

(2022) 01 NCLT CK 0021
In the National Company Law Tribunal
Case No : C.P (IB) No.1270/KB/2019

M/s Marotia Steel Traders Private Limited	APPELLANT
Vs	
M/s S.B. Ispat India Private Limited	RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Insolvency & Bankruptcy Code, 2016 — Section 8, 8(2), 9, 9(3)(b), 9(3)(c), 13, 14, 15, 15(1), 16(3)(a), 31(1), 33
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 — Regulation 7A

Citation : (2022) 01 NCLT CK 0021

Hon'ble Judges : Rohit Kapoor, Member J; Harish Chander Suri, Member, T

Bench : Division Bench

Advocate : K.C.Garg, Dilawar Khan, Urmila Chakraborty, Pranav Sharma

Final Decision : Allowed

Judgement

Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition under section 9 of the IBC has been filed by M/s Marotia Steel Traders Private Limited, (CIN U27109WB2006PTC10883)9, a corporate entity, having its registered office at No. 62/D/2, J. N. Mukherjee Road, Ghosuri, Howrah-711107, West Bengal (hereinafter referred as the Operational Creditor), through Mr. Rajesh Kumar, authorised vide Board Resolution of the Operational Creditor in the meeting dated 1st July, 2019 seeking initiation of corporate insolvency resolution process in respect of M/s S.B. Ispat India Private Limited, (CIN: L27209WB1983PLC035920) having its Registered office at No. 10/27, Guha

Road, P.O. Ghusuri, Howrah- 711107, West Bengal (hereinafter referred as the Corporate Debtor).

3. It is submitted in the application that the Corporate Debtor is, inter alia, engaged in the business of Boiler Quality Steel Plates, Alloys Plates and other related products and has authorized share capital of Rs.50,00,000/- (Rupees Fifty Lacs only) and paid up share capital of Rs.24,00,000/-. It is submitted that the Operational Creditor is, inter alia, engaged in the business of supplying, distribution and trading of Alloys Steel Bar and other related products.

4. It is submitted that the Operational Creditor supplied Alloys Steel Bar/Round and raised invoices amounting to Rs.8,74,459/- for sale made on 18th

July, 2018 to 25th July, 2018 upon the Corporate Debtor and against the outstanding amount, the Corporate Debtor has made payment of Rs.2,00,000/-

to the Operational Creditor on 6th April, 2019 leaving an outstanding balance of Rs.6,74,459/- plus 18% interest. It is further submitted that after

making the said payment, the Corporate Debtor defaulted in making further payment in spite of several requests and demands by the Operational

Creditor to clear the outstanding dues. It is submitted that the Operational Creditor had issued E-way bill in favour of the Corporate Debtor for

movement of the goods as the value of the goods exceeds Rs.50,000/- and copies of the GST B2B invoices are annexed as Annexure-F to the

petition. The Operational Creditor has further annexed a copy of the Bank Statement to reveal that no payment has been made by the Corporate

Debtor against the invoices raised by the Operational Creditor after 6th April, 2019, the Copy of the Bank Statement is annexed as Annexure â?"G to

the petition. It is further submitted that the Corporate Debtor has failed and neglected to make any payment to clear the outstanding of Rs.6,74,459/-

along with interest @ 18% per annum. It is submitted that the Corporate Debtor has accepted and admitted its liability but has failed to clear the dues.

5. It is submitted that the Operational Creditor has issued a Demand Notice (Form-3) through its counsel by speed post on

1st July, 2019 to the Corporate Debtor demanding a sum of Rs.8,22,800/- which is inclusive of interest till the filing of the petition. A copy of the

Demand Notice along with Track Report and Postal Receipt is annexed as Annexure-H(Colly.) to the petition. It is submitted that the notice was duly

served but no reply to the same has been received by the Operational Creditor.

6. The Operational Creditor has also filed affidavit under section 9(3)(b) of the Code and the Bank Statement of Kotak Mahindra Bank.

7. The Operational Creditor has annexed the statement of its Bank account number of Marotia Steel Traders Private Limited, Account No.

551044038930, Kotak Mahindra Bank.

8. The Operational Creditor has annexed copies of the following documents to support its claim, which are as under:-

i. Copy of the company master Data of the Operational Creditor, as downloaded from the website of the Registrar of Companies, Department of Affairs,

Government of India, is annexed as Annexure-A to the petition.

ii. Copy of the company Master Data, as downloaded from the Website of the Registrar of Companies, Department of Affairs, Government of India, is annexed as

Annexure-B to the petition.

iii. Copy of the Board Resolution is annexed as Annexure-C to the petition.

iv. Copy of Invoices are annexed as Annexure-D (colly) to the petition.

v. Copy of the Ledger Account maintained by Marotia Steel Traders Limited pertaining to the Account of S.B. Ispat India Private Limited is annexed as Annexure-

E to this petition.

vi. GST B2B invoices are annexed as Annexure-F to the petition.

vii. Copy of the Bank Statements of Operational Creditor is annexed as Annexure-G to the petition.

viii. Copy of the Form 3 Demand Notice along with track report and postal receipt is annexed as Annexure-G (colly.) to the petition.

ix. Affidavit under section 9 (3)(b)& (c) of the Code.

9. It is submitted that when the notice was issued to the Corporate Debtor by this Adjudicating Authority, the Corporate Debtor filed its reply affidavit

through Mr. Bikash Sharma, one of the Directors of the Corporate Debtor, submitting reply affidavit that the application is not maintainable in law and

in facts, and it is liable to be rejected in limine because no proceedings could have been instituted under the IBC.

10. It is further submitted by the Corporate Debtor that the application is not filed in accordance with the forms prescribed under the said Code and

the various Rules, Regulations and Forms framed thereunder. It is submitted that there is no record of default with the information utility against the

Corporate Debtor, which shows that there is no default on the part of the Corporate Debtor. The Corporate Debtor has further submitted that the

Operational Creditor has failed to show any existence of debt or any occurrence of default on the part of the Corporate Debtor.

11. It is further submitted by the Corporate Debtor that there is existence of disputes as to the quantity and quality of materials supplied prior to the

issuance of the purported demand notice and that there is no cause of action against the Corporate Debtor. It is submitted that the claim of the

Operational Creditor on account of interest is completely baseless and there is no agreement regarding terms of payment or for payment of interest. It

is also submitted by the Corporate Debtor that there are triable issues which cannot be adjudicated upon in a summary proceeding like insolvency; and

that since the Operational Creditor has alleged breach of contract, the question of breach of contract cannot be agitated in an application under the

Insolvency and Bankruptcy Code for commencement of CIRP. It is stated that the claim of the applicant is barred by law of limitation and principle of

estoppel etc. The Corporate Debtor has denied the averments made in the petition and also denied that any sum of Rs.8,22,800/- or any part thereof is

due or outstanding or payable to the Operational Creditor.

12. During the Course of arguments, Ld. Counsel for the Operational Creditor has taken us through all the documents placed on record including the

Tax Paid Invoices and the Ledger Account of Corporate Debtor maintained in the books of the Operational Creditor. Ld. Counsel has further shown

us the Bank Statement, Demand Notice dated 1st July, 2019 demanding the outstanding dues from the Corporate Debtor specifically calling upon the

Corporate Debtor to bring to the notice of the Operational Creditor the existence of a dispute if any, or payment of unpaid debt(in default), it should

provide the same within 10 days of receipt of the letter, or record of any pendency of the suit or arbitration proceedings in relation to such dispute filed

before the receipt of the letter/ notice. It is further mentioned in the Demand Notice that if the debt has been repaid before receipt of the letter, they

should demonstrate such repayment by sending it to the Operational Creditor within 10 days of receipt of the Demand Notice.

13. For the purpose of deciding this issue, Section 8(2) of the IBC is relevant and reproduced as under:-

8. Insolvency resolution by operational creditor- (1)

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section

(1) bring to the notice of the operational creditor-

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to

such dispute;

(b) the [payment] of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the Bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

14. Since the Corporate Debtor has not responded to the said notice and has not given any proof of existence of any dispute or payment made to the

Operational Creditor within 10 days, the Corporate Debtor has lost the golden opportunity provided to the Corporate Debtor under the Code. The

Corporate Debtor, however, filed reply to the petition and in the reply also all the vague grounds and averments have been mentioned in its defence.

None of the grounds mentioned in the application or submitted by the Ld. Counsel appearing for the Corporate Debtor satisfies us to grant any relief to

the Corporate Debtor. Corporate Debtor has failed to make the payment of the outstanding dues to the Operational Creditor. On the other side, the

Operational Creditor has filed all the requisite documents, which prompt our conscience to admit the petition.

15. The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions under section 16(3)

(a) of the IBC, we appoint Mr. Nitin Daga, IRP having Reg. No. IBBI/IPA-001/IP-P02213/2020-2021/13405, to act as Interim Resolution

Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.

16. The application is complete in all respects.

17. Having gone through and considered the petition, reply affidavit and all other documents placed on record by both the parties, we consider it to be

a fit case for admission of the present petition and initiation of CIRP against the Corporate Debtor. We have thus no hesitation to admit this petition

with the following orders:

ORDERS

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency

Resolution Process against the Corporate Debtor, is hereby admitted.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public

announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public

announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted

during the moratorium period.

- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Mr. Nitin Daga, IRP , registered with Insolvency and Bankruptcy Board of India, having Registration NoI BBI/IPA-001/IP-P02213/2020-2021/13405, email ID-daga.nitin.cs@gmail.com and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- (Rupees One Lakh only) with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
18. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
19. List the matter on 15/03/2022 for filing of Progress Report.
20. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.