

**In the National Company Law Tribunal
Single Bench, Chennai**

TCP/114/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

Shah Brothers Ispat Private Limited

V/s

Tech Megacorp International Private Limited

Order delivered on: 16.08.2017

For the Petitioner/OC: Shri Arun Karthik Mohan, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Shah Brothers Ispat Private Limited (in short, **‘Petitioner/Operational Creditor’**) against Tech Megacorp International Private Limited (in short, **‘Respondent/Corporate Debtor’**) under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon’ble Madras High Court which has been transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government notification number GSR 119(E) dated 07.12.2017, this petition needs determination as

per the provisions of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. Shri Arun Karthik Mohan, the learned counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is a supplier of Boiler/Pressure Vessel Quality Steel & structural steel plates and hot rolled coils whereas the Respondent/CD is involved in design, engineering and fabrication of components for power/petrochemical industries. It is submitted that the respondent procured steel from the petitioner/OC from time to time and consequently, various invoices were raised. The purchase order issued by the respondent company provided for interest @ 18% per annum on delayed payments.
4. It is further submitted that a total amount of Rs. 7,06,57,779/- was due and payable by the respondent as of August 2015 and in acknowledgement of the aforesaid outstanding liability, the respondent issued 53 post-dated cheques for the said amount. However, all the cheques were dishonoured with the remark 'Insufficiency of Funds'. As per a tri-partite agreement, between the petitioner, respondent and M/s. Doosan Power System

Private Limited, a customer of the respondent, the bank guarantee issued by the respondent to M/s. Doosan Power System Private Limited was encashed and paid over to the petitioner towards part payment of the outstanding liability, thereafter, the total outstanding liability stood revised to Rs. 4,18,26,914/- including interest rate @ 18% per annum.

5. It is further submitted that the petitioner, after making several requests to settle his dues and having waited for a long period of time for his legitimate dues, issued a statutory notices dated 16.04.2016 under section 434 of the Companies Act, 1956, demanding the payment of Rs. 2,84,52,426/- alongwith interest @ 18% per annum (Rs. 4,18,26,914/-) and thus now claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD. The petitioner further submits that the total outstanding liability of the respondent company as of June 2017 amounts to Rs. 5,32,36,147.90/-.

6. It is pertinent to mention herein that the respondent company neither gave any reply to the statutory notice dated 16.04.2016 sent by the Operational Creditor nor caused appearance before this adjudicating authority even after receiving another notice

for appearance. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016. As per the submission of the counsel for the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 as well as MCA Notification dated 29.06.2017.

7. After hearing submissions of the counsel for the petitioner and having perused the record, this Adjudicating authority is satisfied that the petitioner has made out his case by establishing that this Corporate Debtor has defaulted the payment dues on various occasions to this petitioner/OC and there is no dispute between the parties. In the circumstances, I am inclined to admit the instant application.
8. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.
9. I appoint Mr. V. Mahesh as Interim Resolution Professional (IRP) proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management

immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed

10. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely :

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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 (54 of 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.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.
13. The Petitioner/OC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
14. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

15. The Registry is also directed to communicate this Order to the
Operational Creditor and the Corporate Debtor.

16. The address details of the IRP are as follows: -

Mr. V. Mahesh
Regn No:(IBBI/IPA-002/IP-00215/2016-17/1930)
39/19, Aspen Court, 3rd floor,
6th Main road, R.A. Puram, Chennai – 600017
Email: maheshvenki@gmail.com
Mobile No: 9600034643



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS