

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

**Company Petition (IB)No.70/ALD/2018
(Under Section 9 of Insolvency and Bankruptcy Code,2016)**

IN THE MATTER OF:

R.G STEEL

(Registered Proprietorship Firm

Registered Office at:

Plot No.14, J.K Iron Compound,

84/20 Fazalganj, Kanpur Nagar.

.....Operational Creditor/ Applicant

VERSUS

M/s Bee Kay Precisum (India) Pvt.Ltd

(Having its Registered Office at

D-40 Udyog Kunj Panki Site V, Kanpur-208022)

.....Corporate Debtor/Respondent

JUDGMENT/ORDER DELIVERED ON 21.08.2018

CORAM :

Sh. V.P. Singh, Hon'ble Member (Judicial)

Ms Saroj Rajware, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Sh. R.K Mishra, Adv.

For the Respondent/ Corporate Debtor : Sh.Saurabh Srivastava, Adv.

AS PER: V P Singh, Member Judicial

Order/Judgment

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor i.e. **R.G Steels** for initiation of Corporate Insolvency Resolution Process against the respondent/ corporate debtor company "**Bee Kay Precisum (India) Pvt.Ltd.**
2. The Applicant/Operational Creditor, i.e. R.G Steels is Registered Proprietorship firm and Smt. Sangeeta Gupta has been authorised to file this petition.

3. The Respondent/Corporate Debtor “**M/s Bee Kay Precision (India) Pvt.Ltd**” is a company incorporated under the provision of Companies Act,1956 on 22.03.2006 bearing Identification Number U27104UP2006PTC031518. The Authorised Share Capital of corporate debtor company is 200,00,000/- (Two Crore Only) and Paid-up Share Capital is Rs.194,92,400/- (Rupee One Crore ninety-four lakh ninety-two thousand four hundred only).
4. Brief facts related to petition are as follows:
- (i) The operational creditor is engaged in business of Iron and Steel and Corporate Debtor is engaged in business of whole sale and manufacturing, import/export, trading of all kind of automobile parts.
 - (ii) Operational Creditor stated that corporate debtor purchased goods, i.e. Iron and Steels from the operational creditor on various dates on the credit basis and it was agreed by the corporate debtor that the payment will be made on basis of bill and in case of delay interest of 24% will be charged.
 - (iii) Operational creditor stated that they supplied the material/goods on demand/order through various invoices dated 27.06.2015, 17.11.2015 amounting to Rs.11,25,181/- and Rs.6,56,183/- (**Copy of invoices is annexed as Annexure 2**)
 - (iv) Applicant further stated that corporate debtor paid Rs.1 Lac on 14.12.2015 and Rs.1 Lac on 28.12.2015 and Rs.7,09,505/- was due against the Corporate Debtor.

- (v) Hence, the total amount of debt which fell due after supply of goods to corporate debtor is ***Rs.10,39,685.84/- (7,09,505/- (principal amount) + Rs3,09,122.27/-(interest) + Rs. 21,058.57/-(interest on debit note dated 15.10.2017) and date of default is 28.12.2015.)***
- (vi) Further Operational Creditor has stated that when there was no payment from corporate debtor, they issued a **Demand Notice dated 03.01.2018**, for claiming the outstanding amount which includes principal with interest.
- (vii) Operational Creditor has further annexed bank certificate of Union Bank specifically stating that no payment has been made by the Corporate Debtor to the Applicant from 28.12.2015 till date annexing the bank statement. (***Bank certificate and statement is annexed as Annexure SA-1 of the Supplementary Affidavit and Annexure-1 of the petition).***)
- (viii) Given the facts above, Operational Creditor has filed this petition for initiation of CIRP against the Corporate Debtor on the ground that the corporate debtor has failed to pay the outstanding amount in spite of receiving demand notice U/S 8 of I B Code.

5. Corporate Debtor objected to the present application and filed Counter Affidavit of Neeraj Kumar Sharma, Whole-time Director of the Corporate Debtor stating:

- (i) That, the mandatory demand notice dated 3.1.2018 concerning the unpaid operational debt is vague so much so the duly Stamped ledger of account has not been annexed with the said notice and there is nothing on record which corroborate the claim of the operational creditor.
- (ii) That the statement of account concerning account no. 394804010028108 with Union Bank of India Swaroop Nagar Branch, Kanpur is not signed, stamped, and verified given Banker's Book of Evidence Act.
- (iii) That in the absence of proper demand notice and without any basis for raising demand in the aforesaid insolvency petition, the Insolvency Petition is not maintainable.
- (iv) That in the format of insolvency petition only the bloated figure of alleged demand are stated, however, the various correspondence about the Deficiency of service and poor quality of supply has not been brought on record. Further, the exorbitant amount claimed in the petition has no basis whatsoever.
- (v) That the fact of the matter is that on account of supply of poor quality good the respondent company has to suffer irreparable loss and Financial injury.

- (vi) That besides the petitioner/operational creditor is also liable to pay the corporate, debtor substantial amount of interest on the advanced amount paid by the corporate debtor towards delayed supply of goods by the petitioner/operational creditor.
- (vii) That further it is significant to state that the corporate debtor is operational creditor of LML Ltd., Kanpur and a sum of Rs. 108,988,953.89 besides upto date interest is standing due against the said LML Ltd. Payable to the present corporate debtor Beekay Precision (India Pvt. Ltd.). The present corporate debtor had filed his claim before the Insolvency professional in insolvency proceedings (CP No (IB)55/ALD/2017, CA NO 73 of 2018) which was accepted to the extent of Rs. 84,545,144.00. Subsequently, this Tribunal has ordered for proceeding with the liquidation of the said LML Ltd., and the present corporate debtor has filed his claim before the liquidator. True and correct copies of the claim of present corporate debtor Beekay Precision (India Pvt. Ltd.) has been filed as Annexure No. 1 & Annexure No. 2. The true and correct Photostat copies of the list of the Operational Creditors, showing acceptance of admitted liability by LML is also filed as

Annexure-3 to the objection, in which the claim of Beekay Precision (India Pvt.Ltd) has been mentioned at Sl. NO. 39. It is further contended that the corporate debtor, Beekay Precision (India Pvt. Ltd.) is not liable to be declared insolvent and the proceeding for initiation of CIRP is not maintainable against it.

(viii) It is further contended that the discussion between the parties has been done to resolve the issue, however, due to non-cooperation attitude of the applicant company the accountants cannot be settled.

6. Applicant has filed the re-joinder stating that:

(i) That proper Demand Notice was issued to the Corporate Debtor, but neither the corporate debtor has repaid the debts nor has given any reply of the said demand notice, and after that applicant being left no option but to file present petition.

7. Heard the Learned counsel the parties at length and perused the record available.

8. It is matter of record that Counsel for the respondent during course of argument failed to bring to our notice any existing dispute between the operational creditor and the corporate debtor. They have only relied on the point that corporate debtor, i.e. Bee Kay Precisum (India) Pvt.Ltd is operational creditor of LML Ltd., Kanpur and a sum of Rs. 108,988,953.89 is outstanding

due against the said LML Ltd., which is payable to the present corporate debtor and the present corporate debtor had filed his claim before the Insolvency process in insolvency proceedings (CP No (IB)55/ALD/2017, CA NO 73 of 2018) which was admitted and accepted to the extent of Rs. 84,545,144.00. Subsequently, this Tribunal has passed order for the liquidation of the said LML Ltd, and the present corporate debtor has filed his claim before the official liquidator. ***(True copies of the claim of present corporate debtor Beekay Precision (India Pvt. Ltd.) are being filed as Annexure No. 1 & Annexure No. 2)*** Hence, it is contended that the Corporate Debtor, i.e. Beekay Precision (India Pvt. Ltd.) is not liable to be declared insolvent and the proceeding for initiating corporate insolvency process is not maintainable against it.

9. Since present matter is filed under Section 9 of the IBC and the applicant has complied with all the formalities, as mandated under section 9(3)(b) and 9(3)(c) of the Code. The Corporate Debtor has failed to reply to the statutory Demand Notice and has not brought any evidence, which would reflect that there is pre-existing dispute related to Demand raised by the Applicant. The Corporate Debtor's defence is that it is Operational Creditor to one of the Company, i.e. LML Ltd, which is going under Liquidation. Only by filing the claim by the corporate debtor creditor before liquidator will not have any impact on the present case, because the Corporate Debtor has done default in making payment of the outstanding dues of operational creditor, and application for initiation of CIRP is complete.

10. The Operational Creditor had not received the outstanding Dues of more than one lac rupees from the Corporate Debtor inspite of issuing demand notice U/S 8 of the Code. Thus the requirements as prescribed under section 8 & 9 of the I&B Code have been completed by the Petitioner. Thus we are of the view that this Petition deserves 'Admission'.

ORDER

Petition filed by petitioner U/S 9 of the I&B Code is admitted.

The Operational Creditor /Applicant has not proposed name of any Interim Resolution Professional(IRP) in the application. Therefore, **Mr. Pawan K Goel, IP Registration No- IBBI/IPA-001/IP-P00203/2017-18/10392,E-mail- pawankgoel11@gmail.com is appointed as IRP.**

Given the above we declare a moratorium for the purpose referred to in section 14 of the Code with the following direction:

Subject to provisions of sub-sections (2) and (3) of Section 14(1) of the Code, moratorium order prohibits the following, namely: —

- (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 Financial 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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(3) 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.

(4) The order of moratorium shall come into force with immediate effect till the completion of the corporate insolvency resolution process as prescribed Under section 12 of the code.

11. IRP is directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.

12. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and also to IRP.

13. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

List on DT 04.09.2018 for the filing of the progress report.

(Ms. Saroj Rajware)
Member (Technical)

(V.P Singh)
Member (Judicial)

Dated-21st August 2018`