

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Jinan K.R., Hon'ble Member (J)

CP (IB) No. 201/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Swastika Steel & Allied Products Private Ltd.

a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 117A, Chittaranjan Avenue, Kolkata- 700 073;

... Applicant / Operational Creditor

-Versus-

In the matter of:

Benzfab Technologies Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at A-19, Sahid Nagar, Bhubaneshwar, Orissa- 751 007;

.... Respondent/Corporate Debtor

Counsel on Record:

- | | |
|-------------------------------------|------------------------|
| 1. Mr. Awadhesh Kumar Rai, Advocate |] Operational Creditor |
| 2. Ms. Pooja Roy |] |

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1. Mr. T.K.Das, Advocate] - For the Corporate Debtor
2. Ms. Parna Das, Advocate]

Date of Pronouncement of Order: 11.07.2018

ORDER

This is an application filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) by the Operational Creditor namely, Swastika Steel & Allied Products Pvt. Ltd. for initiating Corporate Insolvency Resolution Process in respect of Benzfab Technologies Pvt. Limited/Corporate Debtor

2. The applicant contends that it is a dealer in sale of fabrics and galvanized structures of different specifications and vide Invoice Annexure -A dated 03.08.2017, materials were supplied to the Corporate Debtor for an amount of Rs.14,18,242/- out of which Rs.2,58,398/- was paid in advance leaving an outstanding of Rs.11,59,843/-.

3. The applicant contends that the said amount is due from the Corporate Debtor with interest at 18%. Despite demand the respondent failed to repay the amount hence the applicant filed this application. The Corporate Debtor though received the demand notice not chosen to file any reply. In order to strengthen its contentions, the applicant produced the copy of invoice as Annexure "A", copy of demand notice Annexure D, affidavit in compliance with section 9(3)(b) and certificate in compliance with section 9(3)(c) of the Code. However, the applicant did not propose any name of Insolvency Resolution Professional. Upon said contentions, the applicant prays for admitting the application.

4. The Respondent/Corporate Debtor entered appearance and filed reply affidavit contending in brief is the following:

5. The application is not maintainable in law and in facts. The application had been filed in abuse of process of law and the same is liable to be rejected. The Corporate Debtor further contends that the materials supplied to the Corporate Debtor is not at the agreed rates and the materials supplied are not standard materials as per the purchase order. The materials received at the site is found with the GI structural materials are for STP and not PSC poles and that the Operational Creditor has sent full set of DTR structural materials which has been found after physical verification as well as from the packing list of dispatch documents. The rate charged by the Operational Creditor is much higher than the PO. It is also contended that they are issuing a cheque of Rs.10 lakhs as security on a returnable basis. The goods supplied are wrong materials and that the applicant was directed to rectify the invoices but not rectified it. Therefore, the Corporate Debtor has no liability to pay the claim as demanded by the Operational Creditor. Upon said contentions, the Corporate Debtor prays for dismissal of the application.

6. Heard both the sides and perused the records.

7. This is an application filed by the Operational Creditor under section 9 of I&B Code for initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor. The Operational Creditor is admittedly a dealer in fabricates and galvanized structures materials and corporate debtor admittedly purchased goods from the applicant and not denied the receipt of goods as per Annexure A. The Corporate Debtor raised disputes in respect of materials supplied on the basis of an invoice No.SSAP/M/2017-18/027 dated 25th July

2017 and not on the basis of materials supplied as per Annexure "A" annexed to the application. Admittedly, the Corporate Debtor was in receipt of the demand notice. The Respondent did not choose to send a reply within the stipulated period of 10 days and not brought the existence of any disputes in respect of the amount found due to the applicant. The disputes, if any refers to in reply affidavit submitted by the Respondent not at all related to the goods supplied as per the Annexure A invoice. Therefore, here in the instant case, no dispute at all raised by the Corporate Debtor as against the goods supplied to the Corporate Debtor by the Operational Creditor.

8. It is submitted on the side of the Operational Creditor that the cheque issued as security was dishonoured when presented for encashment. According to the Ld. Counsel for the applicant, the entire claim as claimed in the application is due from the Corporate Debtor and the respondent not raised dispute upon receipt of the demand notice. The respondent did not pay any part of that amount and therefore, this is a fit case in which CIRP is to be initiated against the corporate debtor.

9. The Ld. Counsel for the Corporate Debtor not at all succeeds in establishing that there exists a *bona fide* dispute regarding the supply of goods, admittedly received as per the invoice Annexure "A". The applicant herein, in the instant case, has succeeded in proving that all the requirement to be meted out under Section 9(5)(2) are complied. An affidavit under section 9(3)(b) and bank certificate under section 9(3)(c) was produced. Applicant did not propose any name of the IRP. Therefore, this application is liable to be admitted.

10. In the result, the application is admitted upon the following orders:

ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of **Benzfab Technologies Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- (iii) Moratorium under Sec.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 judgement, 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

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any action under the Securitization 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 possession of the corporate debtor.

- iv) 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.

- v) 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.

- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

- vii) 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

- (ix) Mr. Vishal Passary, Odisha (Mob.9438088860) having email no. passaryvishal@yahoo.com is appointed as Insolvency Resolution Professional registered with the ICSI Insolvency Professionals Agency


having Registration No. IBBI/IPA-001/IP-P00230/2017-18/10459 as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors. He shall produce Form2 and written communication upon acceptance of the order.

i) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on ~~14~~¹¹ 08. 2018 for the filing of the progress report.


(Jinan K.R.)
Member (J)

Signed on this, the ¹¹~~14~~ day of July, 2018.