(2018) 06 NCLT CK 0006

In the National Company Law Appellate Tribunal

Case No : IB-492(ND) Of 2018

Vaiva Metals And Alloys Pvt. Ltd. — APPELLANT

Vs

Sungil India Pvt. Ltd. — RESPONDENT

Date of Decision : 01-06-2018

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency And Bankruptcy Code, 2016 — Section 8, 9 , 9(3)(c), 9(5), 14(1), 14(2), 14(3), 14(4), 31(1), 33

Citation : (2018) 06 NCLT CK 0006

Hon'ble Judges : Dr. Deepti Mukesh, J

Bench : Single Bench

Advocate : Kapil Duggal

Final Decision : Allowed

Judgement

1. The instant application has been filed by M/s Vaiva Metals and Alloys Private Limited (for brevity 'The Applicant') under the provisions of Section

9 of Insolvency and Bankruptcy Code, 2016 (""IBC, 2016"") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) of M/s Sungil India Private Limited (for brevity 'Corporate Debtor).

2. The applicant is a company incorporated under the provisions of Companies Act, 1956 with CIN No. U74900KA2012PTC066652, having

registered office at #633F/555, Koundinya, 6th Main 1st Cross, Thayappa Garden, Bannerghatta Road, Bilekahalli, Bengaluru560076. The Applicant

has authorized Mr. Anirudh Muralidhar, Area Manager for Delhi-NCR Region via Board Resolution 09.12.2017, to file this applicant on behalf of the

Applicant.

3. The Application is involved in the business of importing and stockists of plastic mould steel, cold work tool steel, hot work tool steel, aluminium,

Beryllium Copper, Special forging and special steel.

4. The Corporate Debtor is the company incorporated on 06.03.2007 under the provisions of Companies Act, 1956 with CIN No.

U25206DL2007FTC160144, having registered office at Flat No. 351, LIG, L&T PKT (Shree Awas RWA), Ph-2 sector- 18B Dwarka, South West

Delhi, New Delhi- 110078.

5. It is the case of the Applicant that the Corporate Debtor had placed an order vide various emails and telephone call to supply alloy steel blocks at its

plant/site situated at No. 14, Sector-8, IMT Manasar, Gurgaon, Haryana-122051. Pursuant to said orders, the Applicant supplied 18,292 kg of alloy

steel blocks between 03.09.2015 to 20.10.2016 and raised four invoices of Rs. 2,61,934/-, Rs. 2,68,138/, Rs. 12,79,338/-, and Rs. 18,81,732/- against

the said orders, totaling to the amount of Rs. 36,91,142/-

6. It is further stated that the Corporate Debtor had made part payment of Rs. 5,05,280/- vide Cheque No. 000749 dated 17.10.2016 which is duly

received by the Applicant, out the total amount of Rs. 36,91,142/-, leaving balance of Rs. 31,85,862/- as unpaid.

7. It is the case of the Applicant that as per the telms of invoices, the payment of bill was to be made within a period of thirty days from the date of

invoice. The payment of Rs. 31,85,862/- was not made as per the agreed terms in various invoices raised by the applicant and inspite of various

demands made by the Applicant no payment was made by Corporate Debtor, for the balance due of Rs. 31,85,862/-.

8. The Applicant from time to time requested the Corporate Debtor to clear the outstanding amount, however, Corporate Debtor neglected and failed

to pay the unpaid debt of the Applicant. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code

was issued on 04.01.2018 to the Corporate Debtor.

9. The Applicant sent the Demand Notice (Form 3) along with Form 4 on 04.01.2018 to all official email ids of the Corporate Debtor viz.

sungilindia@gmail.com, sungi1ceo23@gmai1.com, purchase@sungilindia.com as well as on accountsRsungilindia.com on 13.02.2018 which were

received as per the claim of the Applicant.

10. Despite the demand notice sent u/s 8 of the Code, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand

notice raising any dispute, hence this application, seeking to unfold the process of CIRP. An affidavit u/s 9(3)(b) is also filed by the Applicant to that

extent.'

11. The applicant has not filed the bank certificate as required u/s. 9(3)(c) of I&B Code. As per the Applicant, the Applicant has made request to the

Indian Bank number of times but the Bank has not issued the certificate as necessitated under the Code. The bank has filed the certified copy of the

bank statement and requested this Tribunal to dispense with the requirement of Section 9(3)(c), relying on the order dated 15.12.2017 passed by

Hon'ble Supreme Court in the matter of Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd.

12. As per the records the applicant has attempted to serve the copy of the application on the Corporate Debtor on 23.05.2018 in compliance of the

order dated 15.05.2018 as dasti but the acceptance of the application was refused by the staff/ security personnel of the Corporate Debtor and also

refused to give anything in writing. An affidavit has been filed by the Applicant on 25.05.2018 to that effect. Hence service is deemed to be complete.

None appeared for the 'Corporate Debtor'.

13. The amount of debt claimed is Rs. 31,85,862/- which is above 1 lakh.

14. The default occurred on 22.11.2016, hence the debt is not time barred and the application is filed within the period of limitation.

15. The registered office of the Corporate Debtor is situated at Delhi and is within the territorial jurisdiction of this Tribunal.

16. In the circumstances mentioned above Corporate Debtor despite repeated service has not appeared before this Tribunal and existence of a default

of debt due to the Applicant is established. The Tribunal is of the considered view that this application requires to be admitted and that CIRP process

is required to be initiated against the Corporate Debtor.

17. The Applicant has not proposed the name of any IRP and requested the Tribunal to appoint any IRP, hence Mr. Rajesh Parikh , having mail id.-

parikh . raj e sh@gmail . c om is duly registered with Insolvency and Bankruptcy Board of India and having registration No. IBBI/IPA-001/IP-

P00272/2017-18/10516, is be and hereby appointed as an Interim Resolution

Professional.

18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section

14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of 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 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 the possession of the corporate debtor.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(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

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.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows: -

4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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 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.

19. Based on the above terms, the Applicationstands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of

this date.

A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of

the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the

Registry.

