

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.162/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

Mr. Ramdeo R. Agarwal

(Proprietor of M/s. Agarwal Coal Depot)

[PAN: AATPA7903M]

...Operational Creditor

v/s.

Harkar Developers Private Limited

[CIN: U70102MH2011PTC225418]

...Corporate Debtor

Order Delivered on: 18.07.2023.

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

Mr. Harsh Kesharia, Ld. Counsel.

For the Corporate Debtor:

None.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mr. Ramdeo R. Agarwal (Proprietor of M/s. Agarwal Coal Depot) (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Harkar Developers Private Limited, the Corporate Debtor.
 - 1.1. The Company Petition is filed on 10/02/2021 claiming an amount of Rs. 1,89,57,920/- in default as on 15.12.2020. The date of default as specified in Part IV of the petition is 27.02.2018.
 - 1.2. The Harkar Developers Private Limited ("Corporate Debtor") had approached M/s. Agarwal Coal Depot, Prop. Mr. Ramdeo R. Agarwal ("Operational Creditor") for supply of coal.
 - 1.3. Pursuant to the negotiations and discussions between the parties, Mr. Ramdeo Agarwal through its Proprietary concern M/s. Agarwal Coal Depot supplied the ordered quantities of the coal to the Corporate Debtor from Financial Year 2015-2016 till the month of March 2018 and has raised the corresponding invoices on the Corporate Debtor.
 - 1.4. The Corporate Debtor made quite delayed payments since initial months of supply by the Operational Creditor. The Corporate Debtor made last payment of Rs.18,10,737/- to the Operational Creditor on 26.02.2018. This payment was also received after rigorous follow up by the Operational Creditor. Thereafter, the Corporate Debtor didn't even make a single

payment to the Operational Creditor thus defaulting on its payment commitments.

1.5. Several phone calls to clear off the outstanding bills have been made to the Corporate Debtor by the Operational Creditor on regular basis since March 2018 till date, to which no satisfactory replies were received from the Corporate Debtor. Further, despite repeated reminders made verbally over telephone as well as personal visits to the office of the Corporate Debtor by the Operational Creditor, the Corporate Debtor failed to make any further payments to the former. Thus, despite constant follow ups with Corporate Debtor for payment of the outstanding amounts of the Operational Creditor, it defaulted/failed to make payments amounting to Rs. 1,12,67,715/- against the invoices raised till 10.03.2018.

1.6. In view of the failure on part of Corporate Debtor to make payments of the outstanding dues, the Operational Creditor had sent a demand notice in Form No. 3 dated 22.12.2020 to the Corporate Debtor at the registered office of the Corporate Debtor and vide email on the registered email address of the Corporate Debtor and also to the directors of the Corporate Debtor. The demand notice sent by RPAD to the Corporate Debtor was returned undelivered with remark 'INSUFFICIENT ADDRESS', but the demand notice sent through email has been received by the Corporate Debtor on 12.01.2021 thus the Demand Notice under the Code was served to the Corporate Debtor. The Copies of Demand notice sent to the registered addresses of the Directors of the Corporate Debtor were duly delivered to 2 out of total 3 directors. However, the copy sent to the third director was returned with the remark "*Address cannot be located*".

2. This matter came up for the first time on 10.03.2021 when the court notice was issued to the Corporate Debtor thereafter on 02.08.2021, the petitioner was directed to issue personal notice to the Corporate Debtor. On 22.10.2021 the counsel for the petitioner informed this bench personal notice returned undelivered with an endorsement "Addressee left". Accordingly, the petitioner was directed to take out substituted services by way of publication which was completed on 17.12.2021. On 24.12.2021, the Corporate Debtor was set *ex-parte*. Thereafter, this matter was listed on ten occasions and the Corporate Debtor never came up. The Corporate Debtor was never represented in any of the hearing nor any reply was filed.

Findings:

3. We have heard the arguments of Learned Counsel for Operational Creditor.
4. The Operational Creditor has placed on record the copy of GST returns and TCS returns to prove the supply of goods to the Corporate Debtor. In the absence of any response from the Corporate Debtor, the matter placed on record shows that there exists debt and default in payment thereof. The petition filed is also within limitation. Thus, the present Company Petition satisfies all the necessary requirement for admission. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor.
5. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. Since, the debt and

default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.

6. The Operational Creditor has proposed the name of Interim Resolution Professional (IRP) in the matter.
7. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016 by passing the following order.

ORDER

8. The petition bearing CP (IB) No.162/MB-IV/2021 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mr. Ramdeo R. Agarwal (Proprietor of M/s. Agarwal Coal Depot) (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Harkar Developers Private Limited, the Corporate Debtor is **Admitted**.

- I. That this Bench as a result of this prohibits:
 - a) 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;
 - 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 Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Amit Chandrashekhar Poddar, an Insolvency Professional registered with Indian Institute of Insolvency

Professionals of ICAI having registration number IBBI/IPA-001/IP-P00449/2017-18/10792 Email: amitpoddar.ca@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
18.07.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)