

In the National Company Law Tribunal  
Mumbai Bench.

TCP No. 558(IB)/MB/2017

Under Section 9 of Insolvency & Bankruptcy Code 2016

In the matter of

BMM Ispat Ltd. : Petitioner

V/s

Ramdas Ispat and Metals Pvt. Ltd. : Respondent

Heard on : 26.03.2018  
Order delivered on: 06.04.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

Present:

For the Petitioner(s): : 1. Mr. Rajeev R., Advocate.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. This is a Petition transferred from the Hon'ble High Court at Bombay Judicature. Initially a Petition was filed bearing Company Petition (L) No. CPL/196/15 (High Court) on 4.3.2015 before the Hon'ble High Court for winding up by invoking the jurisdiction under section 433(e), 434 of the Companies Act, 1956 pertaining to a Debt of ₹1,83,68,422/- (Principal) Plus Interest on outstanding amount ₹50,88,182/-, totalling to ₹2,34,56,604/-. These details are as per "Particulars of Operational Debt" of Form No.5 submitted on 09.06.2017.

2. The said Petition was transferred to NCLT and thereupon the Petitioner (Operational Creditor) has submitted Form No.5 under Rule-6 of the Insolvency and Bankruptcy (Applications to Adjudicating Authority) Rules, 2016 on 09.06.2017 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

3. The brief history of the case is as under:-

3.1. The Petitioner M/s. BMM Ispat Limited is a manufacturer of Sponge Iron lumps and Iron Ore Pellet. The Corporate Debtor is dealing in Manufacture of MS Billets and allied products and for the purpose of manufacturing the said goods they need Sponge

Iron lumps. On the basis of Purchase Orders placed by the Corporate Debtor the Operational Creditor made supplies to the Corporate Debtor. A credit facility of 15 days' period for repayment in relation to goods supplied was also agreed upon between the parties. It was also agreed that the amounts paid shall be adjusted on First In First Out (FIFO) method.

3.2 According to the Petition, the Operational Creditor sold goods worth ₹8,49,34,549/- during the financial years 2012-13 and 2013-14 against which a payment of ₹6,91,19,295/- have been made, leaving unpaid balance amount as on 27.07.2013.

3.3. As per Para-8 of the Petition, one of the Directors of the Corporate Debtor has acknowledged the outstanding Debt of ₹1.58 crores as on 21.12.2013 and requested time up to April 2014 to settle entire dues. However, the outstanding Debt has not been paid.

4. The Petitioner has stated that he had supplied the required quality and quantity of goods as and when purchase orders were placed on him since 30.10.2012 till 27.09.2013 and this fact had never been disputed by the Corporate Debtor. He has also stated that delay in payment beyond 15 days would attract interest @ 24% per annum or 2% per month until payment. Further, as per the Petitioner, the Corporate Debtor had admitted that they owed ₹1,58,15,254/- to the Operational Creditor. Further, according to the Petitioner, the facts relating to purchase orders placed by the Corporate Debtor upon the Operational Creditor, the subsequent supply of goods and consequent consumption of goods supplied in entirety have not been disputed at any point of time. The total value of ₹1,58,15,254/- in Debt has also not ever been disputed by the Corporate Debtor.

5. As the Debt amount was not paid, the Operational Creditor served Demand Notice dated 19.09.2017 on the Corporate Debtor and two of its Directors supported with details of the outstanding claim. However, the Demand Notice was returned by the Postal authorities with the remark "Gone Away". Further, as per the Affidavit of Service filed by the Petitioner, the Hearing Notices dated 13.03.2018 were sent to Respondent Nos. 1 to 3. However, the said notice to Respondent No.1 Company was returned with the remark "Left" and to Respondent Nos. 2 and 3 the notice was delivered on 17.03.2018. There are sufficient evidence and Notices on record issued by the Petitioners to demonstrate that enough opportunity was given to Debtor but never responded.



6. The occurrence of default is established from the facts and circumstances narrated in the above paragraphs. Considering the totality of the facts and circumstances, this Petition under consideration deserves to be "Admitted".

7. The Petitioner/Operational Creditor has proposed the name of the IRP Mr. Laxman Digambar Pawar, Registration No. IBBI No. IPA-003/IP-N00015/2017-18/10104, Address: Flat No.16, First Floor, Bhakti Complex, Behind Dr. Ambedkar Statue, Pimpri, Pune – 411 018, email: cmapawar1@gmail.com. The so appointed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending against him. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

8. Having considered the totality of the circumstances and the Petition for initiation of Corporate Insolvency Resolution Process under the I&B Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed *supra*, it is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

9. Accordingly, this **TCP 558/I & BC/NCLT/MAH/2017** stood Admitted.

10. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Date : 06.04.2018.  
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SD/-  
**M.K. SHRAWAT**  
Member (Judicial)