

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP No (IB) 77/6/HDB/2016
U/S 9 of IBC

In the matter of

M/s Bharat Steel Industries
Represented by its Managing Partner
Mr. Dipesh D Banker
A-1, Industrial Estate
Moula-Ali, Hyderabad – 500040

...Applicant

Versus

M/s Basai Steels & Power Pvt. Ltd
A-30, 1st Floor, Shankar Towers
Balanagar
Hyderabad – 500 037

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

...Corporate Debtor.

Date of order: 07/07/2017.

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties Present

Counsels for the Applicant: Shri Nitish Bandary, Advocate
alongwith Shri N. Krishman and
Aahana Madhyala, Advocates

Counsel for Corporate Debtor: None

Per: Ravikumar Duraisamy, Member (T)



ORDER

1. The present Company Petition is filed by M/s Bharat Steel & Power (P) Limited (Applicant) against Basai Steels & Power Limited, under section 9 of IBC Code 2016 R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Present Company Petition copy was served to Basai Steels & Power Limited (Respondent / Corporate Debtor) before filing it before the Tribunal. The case was listed before this Tribunal on 13.06.2017. So directed to issue another notice intimating the next date of hearing of the present petition. In spite of several notices, and after acknowledging the notice of the present petition, none appeared before this Tribunal from Corporate Debtor. The case was listed for admission today.



Heard Shri Nitish Bandary, Learned Counsel for the Petitioner / Operational Creditor. He submitted that the demand notice/invoice dated 17/04/2017 was received by the Corporate Debtor.

4. The Learned Counsel for the Petitioner submits that they have supplied Iron & steel to the Respondent Company amounting to Rs. 34,18,116/-. However, the Respondent Company failed to pay above amount. Hence, the Petitioner/Operational Creditor got issued a notice dated 17.04.2017 to M/s Basai Steels & Power Pvt. Ltd under Rule 5 of IBC (Application to Adjudicating authority) 2016, to pay the above outstanding amount within 10 days from the date of receipt of the notice and informed that they would initiate Corporate Insolvency Resolution Process, if they failed to pay the said amount. The demand notice in form No.3 is also enclosed along with the said notice and enclosing Tax invoice cum delivery challan and ledger accounts. It is also stated in the notice that if there is any dispute relating to the said debt to

Operational Creditor, it is requested to intimate the same with regard to pendency of the suit or arbitration proceedings in relation to such dispute.

5. In response to the above notice, the Corporate Debtor has sent a reply dated 26/04/2017, in which it is inter-alia stated as follows.

- (a) It is stated that outstanding bills/tax invoice as mentioned in the notice is already time barred by limitation to be enforced legally for recovery and thus the claim in question was illegal and not sustainable under any law.
- (b) The materials supplied by Operational Creditor was not as per the order due to which they faced losses and thus payment could not be processed on time for the same.
- (c) The factory situated at Bellary did not operate during the period in which the Operational Creditor has made supplies due to financial constraints, due to ban on the iron ore mining by the Hon'ble Supreme Court and the Company faced heavy losses and was forced to register under section 15(1) of SICA with BIFR. However, the BIFR was repealed on 30/11/2016.
- (d) The Financial Institutions have already initiated recovery actions under the SARFAESI Act 2002, in 2012 which was installed by the SICA Act. It is stated that they are still working Financial Institutions for a possible recovery of the Plant with additional funding to disburse payment of old dues of raw materials suppliers, workers and other creditors of the Company.
- (e) It is further submitted that the Company is working to resolve the problem and to arrange funds for all the suppliers and workers of the company. It is also positive signal from the Financial Institutions allowing them to



operate the plant and they are also in the process of giving a package which will be shared with the Operational Creditor as soon as it is through.

(f) Finally, it is stated that if any legal action is taken under IBC Code, 2016 it may hinder the process and all efforts to revive the company will come to a standstill and thus requested the Operational Creditor to withdraw the notice issued to them and undertake that payment shall be released to them as soon as possible.

(g) The Learned Counsel for the Petitioner submitted that the Respondents have paid an amount of Rs. 2,00,000/- to the Operational Creditor on 21/02/2017 and the bank statement in support of the same is also filed vide memo dated 7/7/2017 today.

6. In view of the facts and circumstances, we are convinced that debt in question is still due to be paid to the Operational Creditor, for whatever reason(s) cited by the Corporate Debtor for the same. Hence, we admit the case. The Learned Counsel for the Operational Creditor is directed to intimate to the Corporate Debtor immediately and furnish all the copies and submit proof of service on the next date of hearing.

7. Post the case for consideration of appointment of IRP on 19.07.2017.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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OF THE ORIGINAL

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR

Order received by the Registry on 29/8/17
प्रमाणित प्रती
CERTIFIED TRUE COPY
केस संख्या CASE NUMBER... CP.No(1B)77/6/HDB/2016
निर्णय का तारीख DATE OF JUDGEMENT... 7.7.2017
प्रति देवार किया गया तारीख 24.8.2017
... BE READY ON...