

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

C.P. (IB) 878/MB/2019

Under Section 9 of the IBC, 2016

In the matter of

Mr. Sudhir Kamble

.....Operational Creditor/Petitioner

V/s

K & K Foundry Private Limited

.... Corporate Debtor

Order Delivered on: 20.03.2020

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

For the Petitioner: Mr. Amit Singh Adv.
For the Corporate Debtor: None Present

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company Petition is filed by Mr. Sudhir Kamble (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against K & K Foundry Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹50,23,709/- plus interest @ 2% per month by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition states that the Petitioner from time to time supplied Pig Iron ('goods') to the Corporate Debtor. The Petitioner raised

invoices upon the Corporate Debtor pursuant to sale and supply of the goods.

3. The Corporate Debtor made partial payments towards the sale of goods by the Petitioner. However, the Corporate Debtor failed and neglected to make payment of outstanding amount.
4. The Petitioner and the Corporate Debtor signed the Settlement Agreement ('First Settlement Agreement') on 30.11.2017 wherein the Corporate Debtor agreed and accepted to pay sum of ₹47,57,650/- to the Petitioner as per the Terms and Conditions of the said Agreement.
5. Pursuant the said Agreement, the Corporate Debtor issued and handed over to the Petitioner cheques amounting to ₹47,57,650/-. However certain cheques issued as per provisions of Settlement Agreement ('First Settlement Agreement') got dishonored.
6. On the request of the Corporate Debtor, the parties entered into one more settlement agreement ('Second Settlement Agreement') on 29.06.2018. The Corporate Debtor in this settlement acknowledged, agreed and accepted to make payment ₹50,23,709/- as per Terms and Conditions of the Second Settlement Agreement.
7. The Petitioner states that on the request of the Corporate Debtor, the Petitioner did not deposit Cheque No. 107666 dated 13.07.2018 of ₹5,00,00,000/-, Cheque No. 107667 dated 30.07.2018 of ₹6,50,730/- and Cheque No. 206443 dated 30.07.2018 of ₹2,06,443/- all drawn on SVC Co-operative Bank Limited, Kolhapur.

8. The Petitioner deposited cheques amounting to ₹36,66,536/- provided by the Corporate Debtor as per terms and conditions of the Second Settlement Agreement. The said cheques got dishonored for reason 'Exceeds Arrangement'. The copy of the cheque dishonored memo is annexed to the petition.
9. The Petitioner issued notice to the Corporate Debtor under Section 138 of Negotiable Instrument Act, 1881 towards dishonored of above-mentioned cheques.
10. The Corporate Debtor had agreed that in the event of dishonor of any of the said cheque, balance amount of settlement amount shall stand due and payable from the date of dishonor of cheque i.e. 30.10.2018 along with interest of 2% per month.
11. On the account of non-payment of the due, the Petitioner issued Demand Notice dated 01.02.2019 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of ₹50,23,709/- plus interest @ 2% per month. The Corporate Debtor failed to respond to the demand notice.
12. The Petitioner has annexed the copy of Settlement Agreement dated 30.11.2017, Settlement Agreement dated 29.06.2018, statement of dishonored cheques, dishonored cheques with Bank Return Memos, Notice dated 28.11.2018 under provisions of Negotiable Instrument Act, 1881 towards dishonored cheques and Balance Sheet, Profit & Loss Account for financial year 2015-2016 & 2016-2017.
13. The counsel for the Petitioner is present. This matter was filed on February 2019 and thereafter it has come up for hearing on 03.07.2019, 09.09.2019, 23.09.2019, 23.10.2019, 13.11.2019,

28.11.2019, 16.12.2019, 02.01.2020, 21.01.2020 and 24.02.2020. No reply has been filed in this matter till date and on most of the occasions the Corporate Debtor side has not been present during the hearing. Hence on 24.02.2020 heard the counsel of the Petitioner and reserve for orders.

14. On the perusal of the above facts, it is clear that the Corporate Debtor has defaulted in making payment of outstanding amounts under the Settlement Agreements between the Petitioner & Corporate Debtor and default of payment vide bounced cheques & offence under Section 138 of NI, Act 1881. Hence, there is clear debt and default.
15. The outstanding debt of ₹50,23,709/- plus interest @ 2% per month is due and payable against the Corporate Debtor has committed default in making the payment.
16. The application filed by the Operational Creditor is on proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.
17. 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 more than rupees one lakh 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.

18. This application is filed under Section 9 of I&B Code, 2016, filed by **Mr. Sudhir Kamble**, against **K&K Foundry Private Limited**, 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 provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- IV. 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.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Dinesh Gopal Mundada, having registration No. IBBI/IPA-001/IP-P00286/2017-18/10530, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
- VII. 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.
- VIII. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. 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.

- IX. 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.
- X. The appointed IRP shall also comply 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.
- XI. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)