submissions of the learned Counsel appearing on behalf of the Operational Creditor*

5.1. The learned Counsel submitted the Corporate Debtor placed orders for Lam Coke and Dolomite *via* telephone as well as through emails, and the Operational Creditor supplied the goods as per the requirements of the Corporate Debtor. The Operational Creditor raised invoices accordingly.

5.2. The responsibility of transportation of goods from the Depot premises of the Operational Creditor was in the hands of the Corporate Debtor, the

¹ Annexure C at Page 28 of the CP

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Corporate Debtor always arranged the transportation for carrying the goods to the Corporate Debtor's factory site.

5.3. It is submitted that despite default in making payments for the invoices raised between 02 September 2019 to 21 November 2019, the Corporate Debtor approached the Operational Creditor for supply of goods in the month of February 2020 stating that the Corporate Debtor was going through financial crunch in the business and promised the Operational Creditor that payment would be made immediately.

5.4. For the sake of good business relation, the Operational Creditor supplied goods and raised invoices for the supplies made between 12 February 2020 to 19 February 2020. The Corporate Debtor paid a sum of Rs.1,12,36,250/- out of Rs.1,12,74,721/- leaving a due of Rs.38,471/-.

5.5. The payments received from the Corporate Debtor were adjusted towards the invoices in FIFO basis. The Corporate Debtor has given a confirmation of accounts confirming the outstanding amount of Rs.1,18,57,172/- from the period of 01 April 2019 to 06 February 2020.

5.6. The Operational Creditor requested the Corporate Debtor to make payment of the outstanding invoices on several occasions.

5.7. The Operational Creditor issued a demand notice dated 08 October 2021 under section 8 of the Code to the Corporate Debtor demanding the payment of the outstanding debt which was delivered *via* post on 09 October 2021. No reply was received from the Corporate Debtor.

5.8. The Operational Creditor has filed an affidavit in compliance with section 9(3) (b) of the Code.

5.9. The Operational Creditor filed a supplementary affidavit, wherein the Operational Creditor has proposed the name of Mr. Jitendra Lohia, having registration no. IBBI/IPA-001/P00170/2017-28/10339 as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim

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Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

6. *Submissions of the learned Counsel appearing on behalf of the Corporate Debtor*

6.1. It is submitted that the Operational Creditor has forged documents and obtained signatures of the Respondent on blank sheets of paper by coercion.

6.2. The Operational Creditor has raised a claim with respect to invoices raised from 02 September 2019 to 21 November 2019. It is submitted that the Corporate Debtor has made regular payments to the Operational Creditor. A total sum of Rs.1,50,93,852/- (Rupees One Crore Fifty Lakh Ninety Three Thousand Eight Hundred and Fifty Two only) has been paid to the Operational Creditor over a period of time i.e. from 02 September 2019 to 26 November 2019.

6.3. From 12 February 2020 till 19 February 2020, the Operational Creditor supplied goods worth Rs.1,12,74,721/- out to which the Corporate Debtor has made a payment of Rs.29,50,000/-.

6.4. The Corporate Debtor has further made a payment of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the Operational Creditor on three dates i.e. 28 January 2022, 04 March 2022 and 29 September 2022, after the institution of this Company Petition.

6.5. Hence, as on the date of filing of this Company Petition, the outstanding amount of the was Rs.59,07,172/- (Rupees Fifty-Nine Lakh Seven Thousand One Hundred and Seventy Two only) which is less than the threshold limit of Rs.1Crore.

6.6. It is submitted that the Corporate Debtor is a going concern and is a reputed and profit making company which is evident from its last audited financial statement.

Analysis and Findings

7. Heard the learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the records.
8. The Corporate Debtor has raised three contentions:
 - 8.1. Payments have been made on a regular basis;
 - 8.2. Amount due is less than the threshold limit; and
 - 8.3. The Corporate Debtor is a solvent and profit making company.
9. Let us consider the first two contentions raised by the Corporate Debtor. According to the Corporate Debtor it has made a payment of Rs.1,50,93,852/- (Rupees One Crore Fifty Lakh Ninety Three Thousand Eight Hundred and Fifty two only) from 02 September 2019 till 26 November 2019, and has also stated in its reply that copies of the relevant Bank Statement are annexed in Annexure A. Unfortunately, Annexure A that is annexed to the reply from pages 16 to 22A is the ledger, which is a document of the Corporate Debtor and are not Bank Statements. Thereafter, the Bank Statements attached in Annexure B start from 15 February 2020. From the above it is clear that the Corporate Debtor has not furnished a genuine document to substantiate its claim of payment from 02 September 2019 till 26 November 2019.
10. The Corporate Debtor has filed Bank Statement for the period of 15 February 2020 to 18 February 2020 wherein the Corporate Debtor has made payment to the Operational Creditor on 17 February 2020 and 18 February 2020 totaling to Rs.29,50,000/- (Rupees Twenty Nine Lakh Fifty Thousand only).
11. Thereafter the Corporate Debtor has filed Bank Statement for the year 2022 i.e. after the institution of the Company Petition.

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12. The Corporate Debtor has not filed any other document to substantiate that regular payments were being made as the last payment as reflected from the Bank statement is of 18 February 2020.
13. This clearly goes to show that there is default on the part of the Corporate Debtor.
14. The third contention raised is that the Corporate Debtor is a solvent company and the object of the Code is the restructuring of Companies that are unable to pay and are in continuous default in payment of their dues. In the present case the Corporate Debtor has filed a two page extract of the audited Financial Statement and we cannot come to any conclusion by perusing only two pages of the extract of the audited Financial Statement, whether the Corporate Debtor is a solvent Company or not.
15. The Operational Creditor has not mentioned the date of default in Form 5 but the same is mentioned in the Form 3 i.e. the Demand Notice that was sent to the Corporate Debtor on 04 October 2021. The date of default has been mentioned as 02 September 2019, hence the petition has been filed within the period of limitation. Although the date of default is not mentioned in Form 5 there is no bar in considering the date of default mentioned in the Demand Notice.
16. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.
17. It is, accordingly, hereby ordered as follows:-

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- a. The application bearing CP (IB) No. 346/kb/2021 filed by Subhadra Commercial Private Limited, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Purulia Metal Casting Private Limited, the Corporate Debtor, is **admitted**.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. 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.
 - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - e. Mr. Jitendra Lohia, having registration no. IBBI/IPA-001/P00170/2017-28/10339, email id : jitulohia@knjainco.com, phone no. 9874044000, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. 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 Code.
 - f. 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

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in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby 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. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

18. **CP (IB) No. 346/KB/2021** to come up on **29.11.2023** for filing the periodical report.

19. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is pronounced on the 18th day of October 2023.

GGRB_LRA