

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 166/IBC/NCLT/MB/MAH/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016se

In the matter of

Sikkim Ferro Alloys Limited

..... Operational Creditor
(Petitioner/Applicant)

v.

Akshata Merchantile Private Limited

..... Corporate Debtor
(Respondent)

Heard on : 17.05.2018

Order delivered on : 23.07.2018

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner: Ratnaveer Singh, Advocate

For the Respondent: Advocate Shahazad Irani i/b Triumph Legal

Per: M. K. Shrawat, Member (J)

ORDER

1. Sikkim Ferro Alloys Limited (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 30.01.2018 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, Akshata Merchantile Private Limited (hereinafter as **Debtor**) having registered address at 308, 3rd Floor, Ceejay House, Dr. A.B. Road, Worli, Mumbai-400018.
3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹27,70,56,334/- payable as on 28.02.2017.

Submissions by the Operational Creditor :

4. The Learned Advocate for the Operational Creditor has submitted that the Operational Creditor delivered to the Operational Debtor lots of Stainless Steel Patta, Stainless Steel

Strip, Stainless Steel Round Bars, Stainless Steel Sheet/ Plate against which various invoices were raised by the Petitioner on and from 24.01.2017 to 28.02.2017. These invoices are unpaid and long overdue till date.

5. The Operational Creditor has issued a 'Demand Notice' U/s. 8 of the Code in Form 3 as well as Form 4 dated 29.12.2017 and the said notice is duly served upon the Debtor. But even after service of this Notice the Debtor has neither paid the Demanded Amount nor raised a dispute regards to the 'Debt' within the stipulated time of 10 days. The Corporate Debtor did not even reply to the said Demand Notice.
6. Hence, the Operational Creditor has filed this Petition/Application to initiate CIRP over the Debtor. It is stated that as the Debtor has neither paid the amount nor contesting the admission of this Petition/Application for Commencement of CIRP.

Submissions by the Debtor :

7. The Learned Advocate for the Debtor has appeared and stated that the Debtor is incurring losses and he is in great financial crunches.
8. As the Debtor is in great financial crunches hence there is nothing much to say in defence. The Debtor has no objection for Admission of this present Petition/Application. However, without prejudice to the legal rights to protect its interests under the I & B Code or any other Court of Law.

Findings :

9. I have gone through the submissions of both the parties and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that he has delivered the Steel Items to the Operational Debtor in from 24.01.2017 to 28.02.2017, for which an amount of ₹27,70,56,334/- is due and a default has also occurred. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
10. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that the Debtor has received the same but has not paid the amount of unpaid ~~salary~~ ^{Debt}. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt.
11. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed

- by the Petitioner/Applicant. It is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.
12. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Neelesh Gupta**, having registration no. as IBBI/IPA-002/IP-N00179/2017-18/10448, having having address at 111, Ratanmani Complex, 7/1, new Palasia, Indore-452001 as Interim Resolution Professional for initiation of CIRP.
13. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
14. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
15. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
16. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Dated : 23.07.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)