

Sr.No-187/2019

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 70/9/JPR/2019

(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:

ASTRON INTERNATIONAL PRIVATE LIMITED

**...OPERATIONAL CREDITOR/
APPLICANT**

VERSUS

DIVYANSHI MINERAL & METAL PRIVATE LIMITED

**...CORPORATE DEBTOR/
RESPONDENT**


Assistant Registrar
National Company Law Tribunal
Jaipur

04/9/2019

For the Applicant:

For the Respondent:

**SANDEEP JAIN, PCS
NONE-APPEARED**

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Divyanshi Mineral & Metal Private Limited



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MEMO OF PARTIES

Astron International Private Limited

Registered Office at: - Block -C, 309,

3rd Floor Supath-II Complex,

Vadaj Ahmedabad- 380013 (Gujrat)

...Operational Creditor/Applicant

VERSUS

Divyanshi Mineral & Metal Private Limited

Registered Office at: 1, Kama Vihar,

Daangion Ka Guda, Lakhawali

Udaipur-313001 (Rajasthan)

...Corporate Debtor/Respondent

Order Pronounced On:03.09.2019

ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule-4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Astron International Private Limited (for brevity 'Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process against Divyanshi Mineral & Metal Private Limited (for brevity "Corporate Debtor"). This Application is filed through Mr. Vinod

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Sindhawa an Authorised Representative of the Applicant, authorised vide Board Resolution dated 04.01.2019.

2. The Applicant is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 02.09.2011, duly registered with the Registrar of Companies, Jaipur having CIN: U26915GJ2011PTC066981 and the Registered Office of the Applicant is at Block -C, 309, 3rd Floor Supath-II Complex, Vadaj Ahmedabad- 380013 (Gujrat). The Applicant is engaged in the business of supplying and trading of alt sulphur earths and stone plastering material, lime and cement, natural borates and concentrates, alumina powder etc. in India.
3. The Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 01.06.2013, duly registered with the Registrar of Companies, Jaipur having CIN: U26910RJ2013PTC042753 and the Registered Office of the Corporate Debtor is at 1, Kama Vihar, Daangion Ka Guda, Lakhawali Udaipur-313001 (Rajasthan). The Corporate Debtor is the supplier and trader of Zircon Powder, Zirconium Silicate, Zirconium Chemicals etc. in India.
4. It is the case of the Applicant that the Applicant has supplied alumina powder to the Corporate Debtor but the Corporate Debtor has failed to make payment for invoices raised by Applicant from 10.10.2014 to 20.11.2014 for

an outstanding amount of Rs. 15,39,252/- (Rupees Fifteen Lakh Thirty-Nine


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Thousand Two Hundred Fifty-Two Only). Copy of invoices are annexed as Exhibit-C. Thereby the applicant has issued a notice under Section 8 of the Insolvency and Bankruptcy Code through post and via email, demanding an amount of Rs. 26,64,637/- including interest @ 18% p.a. on 19.12.2018 on the Corporate Debtor, which was duly received by Corporate Debtor and tracking report as proof of service of the said Section 8 notice is annexed but the Corporate Debtor has neither replied to the Demand Notice nor raised any dispute of the unpaid operational debt. Thus, the applicant filed the present application under section 9 of Insolvency and Bankruptcy Code, 2016.

5. The total amount claimed by the applicant as mentioned in Part IV is a sum of Rs. 26,64,637/- including interest as an outstanding amount which is due and payable by the corporate debtor.
6. Perusal of the records of the proceeding before this Tribunal shows that notices were issued to the Corporate Debtor as well as to the directors of the Corporate Debtor and as per the track report filed vide Dairy No. 595/2019, the notices were duly served to both the directors but the envelope sent to the Corporate Debtor at the address mentioned in the Master data has returned back with the endorsement "Insufficient Address".

It is seen that the copies of application were also served through email as

reflected in the master data. Thus, in view of non-appearance, this Tribunal

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was constrained to proceed ex-parte against the respondent and the submissions of learned counsel for the Applicant were heard on 08.08.2019 and orders were reserved.

7. It is seen from records that invoices were raised by the Applicant pertaining to the year 2014 and the same was noted by this Tribunal in its Order dated 06.06.2019. Thereby, the Applicant vide Dairy no. 1127/2019 submitted that the corporate Debtor has made a payment of Rs. 70,00,000 by transfer in the Bank Account of the Applicant on 30.03.2017. Copy of Bank Statement is annexed. It is further submitted that the Corporate Debtor has also issued a cheque dated 05.02.2018 of Rs. 15,39,252/- (Rupees Fifteen Lakh Thirty-Nine Thousand Two Hundred Fifty-Two only) and the same was dishonoured with remark "Insufficient Funds" when presented for encashment. Copy Return Memo dated 06.02.2018 is annexed. Thus, the matter is within the purview of Law of Limitation.
8. This Tribunal perused all the relevant papers and found them to be in order. The Registered Office of Corporate Debtor is situated in Udaipur and therefore this Tribunal has jurisdiction to entertain and try this Application.
9. It is apparent from the records that the payment of claim amount has been defaulted by the Corporate Debtor as despite the issue of Section 8 notice by the Operational Creditor and the receipt of the same by the Corporate Debtor, the payment was not made. In these circumstances the claim stands

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established and prima facie presumption raised that there is default in payment of the amount due to Operational Creditor and no dispute is in existence. Hence, this Tribunal is inclined to initiate the proceedings namely, Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the Provisions of IBC, 2016.

10. The Applicant has named the Interim Resolution Professional (IRP) to be appointed by the order of this Tribunal, one Mr. Kedarram R Laddha having Registration Number IBB/IPA-001/IP-P00586/2017-18/11115 (email: info@kpsjca, Mobile No. : 9737533000), duly registered with Indian Institute of Insolvency Professional of ICAI, as the Interim Resolution Professional. The Applicant has filed consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.

11. The consequences of initiation of CIRP shall be inter alia, as follows: -

(i) The Resolution Professional Mr. Kedarram R Laddha, having Registration No. IBB/IPA-001/IP-P00586/2017-18/11115 is hereby appointed as the Interim Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the Provisions of IBC, 2016, including issue of

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Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.

- (ii) Further as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out the Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be

communicated to the Operational Creditor, Corporate Debtor as well

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as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today.

A copy of this order shall also be communicated to IBBI for its records.

In the circumstances this Application is admitted.

SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)

DR. POONDLA BHASKARA MOHAN
MEMBER (JUDICIAL)



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