

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

CP (IB) No.3231/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

**National Steel And Agro
Industries Private Limited**

[CIN: L27100MH1985PLC140379]

...Operational Creditor

v/s.

Mitesh Trading Private Limited

[CIN: U74900MH2010PTC199988]

...Corporate Debtor

Order Delivered on: 19-01-2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Atul K. Gupta, Advocate

For the Respondent:

SANCHETI &SANCHETI, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by National Steel And Agro Industries Limited, (“the Operational Creditor”), [CIN: L27100MH1985PLC140379] seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Mitesh Trading Private Limited (“the Corporate Debtor”), [CIN: U74900MH2010PTC199988].

2. The Corporate Debtor is a company incorporated on 11.02.2010 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Flat No.22, Dharti Maa Society, Bhandewadi, Wathod Road Nagpur Maharashtra-440008. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition is filed by the Operational Creditor before this Adjudicating Authority claiming the Corporate Debtor failed to make payment of a total sum of Rs.41,14,41,054/-. The Last Date of Invoice is 12.02.2018. The date of default is 13.02.2018.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that the Operational Creditor is a listed Public Company dealing in the Steel and Agro Business. The Corporate Debtor had purchased the agricultural products (yellow peas) on credit and has been making part payments.
 - b) The operational creditor by its letter dated 04.05.2018, 02.07.2018 and 07.08.2018 requested the Corporate Debtor to release the due payments and in reply of the aforesaid letters Corporate Debtor by its letters dated 07.06.2018, 20.07.2018 and 16.08.2018 admitted the dues. After several reminders to release the due payments the Corporate Debtor failed in making aforesaid payments.
 - c) The Operational Creditor submits that, legal Notices dated 11.09.2018, 15.11.2018 & 18.02.2019 to the Corporate Debtor for recovery of the due payments and in reply of the aforesaid letters Corporate Debtor by its letters dated 14.09.2018, 26.11.2018 and 28.02.2019 admitted the dues.

- d) The Operational Creditor had served a Demand Notice in Form 3 dated 12.04.2019 to the Corporate Debtor at Pg. No 13-17 of the Petition. Following chart shows the Annexures to the Demand Notice.

Sr. No	Invoice no.	Date	Invoice amount in rupees.
1	KOAD/17-18/1134	10.10.2017	1,77,90,210
2	KOAD/17-18/1175	13.10.2017	1,71,97,250
3	KOAD/17-18/1176	13.10.2017	1,73,52,580
4	KOAD/17-18/1177	13.10.2017	1,69,30,970
5	KOAD/17-18/1178	13.10.2017	1,72,86,010
6	KOAD/17-18/1418	23.10.2017	1,68,79,600
7	KOAD/17-18/1419	23.10.2017	1,71,01,700
8	KOAD/17-18/1459	24.10.2017	1,71,68,330
9	KOAD/17-18/1460	24.10.2017	1,72,34,960
10.	KOAD/17-18/1505	26.10.2017	1,42,52,400
11.	KOAD/17-18/1506	26.10.2017	1,44,30,000
12.	KOAD/17-18/1507	26.10.2017	1,45,85,400
13.	KOAD/17-18/1750	02.11.2017	1,99,35,600
14.	KOAD/17-18/1751	02.11.2017	2,00,24,400
15.	KOAD/17-18/3117	06.02.2018	1,90,90,500
16.	KOAD/17-18/3118	06.02.2018	1,88,23,500
17.	KOAD/17-18/3162	10.02.2018	3,69,96,488
18.	KOAD/17-18/3163	10.02.2018	3,79,58,709
19.	KOAD/17-18/3170	12.02.2018	1,70,19,360
20.	KOAD/17-18/3171	12.02.2018	1,66,44,720
21.	KOAD/17-18/3172	12.02.2018	1,64,30,640
22.	KOAD/17-18/3172	12.02.2018	1,72,86,960
Less: Amount Received			- 69,79,233
Total			41,14,41,054

- e) The Operational Creditor submits that, no reply of the Demand Notice received from Corporate Debtor till date. Neither have they disputed anything on the quality or on any other aspects.

5. The Corporate Debtor has submitted its reply as follows:

- a) The Corporate Debtor further submits that, the Operational Creditor had supplied materials during the period from September 2017 to March 2018. The Operational Creditor supplied (yellow peas) aggregating to Rs.63.32 Cr. (Approx.), however due to erratic supply of goods and inferior quality of materials, the Corporate Debtor experienced huge difficulties and set back in corresponding supplies of the commodities to its intending buyers on time and further owing to fluctuating market conditions and falling market prices.
- b) The Corporate Debtor requested the Petitioner to co-operate and bear with Operational Creditors, to face the crunch situation, till improvement of market conditions and prices to mitigate substantial losses. The Corporate Debtor had faithfully paid substantial dues to the Operational Creditor during the period April 2018 to October 2018.
- c) The Corporate Debtor further submits that he had since paid a sum of Rs.75,00,000/- (Rupees Seventy-Five Lacs) to the Operational Creditor on dated 26th August 2019, i.e. post filing of instant application under Code 2016.
- d) That considering the facts and circumstances of erratic schedule of supplies of the materials by the operational creditor, there exists a dispute as defined u/s 5(6) of the IBC Code 2016.

Findings:

6. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
7. Invoices have been placed on record at pp.20-49 of the Petition. The total debt due and payable to the Operational Creditor is Rs. 41,14,41,054/-.

8. There is no dispute as to the amount of debt nor the Corporate Debtor has denied the claim amount 41,14,41,054/-.
9. It is also noticed from the petition that the Corporate Debtor also admitted the amount of Rs. 41,14,41,054/- in its reply letters.
10. In view of the above, the Petition 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 rupees one lakh stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition.
11. Mr. Rajesh Lohiya an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00049/2016-17/10093 has been proposed as interim resolution professional by the National Steel and Agro Industries Limited (Operational Creditor) in connection with the proposed corporate insolvency resolution process of Mitesh Trading Private Limited.

ORDER

- I) The Petition bearing CP(IB) 3231/MB-IV/2019 by National Steel And Agro Industries Limited, (“the Operational Creditor”), [CIN: L27100MH1985PLC140379] seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Mitesh Trading Private Limited (“the Corporate Debtor”), [CIN: U74900MH2010PTC199988] is admitted.
 - (a) 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.
- (b) 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;
- (c) 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.

- (d) 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.
- (e) Mr. Rajesh Lohiya an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00049/2016-17/10093 is hereby appointed as Interim Resolution Professional by the National Steel and Agro Industries Limited (Operational Creditor) in connection with the proposed corporate insolvency resolution process of Mitesh Trading Private Limited.
- (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 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.
- (g) 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. These expenses are subject to approval by the Committee of Creditors (CoC).
- (h) 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.

- II) 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/-

Kishore Vemulapalli
Member (Judicial)

19.01.2022

Sd/-

Rajesh Sharma
Member (Technical)