IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.96/BB/2020
U/s 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Synew Steel Private Limited
(Represented by
Mr. Nilesh Vallabhdas Dhanani, Director)
806 A, 8th Floor, Prestige Towers,
99 & 100, Residency Road,
Bangalore – 560 025. - Petitioner/Corporate Applicant

Order Pronounced on: 30th June, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels present (Through Video Conference):

For the Petitioner : Mr. Akshay Petkar

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P. (IB) No.96/BB/2020 is filed by Mr. Nilesh Vallabhdas Dhanani, Director of Synew Steel Private Limited (hereinafter referred to as 'Petitioner/ Corporate Applicant') under Section 10 of the IBC, 2016, R/w Rule 7 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Synew Steel Private Limited, on the ground that it has committed default for total amount of Rs.1,18,56,964/- (Rupees One Crore Eighteen Lakh Fifty Six Thousand Nine Hundred and Sixty Four only) which includes Financial Creditors (Rs.27,84,394/-) and Operational Creditors (Rs.90,72,570/-).

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) Synew Steel Private Limited (herein after referred to as 'Company') was incorporated on 24.03.2008 as a limited Company with the name and

style, '*Synew Steel Limited*'. Thereafter, the Company was converted into a Private Limited Company on 04.11.2015 with the name and style of '*Synew Steel Private Limited*' vide CIN: U27106KA2008PTC045714. Its Authorised Share Capital is Rs.10,00,00,000/- (Rupees Ten Crore Only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs.10/- (Rupees Ten Only) each and the Paid-up Share Capital of Rs.4,96,25,000/- (Rupees Four Crore Ninety Six Lakh Twenty Five Thousand Only). The main objects of the Company in brief are to carry on the business in India or elsewhere, on its own and/or through others and/or in association of others as miners, manufactures, repairs, fabricators, importers, exporters, mechanical engineers, metallurgical engineers, job work buyers, sellers etc.

(2) It is submitted by the Petitioner that the Financial Creditors of the Company consist of unsecured loans amounting to Rs.27,84,394/- (Rupees Twenty Seven Lakh Eighty Four Thousand Three Hundred and Ninety Four Only). They are as follows:

a. Vinod R Tanti amounting to Rs.4,50,001/-
b. Samanvaya Holdings Private Limited amounting to Rs.11,67,086/- and
c. Tanti Holdings Private Limited amounting to Rs.11,67,307/-

(3) The Petitioner submits that the Company is under an Operational debt of Rs.90,72,570/- (Rupees Ninety Lakh Seventy Two Thousand Five Hundred and Seventy Only). The Operational Creditors are as follows:

i) Ageing more than 7 years-

a. Hatch Associates India Private Limited amounting to Rs.49,10,681/-
b. Hatch Associates UK amounting to GBP 6,640/- i.e. Rs.6,13,640/- (as per exchange rate as on 24.01.2020)
c. Jalakam Solutions Private Limited amounting to Rs.2,20,600/-
d. Korn Ferry International, NL amounting to USD 23,293/- i.e. 16,54,763/- (as per exchange rate as on 24.01.2020) and
e. M.N. Dastur R. Co. Private Limited amounting to Rs.16,71,389/-

ii) Others-

a. Gauri Joshi amounting to Rs.612/- and

b. Monica Kanuga amounting to Rs.885/-

(4) The Petitioner submits that due to unfavourable business environment and economic scenario, the Petitioner was not able to repay the amount due to the Financial and Operational Creditors and made a default in repayment of debt over years. The Members of the Petitioner Company vide their special resolution dated 16.01.2020 passed at Extraordinary General Meeting of the Members of the Corporate Applicant resolved to initiate CIRP in terms of Section 10 of the IBC, 2016. Hence, this Petition.

3. Heard Mr. Akshay Petkar, learned Counsel for the Petitioner through Video Conference. We have carefully perused the pleadings of the party and the extant provisions of the Code and the Law.

4. As per Section 10 of Insolvency and Bankruptcy Code, 2016, a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:

a. *The information relating to its books of account and such other documents for such period as may be specified:*

b. *The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*

c. *The special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.*

As per Section 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

5. As stated supra, apart from the dues of Financial Creditors amounting to Rs.27,84,394/-, there are Operational Creditors for a total amount of Rs.90,72,570/-. Further, it is seen from the Profit and Loss Accounts of the Petitioner Company for the years ending 31.03.2018, 31.03.2019 and 31.03.2020, that the Company has reported losses of Rs.63,785/, Rs.1,33,310/- and Rs.60,774/- respectively. As per the Balance Sheet of the Petitioner Company as at 31.03.2019, the total liabilities are more than the total assets. Due to this and the unfavourable business environment and economic scenario, the Petitioner Company was unable to repay the amount due to the Financial and Operational Creditors and defaulted in repayment of debt over the years. The Corporate Debtor has clearly lost its substratum and its ability to pay its debts or run its business.

6. The Board of Directors of the Petitioner Company convened a meeting on 30.11.2019 in which it resolved that the Company may make an Application under Section 10 of the IBC, 2016, before the Adjudicating Authority. This was followed by the approval of the Members in the Extra Ordinary General Meeting held on 16.01.2020.

7. The Applicant has suggested a qualified Resolution Professional namely Ms.Tanuja Jalan, with Registration No. IBBI/IPA-002/IP-N00101/2017-18/ 10244, who has also filed her written Consent in Form-2 dated 24.01.2020, by inter alia declaring that she is eligible to be appointed as resolution professional in respect of the Corporate Applicant and there are no disciplinary proceedings pending against her with the Board or ICSI Insolvency Professionals Agency.

8. It is settled position of law that once debt and default is proved to the satisfaction of the Adjudicating Authority, the case has to be admitted to initiate CIRP, and appoint IRP, etc. We are satisfied with the reasons cited by the Petitioner to initiate CIRP. The instant Company Petition is filed in accordance with law.

9. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority u/s 10(4)(a) of the Code, we

hereby admit C.P. (IB) No.96/BB/2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Petitioner/Corporate Applicant with the following consequential directions:

(1) **Ms. Tanuja Jalan**, bearing **Registration No. IBBI/IPA-002/IP-N00101/2017-18/10244**, who is a qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Petitioner/Corporate Applicant namely 'Synew Steel Private Limited' to carry out the Corporate Insolvency Resolution Process strictly as per the provisions contained in the Insolvency and Bankruptcy Code, 2016 and the Rules framed in this regard by the IBBI from time to time;

(2) The following moratorium is declared prohibiting all of the following, namely:

a) the institution of suits or continuation of pending suits or proceedings against the Petitioner/Corporate Applicant 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 Securitisation 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 the possession of the Corporate Debtor;

e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;

f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(3) The order of moratorium shall have effect from the date of this order till the completion of the Corporate insolvency resolution process;

(4) However, this moratorium would not apply to cases pending against the Applicant Company before the Hon'ble High Court and Hon'ble Supreme Court.

(5) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant Rules, including fees rules, as framed by the IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.

(6) The Board of Directors and all the staff of Petitioner/Corporate Applicant are hereby directed to extend full co-operation to the IRP, in carrying out her functions as such, under the Code and Rules made by IBBI.

(7) Post the case for report of the IRP on **28th July, 2020**.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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