

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

Company Petition (IB)No.213/ALD/2018

*(Under Section 9 of Insolvency and Bankruptcy Code,2016
read with Rule 6 of the Insolvency and Bankruptcy
Application to Adjudicating Authority) Rule,2016)*

IN THE MATTER OF:

M/s Kumar Casting Private Limited

(Having its Registered Office at:

9th KM Bhopa Roa,

Muzaffarnagar-251001 (UP)

.....Operational Creditor/ Applicant

VERSUS

M/s Jagdamba Loha Udhog Pvt.Ltd.

(Having its Registered Office at:

G-21 Begraipur Industrial Area

Muzaffarnagar (UP) 251003.

.....Corporate Debtor

JUDGMENT/ORDER DELIVERED ON 31.07.2018

CORAM :

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

Ms Saroj Rajware, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Sanjeev Panada, Adv.

For the Respondent/ Corporate Debtor: Laxmi Narayan Mishra, 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. **M/s Kumar Casting Pvt.Ltd.** For initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s Jagdamba Loha Udyog Pvt. Ltd.**

2. The Applicant **M/s Kumar Casting Pvt.Ltd** is Public Limited Company incorporated under the Companies Act 1956 with Identification No is U27310UP2011PTC046964. It is involved in business of Casting of metals.
3. The Respondent/Corporate Debtor “**M/s Jagdamba Loha Udyog Pvt.Ltd.**” is a Company Incorporated on 01/01/1996 under the provision of Companies Act,1956, bearing Identification Number U27310UP1996PTC019256. The Authorised Share Capital of corporate debtor company is 5,00,00,000/- (Five Crore Only), and Paid-up Share Capital is Rs. 4,87,07,000/- (Rupee Four Crore Eighty-Seven Lakh Seven Thousand Only). It is involved in business of Casting of metals (Including casting finished or semi-finished products producing a variety of goods, all characteristic of other activity classes)
4. Brief facts related to petition are as follows:
 - (i) Mr Vipin Goel (Director) has filed this application on behalf of Applicant/ Operational Creditor by authorisation letter dated 21.05.2018. **(Authorization is annexed as Appendix A1)**
 - (ii) The Operational Creditors has stated that the goods/ raw material worth **Rs.25,54,433/- (Rupee Twenty Five Lakh Fifty Four Thousand Four Hundred Thirty Three Only)** were sold and delivered to the Corporate Debtor, against the various invoices/margin bills of different dates, copies of all purchase invoices/margin bills have been annexed by the operational creditors and marked as **Appendix-A2** of the application.
 - (iii) The Operational creditor has stated that the goods were received by the Corporate Debtor and debt for each invoice/margin bills fell due

from receipt of such supplies. Details of the supplies made along with particulars of invoices raised are given in the tabular form annexed as **Annexure 2** with this Application.

(iv) The operational creditor in support of their case has annexed the following documents: -

(a) Demand Notice **dated 09.05.2018** along with Invoices which were issued to Corporate Debtor which was received at their registered address, but no notice of dispute has been issued by the corporate debtor. **(Copy of Demand Notice is annexed as Annexure No.1 (Page 10-11) in the application).**

(b)The statement of bank account where deposits are made, or credits normally received by the operational creditor to show that outstanding debt of amount mentioned above was not received. **(Copy of Bank Statement is Annexure No-3)**

(c)Further in compliance to section 9(5)(b) Operational Creditor has annexed an affidavit stating that they have not received reply to demand notice dated 09.05.2018 by Corporate Debtor raising to the demand raised by the Operational Creditor against the Operational Debt owed by corporate debtor(**Affidavit to this effect is annexed and marked as Annexure 4.)**

(d)Applicant has also annexed a letter dated 04/09/2017 wrote to the Respondent/Corporatae Debtor by the applicant demanding payment of the outstanding amount, which is dully accepted and received by the Respondent (**Letter is annexed as Appendix A-3 at P-30-31 of the application**)

5. Perusing the document annexed with the application, the petitioner has duly complied with the provision of section 9 of IB Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
6. Ld.Counsel for the Corporate Debtor Company during argument raised no objection to the application and accepted the Outstansing Debt owed to the Corporate Debtor Company and opted not to file a reply.
7. Heard the argument of the Ld. Counsel for the Operational Creditor and Corporate Debtor and perused the records.
8. The present petition is filed under the Provision of section 9 of IBC, in the required format through the duly authorised person and the total amount due as claimed by the operational creditor is **Rs.25,54,433/-**. The respondent, in this case, did not file the reply to the demand notice.
9. The (Respondent/ Corporate Debtor has filed Affidavit along with Board resolution dated 22/06/2018 stating specifically in Para 5 that, they prefer not to file reply. The petitioner has succeeded in proving that the respondent has failed to discharge his liability and has failed to make the out standing dues of Rs 25,54,433 of the operational creditor.
10. The corporate debtor failed to make payment even after receiving the demand notice U/S 8 of I B Code and default on the side of the respondent stand proved in this case. The petitioner is therefore found entitled to initiate corporate insolvency resolution process as against the Respondent.
11. Further it is also matter of record that Operational Debt owed by Corporate Debtor is of more than One lakh Rupees and perusal of record shows that Corporate Debtor failed to raise dispute through reply to demand notice within ten days after receipt of Demand Notice as mandated under section 8 (2)(a) of the Code, hence there is no existence of dispute between Operational Creditor and Corporate debtor regarding outstanding debt.

12. The Petitioner, in this case, has complied with section 9 (3) (b) and 9(3)(c), an affidavit to the effect that there is no notice given by the corporate debtor relating to dispute and unpaid operational debt by the respondent is produced. As the petitioner fulfils the required criterion for invoking CIRP under Section 9 of the Code, this petition is liable to be admitted.
13. The Operational Creditor had not received the outstanding Debt from the Corporate Debtor, and the requirements as prescribed under IB Code have been completed by the Petitioner thus we are of the view that this Petition deserves 'Admission'. Hence Admitted.
14. Further, The Operational Creditor /Applicant has proposed the name of Mr Sumit Shukla, Registration Number IBBI/IPA-003/IP-N00064/2017-18/10550 for appointment as Interim Resolution Professional(IRP) and Mr.Sumit Shukla has given consent for appointment as IRP in the present matter, affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him.
15. Given the above, we at this moment admit this petition under Section 9 of the Code 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), on the insolvency commencement date, 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 affect from the date of 31.07.2018 till the completion of the corporate insolvency resolution process as prescribed Under section 12 of the code.

16. We at this moment appoint **Mr.Sumit Shukla, IBBI Registration No- IBBI/IPA-003/IP-N00064/2017-18/10550, email- sumit_shukla@rediffmail.com mob- 9958795463** as Interim Resolution Professional.

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

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

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

List on DT 24.08.2018 for the filing of the progress report.

(Ms. Saroj Rajware)
Member (Technical)

(V.P Singh)
Member(Judicial)

Dated-31.07.2018