

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**C.P. (IB) No. 701/KB/2019**

**In the matter of:**

An application for initiation of corporate insolvency resolution process by an Operational Creditor 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.

**And**

**In the matter of :**

**M/S. DAMODAR VALLEY CORPORATION, 6, Old Post Office Street, Adjacent to "Venu Book" Basement, Kolkata 700001, West Bengal.**

**... Operational Creditor**

**Versus**

**In the matter of :**

**M/S. BHASKAR SHRACHI ALLOYS LIMITED, 8/1, Middleton Row, Kolkata 700071.  
West Bengal.**

**.....Corporate Debtor**

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In the matter of :

M/S. DAMODAR VALLEY CORPORATION ] OPERATIONAL CREDITOR

M/S. BHASKAR SHRACHI ALLOYS LIMITED ] CORPORATE DEBTOR

Date of pronouncement of order : 27/09/2019

Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsels on Record :

MR. SUSANTA DUTTA, Advocate ] For the Operational Creditor  
MR. SUBIR PAL, Advocate ]

**ORDER**

Per Shri Harish Chander Suri, Member (Technical):

1. This is an application filed by **M/s. Damodar Valley Corporation** through Sri Subir Pal, having been authorised by the Operational Creditor vide authorization letter dated 22<sup>nd</sup> March, 2019, hereinafter referred to as the "**Operational Creditor**" against **M/s. Bhaskar Shrachi Alloys Limited**, a Corporate entity having its registered office at Kolkata, hereinafter referred to as the "**Corporate Debtor**" seeking initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate

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Debtor.

2. It is submitted that by way of an agreement dated 26<sup>th</sup> November, 1996 for supply of electrical energy, entered into between the Operational Creditor and the Corporate Debtor, Electrical Energy was supplied by the Operational Creditor to the Corporate Debtor for its business. The Operational Creditor raised its bills to the Corporate Debtor from time to time and payments were made but, when the bill dated 7<sup>th</sup> September, 2017, 8<sup>th</sup> August, 2017, 10<sup>th</sup> July, 2017, 7<sup>th</sup> July, 2017 & 9<sup>th</sup> June, 2017 were raised, the Corporate Debtor made only some part payment and after adjusting of the said part payment, a sum of Rs. 46,08,85,312/- (Rupees Forty Six Crores Eight Lacs Eighty Five Thousand Three Hundred Twelve Only) including interest is due and outstanding, which the Corporate Debtor has failed to pay to the Operational Creditor, and hence the present application was filed.
3. On being served with the demand notice dated 13<sup>th</sup> September, 2017 by the Operational Creditor, a reply was received from the Corporate Debtor vide its letter dated 25<sup>th</sup> September, 2017. The Operational Creditor has enclosed all the invoices for the electric energy consumed by the Corporate Debtor and the total amount due inclusive of interest is Rs. 46,08,85,312/- up to 1st March, 2019.
4. The Operational Creditor has filed an affidavit under Section 9(3)(b) mentioning that the Operational Creditor's present claim is not disputed by the Corporate Debtor and that on the contrary, there is a clear cut admission

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reflected from the letters of the Corporate Debtor. The Operational Creditor has also annexed a certificate from the United Bank of India, complying with Section 9(3)(c) that there is only one credit proceed from M/s. Bhaskar Shrachi Alloys Limited on 31<sup>st</sup> July, 2017 of Rs. 62,18,938/- only since 1<sup>st</sup> July, 2017 till date, meaning thereby that the demanded amount/debt has not been paid.

5. When the matter was listed before this Tribunal on 13<sup>th</sup> May, 2019, notice was directed to be issued to the Corporate Debtor but in spite of the proper service, no appearance or representation was made on behalf of the Corporate Debtor thereby compelling this Tribunal to proceed ex-parte against the Corporate Debtor.
6. The matter has been listed for hearing on 25<sup>th</sup> September, 2019. We would have been benefitted with the version of the Corporate Debtor had the Corporate Debtor come forward and replied to the averments made in the application by the Operational Creditor but, unfortunately the Corporate Debtor has chosen not to appear and put forth their counter affidavit which clearly indicates that they probably admit their liability and have no valid reasons to offer.
7. We have heard the Ld. Counsel for the Operational Creditor and gone through the records placed before us and we are of the considered view that the Corporate Debtor has failed to make the payment of the bills raised by

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the Operational Creditor for supply of Electrical Energy to the Corporate Debtor for its business thereby causing violation of the terms of the power supply agreement between the parties. The application is otherwise complete in all respect. We, therefore, order admission of the application with the following directions:-

### **ORDERS**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Bhaskar Shrachi Alloys Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

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- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) 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.

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vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) Since no Interim Resolution Professional is proposed by the Operational Creditor, **Mr. Samir Agarwal**, of 68, 6<sup>th</sup> Floor, Chitrakoot Building, 230 A.J.C. Bose Road, Kolkata – 700020, an Insolvency Professional, registered with Insolvency and Bankruptcy Board of India, having **registration No. IBBI/IPA-001/IP-P00841/2017-2018/11425**, E-mail ID. [agarwal.samir@gmail.com](mailto:agarwal.samir@gmail.com), Mobile No. 9830335062, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution

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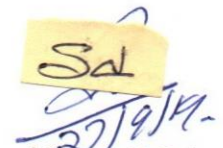
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Applicant within 105 days from the insolvency commencement date.

- xi) The Operational Creditor is directed to deposit Rs. 5,00,000/- (Rupees Five Lacs Only ) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP/RP. The IRP/RP can withdraw the said amount subject to the approval of the CoC to be constituted.
- xii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xiii) List the matter on **30<sup>th</sup> October, 2019** for filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)  
Member (T)



(Jinan K.R.)  
Member (J)

Signed on this the 27<sup>th</sup> day of September, 2019.

vc

