



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.107/Chd/Hry/2023

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Sh. Parveen Kumar Garg,
Sole Proprietor of M/s GSV Products,
Legal Admin & Regd. Office:-
WZ-14D, Manohar Park, New Delhi-110026

...Petitioner/Operational Creditor

Vs.

Laxmi Pipes Limited
Registered Office At:-
Bhiwani Road, Hansi, District Hisar, Haryana-125033
Corporate Office:-
1207, Tower-1, Pearls Omaxe, NSP
Pitampura, Delhi-110034.
CIN: U25209HR1984PLC019135

...Respondent/Corporate Debtor

Judgement delivered on: 17.05.2023

**Coram: Hon’ble Mr. Harnam Singh Thakur, Member (Judicial)
 Hon’ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. G.S. Sarin, PCS
For the Respondent-Corporate Debtor : Mr. Vishav Bharti Gupta, Advocates

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency
and Bankruptcy Code, 2016 (for brevity ‘IBC’ / ‘Code’), by Sh. Praveen



Kumar Garg, Sole Proprietor, M/s GSV Products, Legal Admin (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Laxmi Pipes Limited (for brevity 'Corporate Debtor' / 'Respondent')**).

2. The Corporate Debtor, namely, Laxmi Pipes Limited, is a Company incorporated on 25.09.1984 under the provisions of the Companies Act, 1956 with CIN No. U25209HR1984PLC019135 with its Registered Office At:- Bhiwani Road, Hansi, District Hisar, Haryana-125033, Corporate Office:- 1207, Tower-1, Pearls Omaxe, NSP Pitampura, Delhi-110034. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A-1.

3. The facts of the case, briefly, as stated in the petition are that the petitioner was engaged in the business of sale and supply of furnace oil. The corporate debtor has approached the operational creditor for the purchase of furnace oil and supply thereof. After the supply of the desired quality and quantity of the furnace oil, the operational creditor has raised invoices accordingly. However, the corporate debtor failed to make payment against the said supplies. The Principal amount of Rs.1,14,27,112 is pending for the period 1st April 2021 to 27th January 2023 as per the ledger maintained by the corporate debtor. As per the terms and conditions qua the business transaction, it was mutually agreed between the parties to release the said payments to the applicant within 15 days. After the expiry of 15 days the various outstanding bills, the petitioner demanded for the release of the



due payment from the corporate debtor, however, the same was not released. On account of the delayed payment, an interest @24% p.a. is to be charged from the date of the bill. Hence, a sum of Rs.25,61,331/- is also receivable as interest.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,39,88,443.00 (Rupees One Crore Thirty-Nine Lakhs Eighty-Eight Thousand and Four Hundred Forty-Three Only), which includes principal amount of Rs.1,14,27,112 and interest of Rs.25,61,331/-. It is stated that the default has been occurred on 16.11.2021 i.e. the last date when the payment was received. Copy of Invoices, e-way bills and ledger account maintained of the corporate debtor by the operational creditor (Annexure A-2), and GST return in Form-GSTR-1 (Annexure A-7), calculation sheet of the transactions with regard to the outstanding payments (Annexure A-2) are attached with the main petition.

5. A demand notice in Form 3 & 4 dated 31.01.2023 is stated to be issued by the operational creditor through speed post. The same has been delivered to the corporate debtor and the copy of postal receipts along with the tracking report are attached as Annexure A-4 of the petition. The corporate debtor has replied to the demand notice through letter dated 20.02.2023, wherein it is stated that due to some unavoidable circumstances, the corporate debtor not in a position to pay out the outstanding dues of Rs.1,14,27,112/- as the company is undergoing through financial distress on account of financial difficulties.



6. The respondent appeared on 20.04.2023 and accepts the notice on behalf of the corporate debtor. An affidavit was filed by the Managing Director of M/s Laxmi Pipes Ltd-corporate debtor by diary No.01202/2 dated 11.05.2023, wherein it has been deposed that due to lack of demand company has been unable to generate revenues which eventually led to huge losses. It has been further deposed that the company has been facing a very high liquidity crunch due to the non-materialization of receivables and has incurred defaults of other operational creditors also and the company is also not able to pay out the outstanding dues of Rs.1,14,27,112/-.

7. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

8. The first issue for consideration is whether the demand notice dated 31.01.2023 is stated to be issued by the operational creditor through speed post. The same has been delivered to the corporate debtor through speed post and the and the copy of postal receipts along with tracking report is attached at Annexure A-4 of the petition. Therefore, a demand notice was duly served.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by the operational creditor that no notice is given by the corporate relating to any dispute of unpaid operational debt and there is no pre-existing dispute between the parties in any court of law or authorities as on day. It can be seen from the affidavit filed by the Managing Director of the corporate debtor by diary No.01202/2 dated 11.05.2023 that the corporate debtor admitted its



liability to pay the outstanding principal amount of Rs. 1,14,27,112/- of the petitioner and also expressed its inability to settle the same due to financial crunch.

10. The other issue for consideration is whether this application is filed within limitation. It is seen from the ledger account which is a part of Annexure-A3 that the last payment was received on 16.11.2021. Therefore, the period of limitation starts from 16.11.2021 and the present application is filed vide Diary No.01202 dated 11.04.2023. Hence, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total admitted unpaid operational debt (in default) of Rs. 1,14,27,112/- is still pending which amounts to default. The debt is evidenced from the documents such as Invoices, e-way bills and ledger account maintained of the corporate debtor by the operational creditor (Annexure A-2), and GST return in Form-GSTR-1 (Annexure A-7) which are attached with the main petition. The petitioner proved the debt, which is more than Rupees one crore.

12. It is also noted that the corporate debtor has failed to pay back the aforesaid amount due as mentioned in the statutory notice till date. The corporate debtor has also admitted its liability with regard to the payment of the outstanding amount. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the aforesaid discussed facts that the



liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects and it is also admitted by the respondent/corporate debtor that the operational Debt for a sum of Rs. 1,14,27,112/- is pending. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Laxmi Pipes Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

14. In Part III of Form No. 5, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr Deepak Thukral and there is nothing adverse against him. In view of the above, we appoint Mr Deepak Thukral, Registration No. IBBI/IPA-002/IP-N00182/2017-18/10453, E-mail:deepakthukral1@gmail.com, Mobile No. 9417496655, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr Deepak Thukral shall be in accordance with the provisions of Section 16(5) of the Code;
- ii). In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand



suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

i.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

ii.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;



iii.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

iv.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the



principal documents of the company that should be maintained and preserved since inception.

v.) *“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”*

As per the Standard of Auditor (SA-230)

vi.) *“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report , or, if later, the date of the group auditor's report.”*

vii.) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

viii.) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government



portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

ix.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

x.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

xi.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.



15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be



terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

16. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.



18. The petition is admitted accordingly.

Sd/-

Subrata Kumar Dash)
Member (Technical)

May 17, 2023

SD/SA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)