

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

CP(IB)/17/KOB/2024

*(Under Section 9 of IBC, 2016 read with Rule 6 of
the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016)*

In the matter of:

**A.P. STEEL RE ROLLING MILL LTD.,
PALAKKAD**

MEMO OF PARTIES:

**M/S. S.N. STEELS,
XIII/61, K N Pudur,
Kanjikode,
Palakkad - 678 621**

... Applicant

-vs-

**M /S. A.P. STEEL RE ROLLING MILL LTD.,
VIII / 635, 1 Phase, New Industrial
Development Area, Menonpara Road,
Kanjikode, Palakkad—678 621.**

... Respondent

Order delivered on: 02.05.2024

Coram:

Hon'ble Member (Technical)

Shri. Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. Justice T Krishna Valli

Appearances:

For the Petitioner/Operational Creditor : Mr. Terry V James, Advocate

For the Respondent/Corporate Debtor : Mr. K.V. Krishnakumar, Advocate

ORDER

Per Coram

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Operational Creditor (hereinafter "OC") M/s. S.N. Steels, Palakkad, for the initiation of Corporate Insolvency Resolution Process (CIRP) against A.P. Steel Re Rolling Mill Ltd., Palakkad, the Corporate Debtor (hereinafter "CD") for alleged default in repayment of the Operational Debt of Rs.2,64,38,134/- (Rupees Two Crore Sixty Four Lakh Thirty Eight Thousand One Hundred and Thirty Four only) plus 12% Interest p.a. from 24.03.2022 amounting to Rs.60,88,914/- (Rupees Sixty Lakh Eighty Eight Thousand Nine Hundred and Fourteen only) till 24.02.2024, which is due and payable by the Corporate Debtor to the Operational Creditor.

The brief facts of the case are as follows:

2. The Operational Creditor supplied steel scrap to the Corporate Debtor and the running account maintained by the parties and the payments were due for invoices raised during the period 23.07.2020 to 21.10.2020. The ledger accounts show that a running account was maintained and an amount of

Rs.2,64,38,134/- is due and payable from the Corporate Debtor to the Operational Creditor for the period 01.04.2020 to 31.03.2022.

3. The Bank account statement of the Operational Creditor shows the payments made by the Corporate Debtor to the Operational Creditor and the last part payment on 24.03.2022.
4. The Agreement dated 06.05.2021 executed between the Corporate Debtor and the Operational Creditor shows that the Corporate Debtor undertook to pay the outstanding amounts in instalments commencing from 01.12.2021.
5. The Corporate Debtor defaulted payment on 02.12.2021. A Demand Notice was sent by the Operational Creditor to the Corporate Debtor under Rule 5 on 24.02.2024.
6. The respondent/Corporate Debtor filed their **reply** and stated that the Operational Creditor has suppressed the relevant facts before this Tribunal. It is submitted that the CD is a public company incorporated on 31.07.1992. the CD for the past few years is under loss and is not in a position to meet the day-to-day expenses. The Covid-19 lockdown also drastically affected the CD as the whole steel business was dull during this period. The CD could not pay the due amounts as the entire transactions as stated in the Company Petition occurred during this period.
7. It is submitted that there was a compromise agreement between the CD and the OC which is produced as Annexure II(d) of the Company Petition. The CD further submits that every reasonable effort was made by them to

repay the amount but as there were no operations of the CD, the CD couldn't repay the same.

8. Now, every effort is made by the CD to revive its operations and once the company is revived, the debt due to the OP can be paid. Moreover, the CD is not disputing the debt and only seeking a reasonable time for the repayment of the said debts.
9. Heard the submissions from the Learned Counsels of both parties and perused all the materials available on record.
10. From the details of the transactions and the invoices provided along with the application, it is clear that there exists a Debt between the parties and the said debt qualifies to be an 'Operational Debt' as defined under Section 5(21) of the Code which is due and payable to the Operational Creditor. The operational debt amounting to Rs.2,64,38,134/- along with interest is beyond the threshold limit stipulated under the Code.
11. Further, there exists an Agreement dated 06.05.2021 executed between the Corporate Debtor and the Operational Creditor which shows that the Corporate Debtor undertook to pay the outstanding amounts in instalments commencing from 01.12.2021. The Corporate Debtor defaulted the same and hence in pursuance of this agreement, the alleged date of default as per Part IV of the application falls on 02.12.2021.
12. The Respondent has neither challenged the above transactions/invoices nor there exist any pre-existing disputes between the parties. On the other hand, the respondent has clearly admitted that the above default and debt exists which is due and payable to the operational creditor herein.

13. Given the above, this Tribunal finds that this petition filed by the Operational Creditor for initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor is a fit case to be **admitted** under Section 9 of the Code.
14. Hence, this Tribunal order for the Corporate Insolvency Resolution Process of A.P. Steel Re Rolling Mill Ltd., Palakkad, and accordingly admit the petition and pass the following orders:
- i. This petition bearing **CP(IBC)/17/KOB/2024**, filed by the Operational Creditor, **M/S. S.N. Steels**, under Section 9 of Code for initiating CIRP against the **M/S. A.P. Steel Re Rolling Mill Ltd., Palakkad** (CIN: U27105KL1992PLC006651) the Corporate Debtor is hereby **admitted**.
 - ii. There will be a Moratorium under Section 14 of the Code.
 - iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
 - iv. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
 - v. The Operational Creditor has proposed the name of **Mr. Jossy Stephen Kattur**, **IBBI Registration No.: IBBI/IPA-002/IP-No.**

1056/2021-2022/13627, as Interim Resolution Professional (IRP) and the written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP shall perform all his functions as contemplated under the Code and must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of the Code. The fee payable to IRP or as the case may be, the IRP shall comply with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out all the functions as contemplated under the Code.

- vi. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

- vii. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
 - viii. The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** within two weeks from the date of receipt of this order, in order to meet out the initial expenses to perform the duties assigned to the IRP in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 and IRP is to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. This amount may not be construed as the fee paid to the IRP. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
 - ix. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this order.
15. The present Company Petition bearing no. **CP(IBC)/17/KOB/2023** is **admitted accordingly.**

16. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
17. Let the certified copy of the order be issued upon compliance with requisite formalities.
18. File be consigned to records.

SHYAM BABU GAUTAM Digitally signed by SHYAM BABU GAUTAM
Date: 2024.05.02 16:45:54 +05'30'

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T.KRISHNAVALLI Digitally signed by T.KRISHNAVALLI
Date: 2024.05.02 16:45:14 +05'30'

T. KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 02nd day of May, 2024

Leona/LRA