

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

Company Petition No. T.C.P. NO. 914/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.**

In the matter of :

M/s. INDIAN STEEL CORPORATION LIMITED,

Registered Office at:
611, Tulsiani Chambers,
Nariman Point,
Mumbai – 400 021.

: Petitioner/Operational Creditor

Versus

M/s. KANDLA STEEL PRIVATE LIMITED,

Registered Office at:
7A, Ground Floor, Plot No.73,
Giriraj Building, Sant Tukaram Marg,
Iron Market, Carnac Bunder,
Mumbai – 400 009.

: Respondent/Operational Debtor

CORAM : **(1) SHRI MUKUL KUMAR SHRAWAT,**
Member (Judicial)
(2) DR. ASHOK KUMAR MISHRA,
Member (Technical)

Represented by:

1. Ms. Roshni Gangar,
i/b Pravin Mehta and Mithi & Co. : Advocate for the Petitioner/
Operational Creditor.
2. Ms. Vaishali Dholakia,
i/b Anjali Trivedi : Advocate for the Respondent/
Operational Debtor.

ORDER

Heard on 10.07.2017

ORDER / JUDGMENT dated 10.07.2017

PER SHRI M.K. SHRAWAT, Member (Judicial) & DR. ASHOK KUMAR MISHRA, Member (Technical).

1. The Petitioner M/s. Indian Steel Corporation Limited, having its Registered Office at 611, Tulsiani Chambers, Nariman Point, Mumbai – 400 021, the Operational Creditor has filed the above Petition under section 433 (3) and 434 of the Companies Act, 1956, now to be read with Insolvency & Bankruptcy Code, 2016.

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2. Brief history of the case is as follows:-

- i) The Respondent viz. Kandla Steel Private Limited was incorporated to carry on the business as service provider as buyer, seller, processor, importer, exporter, stockist, dealer, manufacturer of cold rolled, galvanized color coated coils and sheets either plain or corrugated, in all gauges and sizes whatsoever and to provide the services in corrugation of cold rolled, galvanised color coated coils and sheets and other ferrous and non-ferrous alloys and products and other objects set forth in the Memorandum of Association thereof in India or abroad.
- ii) The Respondent had placed few orders for supply of goods on the Petitioner/Operational Creditor on 31-03-2015. On the basis of these orders, the Petitioner sold, supplied and delivered steel material/steel products ("the Goods") to the Respondent and the Respondent also accepted these goods.
- iii) The Petitioner raised invoices against these supplies on the Respondent. The Petitioner stated that he has long business relations with the Respondent for the last about 8 years. He further stated that some invoices drawn by him on 31-03-2015 on the Respondent, amounting to ₹12,01,64,869 are still pending for payment by the Respondent.
- iv) The Petitioner requested the Respondent from time to time to make payment of the said outstanding invoices. However, the payments were not made by the Respondent till date.
- v) At the insistence of the Petitioner, the Respondent has conveyed in writing (by appending the Company's Stamp and signature of the Company's authorised signatory on the balance confirmation dated 04th April, 2016) that the aforesaid amount of **₹12,01,64,869 is due and payable by the Company to the Petitioner**, as per the Company's Books of Accounts as on 31st March, 2016 (Exhibit 'A'). Thus the debt is admitted by the Respondent.
- vi) Thereafter, vide his letter dated 16th April, 2016, the Petitioner requested the Respondent to make his outstanding payments within 7 days from the receipt thereof.
- vii) In reply, the Respondent vide his letter dated 20th April, 2016 has informed the Petitioner that the company was facing a tough time in the market and was not in a position to repay the impugned outstanding amount to the Petitioner. **The Company, however, has accepted and acknowledged that it was the Company's obligation to repay the same to the Petitioner.**

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- viii) Thereafter, the Petitioner sent an Advocate's notice under section 434 of the Company's Act on 14th September, 2016 by Registered A/D to the Respondent requesting him to make payment of the outstanding amount of ₹12,01,64,869 together with interest accrued on the amounts outstanding in respect of each invoice @ 18% per annum from their respective due dates. The Respondent received the said letter on 15th September 2016. Even after, this the Respondent has neither responded nor complied with the request of the Petitioner. The old Petition now stood transferred from Hon'ble High Court to NCLT, Mumbai Bench.
- ix) The Petitioner claimed the principal amount of **₹12,01,64,869** plus interest @ 18% per annum calculated up to 31st October, 2016, **₹3,42,46,988**, totalling to **₹15,44,11,857**. He has also claimed interest @ 18% per annum for the later period from 01.11.2016 also on the Principal amount of **₹12,01,64,869**, till its payment.

3. The Petitioner in his Petitioner has made the following prayers:-

i) To Order and direct winding up of the Respondent Company;

ii) To appoint the Official Liquidator, High Court, Mumbai as Liquidator of all the Assets and Liabilities of the Respondent Company;

iii) Pending hearing and final disposal of the Petition, grant an interim order and injunction restraining the Company, its officers, servants, agents and any person claiming by, through and/or under the Company from selling, transferring, alienating, assigning, conveying and disposing of its assets or any part thereof and/or creating any third party rights and/or encumbrances therein in any manner whatsoever."

4. In Form No.5 the Petitioner/Operational Creditor has proposed the name of Insolvency Resolution Professional (IRP) : "Mr. Manish Jain, 219, President Tower, 6/2, Sough Tukoganj, Madhumilan Square, Indore-452001, Registration No.IBBI/IPA-002/IP-N00047/2016/10092, email id: manishjainandco@gmail.com.
5. In Form No.2 dated 23rd May, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept the above task. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.
6. Accordingly, this Tribunal "Admits" the Petition and appoints 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 to initiate the Insolvency Resolution Process on the above Respondent forthwith with the following directions:-

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Avi (Contd....4.)

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1. Since this is a case of "Operational Creditor" therefore the Insolvency Resolution Process shall commence as prescribed under section 8 and 9 of the I&BP Code, 2016. The occurrence of default is established. Even on service of Demand Notice the amount in question, remained unpaid by the "Operational Debtor" till date. The prescribed period of 10 days has also lapsed.
2. Having considered the totality of the circumstances and the 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.
3. The Respondent Company, its officers, servants, agents and any person claiming by, through and/or under the said Company are restrained from selling, transferring, alienating, assigning, conveying and disposing of its assets or any part thereof and/or creating any third party rights and/or encumbrances therein in any manner whatsoever.
4. The Petition is "Admitted" and hereby pronounced the commencement of the Corporate Insolvency Resolution Process from the date of this Order.

Sd/-

DR. ASHOK KUMAR MISHRA,
Member (Technical)

Sd/-

M.K. SHRAWAT,
Member (Judicial)