



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

CP (IB) 501/MB/2023

Under section 9 of the Insolvency and Bankruptcy Code, 2016

Poona Petroleum Company Private Limited

Address for Correspondence:

479 Rasta Peth, Pune 414111

...Operational Creditor/Petitioner

Versus

SPECIFIC ALLOYS PRIVATE LIMITED

[CIN: U27203PN2000PTC014912]

Reg. Office- Shop No. 24 & 25, Jedhe Mansion,

78 Guruwar Peth, Pune

Corporate Office:

128/1 Pirangute, Lavale Phata,

Taluka- Mulshi, Pune – 412 115

Corporate Debtor/Respondent

Order on: 27.07.2023

Coram:

Hon'ble Member (Judicial) : H.V. SUBBA RAO

Hon'ble Member (Technical): Ms. Anu Jagmohan Singh



Appearances:

For the Operational Creditor : Mr. Yaha Batatawala Adv

For the Corporate Debtor : Mr. Tejas Madhavi Adv

1. This Company Petition is filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Poona Petroleum Company Private Limited (“the Operational Creditor”)**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **SPECIFIC ALLOYS PRIVATE LIMITED (“the Corporate Debtor”)**.
2. The Corporate Debtor was incorporated 23.05.2020 under the Companies Act, 1956. It has its registered Office situated Shop No. 24 & 25, Jedhe Mansion, 78 Guruwar Peth, Pune. Therefore, this Bench has jurisdiction to deal with this petition.

Brief Facts of the case:

3. The present petition was filed on 21.06.2023 before this Adjudicating Authority (AA) on the ground that the Corporate Debtor failed to make payment of a sum of INR 1,54,39,696/- (INR One Crore Fifty Four Lakh Thirty Nine Thousand Six Hundred Ninety Six Rupees only) is the amount due and payable by the Corporate Debtor to the Operational Creditor out of which Rs. 72,99,267/- (Rupees Seventy Two Lakh Ninety Nine Thousand Two Hundred and Sixty Seven only) is due against the principle amount and Rs. 83,40,429/- (Rupees Eighty Three Lakhs Forty Thousand and Four Hundred Twenty Nine only) is due against interest accrued up to 31.12.2022 from the Corporate Debtor. The date of default is 02.09.2022.



4. The Operational Creditor has provided Furnace Oil in Various quantities for which the Operational Creditor raised various invoices on the Corporate Debtor.

Submissions made by Operational Creditor:

5. The Operational Creditor has issued various invoices against the Corporate Debtor for the goods supplied. The amount due and payable by the Corporate Debtor to the Operational Creditor is of Rs. 1,54,39,696/- (Rupees one Crore Fifty Four Lakh Thirty Nine Thousand and Six Hundred Ninety Six Only) out of which Rs. 72,99,267 (Rupees Seventy Two Lakh Ninety Thousand Two Hundred and Sixty Seven only).
6. The Operational Creditor had issued various Reminder Notices dated. 23.07.2021, 03.12.2021 and 14.07.2022 to the Corporate Debtor for repayment of outstanding dues. The Corporate Debtor has acknowledged the said outstanding amount in its statement of Confirmation of Accounts dated 01.01.2023.
7. In spite of repeated reminders the Corporate Debtor has made vague promises and miserably failed to make payment. Hence the Operational Creditor was constrained to issue Demand notice under Section 8 in Form 3 of the Insolvency & Bankruptcy Code, 2016 on the Corporate Debtor on 24.02.2023. However, no reply to Demand Notice in Form 3 has been received by the Operational Creditor.

Submissions made by the Corporate Debtor:

8. The Corporate Debtor has filed reply dated 25.07.2023 to the main Company petition stated that the Corporate Debtor is in the business of Aluminium Industry since last 30 years and have been manufacturing all grades of aluminium alloys as per the specification of the customers. The



Corporate Debtor had procured Furnace Oil time and against in various quantities from the Operational Creditor. Against said supplies, the Operational Creditor had raised various invoices on the Corporate Debtor.

9. The Corporate Debtor submitted that, he has ben facing financial difficulties. Not only that Gram Panchyat had visited the factors premises of the Corporate Debtor and ordered it to discontinue the operations as there was release of smoke from the Furness operating in the factor because of which the nearby residential areas were affected. Accordingly, due to financial crises and smoke issues, the Corporate Debtor had to shut down its operations in November, 2022.
10. The Corporate Debtor had availed financial facilities from Canara Bank, Protium Finance Limited, Bajaj Finance Limited, Larsen & Toubro Finance Co. Limited, Neo Growth Finance Limited and Axis Bank Limited. The Corporate Debtor has defaulted in making payment to the Financial Creditor and hence, its account has turned Non-Performing Asset ("NPA").
11. The Corporate Debtor further submitted that total outstanding amount due and payable to the Operational Creditor by the Corporate Debtor is Rs.1,54,39,696/- (Rupees One Crore Fifty Four Lakh Thirty Nine Thousand Six Hundred and Ninety Six Only). The Corporate Debtor submit that the Corporate Debtor had addressed a letter dated 25/07/2022 to the Operational Creditor thereby requesting them to not take any legal actions and further assured that the Corporate Debtor shall pay the outstanding amount in three tranches period of 6 months, details of which is as follows : -

Date of Payment	Amount (Rs)
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31/12/2022	44,20,520/-
31/03/2022	44,20,520/-
30/06/2022	44,20,510/-

12. The Corporate Debtor failed to fulfil its commitment to pay the outstanding amount as per the schedule maintained in said letter dated 25/07/2022. The Corporate Debtor has been hampered not only due to outbreak of the Covid-19 Pandemic situation but also with the boom in electric vehicle industry in the recent time and decrease in the use of aluminium ingots, the sales of the Corporate Debtor has been heavily affected. The Corporate Debtor submitted that it is correct that the Operational Creditor had sent a Demand Notice dated 24/02/2023 in Form-3 thereby calling upon the Corporate Debtor to repay the outstanding amount.

13. The Corporate Debtor also stated that, the non-payment of Operational debt is not intentional but only because of unfavorable circumstances beyond the control of Corporate Debtor which has resulted in financial crisis within the Corporate Debtor and there has been substantial loss of business. The Corporate Debtor is not in a position to make payment to the Operational Creditor. Hence, it is in the interest of all the Creditors of the Corporate Debtor that the Captioned Company petition is admitted and the Corporate Debtor goes under Corporate Insolvency Resolution Process.

Findings:



14. We have heard the submissions of the Counsel appearing for the Operational Creditor and perused the records.
15. Heard both sides. The Corporate Debtor virtually admitted debt and default in paragraph 7 & 8 of their Affidavit in Reply. Except admitting the debt and default the Corporate Debtor did not raise any substantial defense in opposing the above Company petition.
16. After observing the material on record, this Bench is of the opinion that there is “debt” and “default” on the part of the Corporate Debtor and the Petition filed by the Operational Creditor under Section 9 of Code is deserves to be admitted.

ORDER

- a. The above Company Petition No. (IB) 501 (MB)/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Specific Alloys Private Limited**
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Hiral Shah (18hiral@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00700/2017-2018/11255** as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of **Rs 5,00,000/-** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.



- d. That this Bench hereby prohibits 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; 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.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

Jagdish

Sd/-

H.V. SUBBA RAO
Member (Judicial)