

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

C.P. No. 2706/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Rashmi Realty Builders Private Limited,  
B/215, Shanti Shopping Centre, Opp.  
Railway Station, Mira Road (East)  
Thane-401107

...Petitioner

V/s.

MSM Steels Private Limited

Shop No. 1, Malang Complex, Nandi  
Stop, Old Ausa Road, Latur-413531

... Corporate Debtor

Order delivered on:17.09.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Amit Kakri i/b Ajay Law Associates

For the Corporate Debtor: Adv. Kunal Chheda

*Per: V. Nallasenapathy, Member (Technical)*

**ORDER**

1. This Company Petition is filed by Rashmi Realty Builders Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against MSM Steels Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹2,54,49,071/- (Two Crore Fifty Four Lakh Forty Nine Thousand and Seventy One), the principal being ₹1,64,29,651/- and interest of ₹ 90,19,420/-, 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 reveals that the Petitioner has approached the Corporate Debtor for supply of steel for the construction purposes. On 12.06.2014, the Petitioner issued Purchase Order to the Corporate Debtor for supply of steel (T.M.T. bars 8 MM to 32). As per the terms, the Petitioner made advance payments on various dates amounting to 1,75,00,000/- the details of the dates as mentioned below:

Date	Amount
02.07.2014	1,00,00,000/-
28.01.2015	25,00,000/-
03.03.2015	25,00,000/-
18.04.2015	25,00,000/-

3. The ledger account produced by the petitioner reveals the Corporate Debtor failed to supply goods and there is a balance of ₹ 1,64,29,651/- payable by the Corporate Debtor to the Petitioner. The copy of the ledger account is annexed to the petition.

4. The Petitioner sent several requesting the Corporate Debtor to supply the materials or refund the amount paid as advance.

5. The Petitioner vide letter dated 20.08.2015 requested Corporate Debtor to supply the steel. The Corporate Debtor showed inability to supply the materials and sought time to supply the same.

6. The Corporate Debtor neither refunded the advance nor supplied goods. The Petitioner issued Demand Notice on 20.05.2019 demanding a sum of Rs. 2, 54,49,071/- under Section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no reply from the Corporate Debtor.

7. On 04.09.2019 Corporate Debtor sought time to file reply, this bench permitted the Corporate Debtor to file reply on or before 12.09.2019 but till date no reply has been filed by the Corporate Debtor. On 12.09.2019, both sides argued the matter, the director of the Corporate Debtor personally

present and admitted the liability and default, hence the petition deserves admission.

8. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) that the order of moratorium shall have effect from 17.09.2019 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr. Mayank Rameshchandra Jain, residing at A-1001, Samparpan, Near, Spectra Motors, Western Express Highway, Borivali East, Mumbai-400066 having Registration No. IBBI/IPA-001/IP-P01055/2017-2018/11748 as Interim Resolution Professional to carry the functions as mentioned under the Code.

9. Accordingly, this Petition is admitted.

10. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Suchitra Kanuparthi  
Member (Judicial)