IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I, KOLKATA

CP (IB) No.13/KB/2022

In the matter of:
Under section 9 of the Insolvency and Bankruptcy Code, 2016

And

In the matter of:
Chaitanya Alloys Private Limited
CIN: U27310WB1995PTC071299 ... Operational Creditor

Versus

Y.R. Traders Private Limited
CIN: U51909WB2011PTC163724 ... Corporate Debtor

Date of hearing: 04 May 2022

Date of pronouncement: 07 June 2022

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via hybrid mode):

For the Operational Creditor	:	Ms. Sweta Mohanty, Advocate
For the Corporate Debtor	:	Ms. Urmila Chakraborty, Advocate Ms. Shivangi Thard, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by Chaitanya Alloys Private Limited (Operational Creditor), represented by Mr. Rakesh Saraf, Director of the Operational Creditor, authorised by a Board Resolution dated 01 December 2021,[1] seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Y. R. Traders Private Limited ("Corporate Debtor").

[1] Annexure C of the CP

2. The Corporate Debtor is a private company limited by shares and incorporated on 14 June 2011 under the Companies Act, 1956, with the Registrar of Companies (RoC), West Bengal, having Corporate Identification Number U51909WB2011PTC163724. Its registered office is at Room No.202, 1, British India Street, Kolkata-700069, West Bengal.

3. The present petition was filed on 27 December 2021, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹4,36,55,343/- (Rupees four crore thirty-six lakh fifty-five thousand three hundred and forty-three only) as on 31 October 2021.

Submissions of Ms Sweta Mohanty, learned Counsel for the Operational Creditor

4. The case of the Operational Creditor is that on 04 March 2013,[2] the Operational Creditor placed an order for purchase of TMT Bar with the Corporate Debtor by paying an advance of ₹4,38,92,233/- (Rupees four crore thirty-eight lakh ninety-two thousand two hundred and thirty-three only), which is 25% of the total value of the order placed. The Corporate Debtor failed to supply the goods. Hence, the Operational Creditor was constrained to cancel the order *vide* letter dated 04 January 2014,[3] and requested the Corporate Debtor to refund the advance given by the Operational Creditor.

5. *Vide* letter dated 29 February 2016,[4] the Corporate Debtor acknowledged the debt of ₹4,36,55,343/- (Rupees four crore thirty-six lakh fifty-five thousand three hundred and forty-three only) and promised to pay within a period of six months. But the Corporate Debtor failed to do so. Thereafter, the Corporate Debtor promised to pay the sum by the end of 2016.

6. On 24 February 2017, the Operational Creditor sent a letter demanding the payment. The Corporate Debtor *vide* letter dated 14 April 2017 proposed to pay ₹4,36,55,343/- (Rupees four crore thirty-six lakh fifty-five thousand three

[2] Annexure F at page 27 of the CP

[3] Annexure G at page 28 of the CP

[4] Annexure I at page 31 of the CP

hundred and forty-three only) in twelve equal monthly instalments of ₹6,57,686/- each (Rupees thirty-six lakh fifty-seven thousand six hundred and eighty-six only).

7. The Corporate Debtor made part payment of Rs.85,000/- (Rupees Eighty-Five Thousand only) on 30 June 2018. Thereafter, the Corporate Debtor *vide* its letter dated 10 December 2018 expressed its inability to pay the outstanding debt due to bad financial condition of the Corporate Debtor.

8. On 15 January 2020, the Corporate Debtor made a payment of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only). Thereafter, no further payment was made.

9. The Operational Creditor sent a demand notice under section 8 of the Code on 22 November 2021. No reply was given by the Corporate Debtor.

10. The date of default has been stated to be 15 January 2020.

Submissions of Ms. Urmila Chakraborty, learned Counsel for the Corporate Debtor

11. Ms Urmila Chakraborty submitted that the Corporate Debtor is in financial distress and had filed an application under section 10 of the Code, which is registered as CP (IB) No.104/KB/2020, which was dismissed by this Adjudicating Authority on 09 November 2021.

12. The amount claimed by the Operational Debtor is due and payable but due to financial difficulty, the Corporate Debtor is unable to file the same.

Analysis and Findings

13. Heard the learned Counsel appearing on behalf of the Operational Creditor and the learned Counsel appearing on behalf of the Corporate Debtor.

14. This Adjudicating Authority had dismissed the Company Petition filed under section 10 of the Code, on the basis of the audited Balance Sheet for the Financial Year 2017-18 under current assets which reflected that the Trade Receivables were amounting to ₹466,60,52,425/- (Rupees four hundred sixty-six crore sixty lakh fifty-two thousand four hundred twenty-five), and Cash and

Bank Balance amounting to ₹1,77,951/- (Rupees one lakh seventy-seven thousand nine hundred fifty-one only), totalling to ₹466,62,56,376./- (Rupees four hundred sixty-six crore sixty-two lakh fifty-six thousand three hundred seventy-six only) and the total receivables for the Financial Year 2018-19 are ₹447,90,10,041/- (Rupees four hundred forty-seven crore ninety lakh ten thousand forty-one only), and that in the provisional Balance Sheet as on 25.12.2019, the total receivables are ₹447,82,74,630/- (Rupees four hundred forty-seven crore eighty-two lakh seventy-four thousand six hundred thirty only)

15. Further, five creditors to whom the Corporate Debtor owed dues to, were either liquidated, dissolved or Resolution Plan had been approved.

16. It is pertinent to note the timeline with regard to the steps taken by the Operational Creditor. The Company Petition (IB) No.104/KB/2019 was dismissed on 09 November 2021. Thereafter, the Operational Creditor sent a Demand Notice to the Corporate Debtor 22 November 2021 and the present Company Petition has been filed.

17. On a closer examination of the audited Financial Statements as on 31 March 2020, the Auditor in "Other Notes" has made a comment in paragraph 12 read as under:

"12. The financial statements of the Company have been prepared on a going concern basis, notwithstanding the fact that the Company has incurred substantial losses and its net worth is completely eroded."

18. Hence, the Corporate Debtor is in financial distress, and it would be sensible to admit the Corporate Debtor into CIRP, to give an opportunity for the Corporate Debtor to revive itself.

19. The Company Petition is complete in all aspects. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the

Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code.

20. The Operational Creditor has filed an affidavit under section 9(3)(b) of the Code and has proposed the name of Mr. Sushanta Kumar Choudhury, having registration No.IBBI/IPA/003/IP-N00292/2020-2021/13238 as the Insolvency Professional. The Insolvency Professional has given his consent in Form 2 and has also submitted a valid Authorisation for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

Orders

21. It is, accordingly, hereby ordered as follows:

a. The application bearing CP (IB) No.13/KB/2022 filed by Chaitanya Alloys Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Y.R. Traders Private Limited, the Corporate Debtor, is **admitted**.

b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. Mr. Sushanta Kumar Choudhury, having registration No.IBBI/IPA/003/IP-N00292/2020-2021/13238, email: sk.choudhury123@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in 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. There shall be no future opportunities in this regard.

g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

h. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

i. The Operational Creditor shall deposit a sum of ₹5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

j. The Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata 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 Court within seven days from the date of receipt of a copy of this order.

22. **CP (IB) No.13/KB/2022** to come up on 26.07.2022 for filing of progress report.

23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

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