

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V

CP(IB) 86 MB 2021

Under section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy Rules, 2016)

IN THE MATTER OF

Paras Bhavani Steel Private Limited

Survey No. 785/86/90, Village:
Raipur, Tal: Kadi, Dist: Mehsana,
Kadi Mahesana – 382715.

... Operational Creditor

V/s.

**Shri Samarth Engineering Private
Limited**

Plot No. 174/1, M.I.D.C., Bhosari
Pune – 411026.

... Corporate Debtor

Order delivered on :- 20.10.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Operational Creditor : Adv. Sunil Bhavsar

For the Corporate Debtor : Adv. Avinash Khanolkar

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by Paras Bhavani Steel Private Limited (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Shri Samarth Engineering Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 89,52,900/-.

The submissions by the Operational Creditor: -

2. The Operational Creditor claims to have supplied goods i.e. Stainless-Steel Welded Tubes and Pipes to the Corporate Debtor at its registered office on the basis of the purchase orders received from the Corporate Debtor. However, the Corporate Debtor did not pay the amount of the invoices raised from 17.01.2019 to 27.02.2019 as referred in Annexure-3 attached with the Petition. The total amount of the said invoices comes to Rs. 89,52,900/-.
3. As the outstanding dues were not paid by the Corporate Debtor, the Operational Creditor issued Demand Notice in Form-3 along with the Copy of the Invoice demanding payment u/s 8 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 5 of the Code (Application to Adjudicating Authority) which was served on 31.08.2019 and found to be delivered at the registered office of the Corporate Debtor on 03.09.2019 to which till date no notice/reply has been

given by the Corporate Debtor disputing the said unpaid operational debt nor any dispute has been raised with regard to supply of goods.

4. The Applicant has not received any payment from the Corporate Debtor towards the said unpaid Operational Debtor. Hence, the present Company Petition.
5. No reply was filed on behalf of the Corporate Debtor, vide order dated 13.02.2023, Corporate Debtor was directed to file its reply within two weeks. On 18.07.2023, Counsel for the Corporate Debtor stated that he has no objection if the Company Petition is admitted.

Findings:-

6. In this case it has not been disputed that the goods worth Rs. 89,52,900/- were supplied to the Corporate Debtor vide invoices as per Annexure-3 between 17.01.2019 and 27.02.2019. No payment in respect of the said invoices has been made. A demand notice on Form-3 was also issued to the Corporate Debtor on 19.08.2019 calling upon it to pay the outstanding amount. The said notice was sent through the Registered post and was duly delivered as per the track consignment report annexed with the Petition. The Corporate Debtor has not filed any reply nor has raised any dispute with regard to the transaction in question. Thus there is no pre-existing dispute. No reply has been filed on behalf of the Corporate Debtor in this case. Instead, the Counsel for the Corporate Debtor made statement that he has no objection if the Petition is admitted.

7. The invoices were issued between 17.01.2019 and 27.02.2019 and the present Petition was filed on 20.03.2020 and therefore, the Petition is well within the period of limitation.
8. As a result of above discussion, we hold that the Petition has been able to establish the existence of an operational debt in respect of default has been committed by the Corporate Debtor and there is no pre-existing dispute between the parties and the Petition has been filed within the period of limitation. Therefore, the Petition deserves to be admitted and it is ordered accordingly in the following terms:

ORDER

- a. **The above Company Petition No. (IB) -86 (MB)/2021 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Shri Samarth Engineering Private Limited.**
- b. This Bench hereby appoints Ms. Umesh Balaram Sonkar, Registration No: IBBI/IPA-001/IP-P-02619/2021-22/14043 as the Interim Resolution Professional email :- rosonkar1603@gmail.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit

an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate

Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)