

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI**

COMPANY PETITION NO. TCP 535/I&BP/NCLT/MB/MAH/2017

CORAM

:

SHRI M.K. SHRAWAT

Member (Judicial)

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS UNDER SECTION 9 OF THE
INSOLVENCY AND BANKRUPTCY CODE, 2016**

AND

ORDER UNDER SECTION 433(E), 434 OF THE COMPANIES ACT, 1956 (OLD ACT)

AND

In the matter of **M/s. Indian Steel Corporation Limited,**

Registered Office at:

611, Tulsiani Chambers,
Nariman Point,

Mumbai – 400 021

&

Corporate Office at:

503, Mahakosh House,
7/5, South Tukoganj,

Indore-452 001.

: Petitioner

AND

In the matter of **M/s. Kutch Engineering Private Limited,**

Registered Office:

Shop No.5, Bhagwati Shopping Centre,
S.V. Road, Malad (West),
Mumbai – 400 064.

: Respondent

Represented by:

Mr. Nishant Sasidharan, a/w Mr. Kalpesh Mehta and

Ms. Rohini Gangar, i/b Pravin Mehta and Mithi & Co.

: Advocate for
Petitioner

Ms. Shilpa Bhate, Advocate

: For Respondents.

ORDER dated 20.07.2017

1. It is a Company Petition filed by the Petitioner before the Hon'ble High Court of Bombay bearing Lodging No. CPL/1017/16 dated 14-12-2016.
2. The matter was subsequently transferred from the Hon'ble High Court of Bombay which was pertaining to the provisions of 433(e) of the Companies Act, 1956.
3. The facts of the case is as follows:-
 - 3.1 The Petitioner/Operational Creditor is a manufacturer, supplier and exporter of, galvanized steel coil, galvanized steel sheets, color coating coils, color coating sheets and cold rolled steel.
 - 3.2 The object for which the Corporate Debtor Company was incorporated was "To acquire , build, construct, improve, develop, give or take in exchange or on leave,

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rent, hire, occupy, allow, control maintain, operate, run, sell, dispose of, carry out or alter as may be necessary or convenient any lease-hold or freehold lands, movable or immovable properties, including building, workshops, warehouse, stores, easement or other rights, machineries, plant, work, stock in trade, industrial colonies, conveniences together with all modern amenities and facilities such as housing, schools, hospitals, water supply, sanitation, township and other facilities or properties which may seem calculated directly or indirectly to advance the company's objects and interest either in consideration of a gross sum of a rent charged in cash or services" and other objects set forth in the Memorandum of Association thereof.

- 3.3 During the course of regular business with the Respondent, the Petitioner has supplied and delivered steel material / steel products ("the goods") to the Respondent from time to time and submitted invoices. The Respondent accepted the goods and invoices and agreed and assured to make payments in that regard. It is pleaded that 119 invoices of 8th/9th March 2012 amounting to ₹7,52,71,604/- is however, pending for payment.
- 3.4 The Petitioner had requested the Respondent to pay the Petitioner's unpaid dues. However, the payments have not been made by the Respondent so far.
- 3.5 The Respondent has confirmed the outstanding amount in writing on 04th April, 2016; with the Company's Stamp; stating that the amount of ₹7,52,71,604/- is due and payable by the Respondent to the Petitioner as per the Respondent Company's Books of Accounts as on 31st March, 2016.
- 3.6 The Petitioner sent a Demand Notice vide its letter dated 16.04.2016 and requested the Respondent to pay the unpaid dues within 7 days from the receipt thereof. In reply, the Respondent stated that the Company was facing a tough time in the market. The Respondent claimed that he was not in a position to repay the unpaid dues to the Petitioner. The Respondent accepted, and acknowledged that it was the Respondent's obligation to repay the same to the Petitioner. However, the Company requested the Petitioner to bear with the Company.
- 3.7 On 21st November, 2016, the Petitioner sent a legal notice under section 434 of the Companies Act, 1956 to the Respondent stating the full facts and circumstances and claimed principal amount of ₹7,52,71,604 Plus interest thereon @ 18% per annum from their respective due dates. This notice was received by the Corporate Debtor on 21st November, 2016. Despite this, the Respondent neither paid the amount nor responded to the notice.

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3.8 As per the Petitioner, the interest amount up to 30th November, 2016 @ 18% per annum on the outstanding amount works out to ₹6,32,28,147 up to 30-11-2016. Thus the total amount due was stated to be ₹13,84,99,751. The Petitioner has also claimed interest @ 18% per annum from 01-11-2016 on the principal amount of ₹7,52,71,604 also till the date of payment.

4. **Findings:**

4.1 The Petitioner has demonstrated in his pleadings that the Respondent has defaulted in making the due payments to the Petitioner. Further as discussed above, there is no evidence of existence of any "Dispute" in respect of the outstanding debt.

4.2 He has sent a legal notice on 21st November 2016 under section 434 of the Companies Act, 1956 to the Respondent. Despite this, the Respondent did not make the payment to the Petitioner. Instead he has confirmed the existence of debt but stated that he is running in financial crisis due to global recession in the Steel market. The debt is conclusively established.

4.3 However, it is worth to mention that the Respondent has been duly represented during the proceedings. Further, an affidavit of the Respondent dated 19.06.2017 is also on record. The relevant portion is reproduced below:-

1. *"I am Director of the Respondent abovenamed. I am conversant with the facts of the present case on the basis of my personal knowledge as well as the records maintained by the Respondent.*
2. *I am filing the present Affidavit for opposing admission of the Company Petition. The contents of the Petition, unless specifically admitted herein, shall be deemed to have been denied by the Respondent.*
3. *On 20th May 2005, the Respondent was incorporated. The main object of the Respondent is to carry on all or any of the business and profession of providing Technical Services related to Production and Maintenance of Plant & Machinery.*
4. *As part of its business, the Respondent bought various steel items from the Petitioner since the year 2010. Initially the Respondent regularly made payment for the goods that it has purchased from the Petitioner but due to certain unavoidable circumstances Respondent failed to maintain financial discipline.*
5. *But due to global recession, the steel market faced severe and unprecedented downturn. Consequently, the Respondent's business suffered losses. Therefore, the Respondent was unable to temporarily discharge its liability towards the Petitioner. The Respondent, vide letter dated 18th April, 2016 (Exhibit "C" to the petition) had informed the Petitioner about the same.*
6. *I deny that the Respondent has deliberately failed or neglected to pay the Petitioner. The Respondent is not unreasonably withholding payment to the Petitioner. The Respondent is not unable to pay its debts. The Respondent is not commercially insolvent. I deny that the Respondent is liable to be wound up. I deny that any liquidator / insolvency professional can / ought to be appointed to conduct the affairs of the Respondent."*

5. On perusal of the contents of the affidavit, it transpires that the defendant had not disputed the outstanding amount but expressed a temporary inability to make the payment due to global recession in the Steel market. However, it is stated that

the Respondent is not a commercially insolvent entity. Hence, not liable to be wound up.

6. As a consequence, the "Insolvency Resolution Process" shall commence forthwith. This is a case of "Operational Creditor", therefore, the provisions of Section 8 and Section 9 of I&BP Code, 2016 shall be applied. The occurrence of default is established as per foregoing paragraphs. As on date the amount in question remained unpaid by the "Operational Debtor". The prescribed period of repayment or raising of any objection had also lapsed. Satisfactorily, the admitted factual position is that there is no "Dispute" in respect of the unpaid debt.
7. Having considered the totality of the circumstances and the Application/Petition for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed *supra* it is hereby pronounced that the "Moratorium" as prescribed under section 14 of The Code 2016 shall come into operation. As a result, institution of any suit or parallel proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.
8. The Petitioner has intimated the name of the Interim Resolution Professional as Mr. Manish Jain, 219, President Tower, 6/2 South Tukoganj, Madhumilan Square, Indore-452001 Registration No. IBBI/IPA-002/IP-N00047/2016/10092, email id: manishjainandco@gmail.com.
9. Accordingly, **this CP 535/I & BP/NCLT/MAH/2017 is admitted.**
10. The Insolvency Resolution Process is commenced from the date of this order.

Date : 20.07.2017.

Sd/-
M.K. SHRAWAT
Member (Judicial)