

(2022) 01 NCLT CK 0039
In the National Company Law Tribunal
Case No : CP (IB) No.588/Chd/HP/2019

BMSS Steel Industries Pvt. Ltd.

APPELLANT

Vs

Forge India Private Limited

RESPONDENT

Date of Decision : 12-01-2022

Acts Referred:

Insolvency & Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(3)(c), 9(5), 9(5)(i), 13(1)(b), 14(1), 14(3), 15, 16(5), 17, 18, 18(1)(f), 31(1), 33
Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6

Citation : (2022) 01 NCLT CK 0039

Hon'ble Judges : Harnam Singh Thakur, Member J; Subrata Kumar Dash, Member T

Bench : Division Bench

Advocate : Raghav Kakkar, Nahush Jain

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency

and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s BMSS Steel Industries Private Limited , a

private limited company under provisions of the Companies Act, 1956 (for brevity 'Petitioner') through one of its Director, Mr. Vivek Ashish Goradia

with a prayer to initiate the Corporate Insolvency process against M/s Forge India Private Limited, (for brevity 'Corporate Debtor').

2. The petitioner is a private limited company under the provisions of the Companies Act, 1956, having its CIN No. U74999MH1987PTC030023 and

having its corporate office at 366, S.V.P. Road, Prathana Samaj, Mumbai - 400004, Maharashtra. The petitioner is engaged in the business of

supply of Alloy Steel Forged Bar.

3. The Corporate Debtor is a limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 23.02.1981

bearing CIN U28610HP1981PTC004418 as per master data (Annexure-1 of the petition).

4. The petitioner has submitted that the "Alloy Steel Forged Bar" supplied to the Corporate Debtor and in pursuant to that invoice dated 21.

06.2018 amounting to ₹ 1,06,519/- and 14.08.2018 amounting to ₹ 2,14,559/- and in addition a sum of ₹ 50,301/- against interest for the

period from the date of default till 30.04.2019 and Legal expenses of ₹ 50,000/- as of April, 2019 was raised on the corporate debtor totalling to

₹ 4,21,379/- (plus interest @24% per annum from 01.05.2019 to till date of actual realization).

5. The petitioner has issued demand notice dated 03.05.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as

prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor. The said notice was

sent by Speed Post on the registered address of the corporate debtor available on the master data on the MCA website. Copy of speed post receipt

with track report is annexed as Annexure-8 of the petition. As per the compliance affidavit filed vide Diary No.6617 dated 26.11.2019, the Corporate

Debtor has neither raised any dispute through its reply to the aforesaid notice till date of filing this petition nor made any payment towards the

outstanding dues.

6. As claimed by the petitioner, the corporate debtor is liable to pay a principal amount of ₹ 4,21,379/- (Rupees Four Lakh Twenty One Thousand

Three Hundred and Seventy Nine Only) (plus interest @24% per annum from 1.05.2019 to till date of actual realization).

7. The petitioner has proposed Mr. Mohit Chawla, bearing Registration No. IBBI/ IPA-001/IP-P00524/2017-2018/10949 as Interim Resolution

Professional. The consent of Mr. Mohit Chawla (proposed Interim Resolution Professional) is furnished in Form 2 and the same is filed vide Diary

No.00341/2 dated 03.01.2020. It has been stated in Form 2 that no disciplinary proceedings are pending against him with the Board or Indian Institute

of Insolvency Professionals of ICAI Agency.

8. The petitioner filed the present petition under Section 9 of IBC, 2016 and served the copy of this petition. The notice along with the paper book was sent through speed post on 17.01.2020 and on the registered e-mail id of Corporate Debtor available on master data on 21.01.2020 and the same did not bounce back as per the affidavit of service filed by the petitioner vide Diary No.581 dated 21.01.2020.

9. The learned counsel on behalf of the respondent in its short reply filed vide Diary No.00341/01 dated 15.12.2021 submitted that the Corporate

Debtor admits the outstanding payment to the extent of principal amount only and has become financially unviable.

10. The petitioner has filed its bank statement (Annexure-11) that the amount claimed or any part thereof, the petitioner has neither received nor had

any person, on its behalf who received in any manner the amount due towards Corporate Debtor as required under Section 9(3)(c) of I & B Code nor

received any notice of dispute raised by the corporate debtor under Section 9(3) (b) of the IBC, 2016.

11. We have heard the learned counsel for the petitioner as well as corporate debtor and have also perused the records.

12. The registered office of the corporate debtor is situated in Solan, Himachal Pradesh, and therefore, this Tribunal has jurisdiction to entertain and

try this petition.

13. The first issue for consideration is whether the demand notice in Form No.3 dated 03.05.2019 was properly served. The demand notice was

delivered via speed post at the registered address of the Corporate Debtor. The original postal receipts are attached as Annexure-8 of the petition. In

view of the same, it is held that the demand notice has been duly served.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted in short reply by the

Corporate Debtor vide Diary No.00341/01 dated 15.12.2021 that the Corporate Debtor in the e-mail dated 29.12.2018 admits the outstanding payment

to the extent of principal amount only. The said e-mail has also been annexed in the main petition as Annexure A-7 at page No.25. It is also submitted

by the Corporate Debtor that it is unable to pay the any of amount due and has become financially unviable.

15. The default occurred from 01.05.2019 and the petition is filed on 27.

09.2019, hence the debt is not time barred and the petition is filed within the period of limitation.

16. In the given facts and circumstances, the present petition is complete and the petitioner is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the backdrop of the above facts and records, the present petition is liable to admitted, in terms of Section 9(5) of IBC, 2016.

17. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. The petitioner states that from the abovementioned facts it is clear that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is as per the threshold limit before the Notification S.O.1205(E) dated March 24, 2020.

18. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s BMSS Steel Industries Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

19. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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 the possession of the corporate debtor.

20. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or

suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by

the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till 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.

22. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mohit Chawla and there is nothing adverse found against him.

In view of the above, we appoint Mr. Mohit Chawla, bearing Registration No. IBBI/IPA-001/IP-P00524/2017-2018/10949, e-mail:

ipservices@embeegroup.in , Mobile No.9888003303, r/o Embee IP Services P. Ltd., SCO 2935-36, Level-I, Sector 22-C, Chandigarh, 160022 as the

Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Mohit Chawla shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the

affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution

Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on

the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets

over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The

Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed there under by the Board or the Central Government and in

accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy

Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process

in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all

cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books

and records as well as assets of the Corporate Debtor;

vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the

operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this

Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of

filing the report of constitution of the Committee; and

vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

23. The petitioner is directed to deposit an amount of ₹ 40,000/- (Rupees Forty Thousand) with the Interim Resolution Professional to meet the

immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed

by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

24. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim

Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address

forthwith.