

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

IB-418(ND)/2018

In the matter of

M/s. Alloys & Metals (India)

Having its office at:

7, Clyde Row

Hastings

Kolkata-700022

...Operational Creditor

Vs.

Hindustan Paper Corporation Ltd.

Having its Registered Office

4th Floor, South Tower,

Scope Minar, Laxmi Nagar

District Centre,

Delhi-110092

.... Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on 13.06.2018

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

Present for the Petitioner : Mr. Abhishek Anand, Advocate

Present for the Respondent: Mr. Dilip Agarwal, Advocate

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner, as the Operational Creditor, has invoked the provision of Section 9 of the Insolvency Bankruptcy Code 2016 (hereinafter referred to as the "Code") against the Respondent/Corporate Debtor on grounds of its inability to liquidate its outstanding dues towards them.

2. As per averments, the Corporate Debtor, a public sector undertaking of the Government of India, placed two Purchase Orders on the Operational Creditor for supply of Grey Board. Against the said order nos. 310460/3014400648 & No. 2513101262/2514400339 dated 12.09.2014 & 28.06.2014 respectively, goods were supplied from time to time during the relevant year and invoices were accordingly raised. The amounts under each purchase order aggregated to Rs. 58,82,917/- and Rs. 30,88,584/- respectively. In addition, the Operational Creditor was required to give a security for due performance @ 5%. The Operational Creditor had therefore deposited Rs. 5 lakhs and Rs. 3,56,500/- which the Corporate Debtor was liable to refund upon the complete supplies being made. The Operational Creditor raised various invoices between 25.07.2014 to 15.06.2015 under the two purchase orders. As per the terms of the purchase order, the payments were to be disbursed within 90 days of the supplies under each invoice. The Operational Creditor submits that the total outstanding amount is Rs.

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98,28,001/- which includes the security refund of Rs. 8,56,500/-. The Operational Creditor's case is that despite reminders, the Corporate Debtor failed to liquidate its liability, though it acknowledged its liability vide their letters dated 15.06.2017 & 23.06.2017. As the payments were not made despite repeated request and reminders, the Operational Creditor issued a demand notice dated 13.10.2017 under Section 8 of the Code. In response to the notice under Section 8, the Corporate Debtor has not disputed the same but has expressed its financial inability to liquidate its liability. They also stated that they were in the process of reviving the business and are looking for joint venture partners for which they had invited expressions of interest.

3. On being served, the Corporate Debtor put in appearance through their counsel. No reply has been filed on grounds of a strike at their factory premises at Guwahati where all documents are lying and the record therefore being unavailable. Ld. Counsel has however raised his objection with respect to the prayer made in the petition which is being taken in consideration for the purpose of disposal of this petition.

4. Though there is no denial to the balance confirmation issued by the Corporate Debtor, acknowledging the outstanding liability as Rs, 30,88,584 and Rs. 67,39,417 vide their letters dated 15.06.2017 & 23.06.2017, the petition is being resisted on two points, viz. the claim being barred by limitation and the petition having been filed by a partnership firm which is



not registered and therefore not maintainable being hit by the provisions of Section 69 of the Partnership Act.

5. With respect of limitation, without going into details of various invoices raised pursuant to purchase orders placed on the Operational Creditor for supply of goods, taking into consideration the admitted acknowledgment of debt dated 15th June, 2017, it cannot be denied that all invoices raised after 16th of June, 2014 would be well within limitation. Even if three bills prior to 16th June, 2014 are discounted and not taken into consideration on grounds on limitation, the several other invoices raised thereafter would be well within limitation. The total liability acknowledged vide the letters dated 15.06.2017 and 23.06.2017 is over Rs. 98 lakhs, while the bills prior to 16th June, 2014 are collectively less than Rs. 5 lakhs. Even against these 3 bills, part payments have been made, though the dates of payment have not been mentioned. Disregarding two-three bills does not mitigate the debt to the extent that the prayer for invoking the Resolution Process cannot be entertained as the threshold for permitting Corporate Insolvency is Rs. 1 lakh and for a debt above this amount, the Operational Creditor is entitled to seek initiation of the Corporate Insolvency Resolution of the Corporate Debtor. The submission for rejection of the petition on this ground is therefore not sustainable. It is not for the Adjudicating Authority to look into how much claim can be accepted. Suffice it to state that as long as it is over rupees one lakh, the Operational Creditor is entitled to invoke the CIR proceedings. Admittedly, as

the total liability is over Rs. 1 lakh, the Operational Creditor is entitled to its prayer.

6. With respect to the objection regarding non-registration of the partnership, Id. Counsel for the Operational Creditor has confirmed that the said partnership is duly registered but had inadvertently not been filed with the petition. The provision of the Code mandates that before rejecting the petition, due opportunity should be given to the Operational Creditor to remove the objections/defects. A period of seven days' time was given within which period the copy of the partnership deed, duly registered with the Registrar of Firms, was placed on record.

7. In view of the aforesaid facts, wherein no resistance has been offered nor any dispute raised in respect of the goods supplied, the prayer of the Operational Creditor being legally sustainable merits consideration. The petition is therefore Admitted. A moratorium in terms of Section 14 of Code comes into effect forthwith staying:

“(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 any action under the Securitisation 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.

Further,

(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. (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.”

8. The Operational Creditor has proposed the name of IRP Mr. Kuldeep Verma, Address: 3, Jagabandhu Modak Roak 4th Floor, Shovabazaar, Kolkata-700005, Registration No. IBBI/IPA-001/IP-P00014/2016-17/10038, email: kuverma@gmail.com. His eligibility and consent in Form 2 is on record. This Bench therefore confirms his appointment as the IRP in the case. He is directed to take all such steps as are mandated under the statute, more specifically under Sections 15, 17, 18, 20 & 21 of the Code.
9. The IRP shall file his report within the statutory period.
10. Copy of the order be communicate to both the parties as well as to the IRP.
11. To come up on 16th July, 2018 for the IRP's Report.

Sd/-

(Deepa Krishan)
Member (T)

Sd/-

(Ina Malhotra)
Member (J)