

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

CP/654/(IB)/CB/2017

Under Section 9 of the IB Code, 2016

In the matter of

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| M/s. Kollinal Steels and Alloys Private Limited | ...Petitioner/OC |
| V/s | |
| M/s. Master Shipyard Private Limited | ...Respondent/CD |

Order delivered on: 21.12.2017

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioner/OC: Shri P. Rejinark, Advocate

For the Respondent/CD: Shri N. Sasi, Advocate

ORDER

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

1. Under Consideration is a Company Petition filed by M/s. Kollinal Steels and Alloys Private Limited (in short, '**Petitioner/Operational Creditor**') against M/s. Master Shipyard Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 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. The Petitioner is a private Limited Company engaged in the trading in iron and steel etc. whereas the Respondent is engaged in the business of boat and ship building etc.
4. Shri P. Rejinark., the learned counsel appearing on behalf of the petitioner/OC submitted that the petitioner is selling iron steel and other materials required for the ship building business to Corporate Debtor on credit basis. Both the parties have maintained good business relationship in spite of delay in payments by Corporate Debtor. As per the accounts of the petitioner company, the Corporate Debtor have to pay an outstanding amount of Rs. 23,79,339/- as on 05.04.2014. but submission of the letter seeking conformation on 05.04.2014 the Corporate Debtor had disputed the quantum of the debt and that the outstanding balance was only Rs. 23,34,486/-. As per the ledger account of the petitioner company in the books of the corporate debtor for the period 01.04. 2013 to 31.03.2014 shows that there is an outstanding debt of Rs. 23,34,486/-. The Operational Creditor again sent letter to the Corporate Debtor on 02.05.2015 for seeking confirmation of outstanding

balance of said amount. Again the corporate debtor acknowledged the balance debt of Rs. 23,34,486/- by duly signing the same and specifying that the balance payable was Rs. 23,34,486/- only as per their books of accounts.

5. It is further submitted that the petitioner, after making several requests for settling the dues with the respondent and having waited for a long period of time for his legitimate dues, sent a Demand Notice dated 20.07.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 calling upon the respondent to make the payment of the outstanding due of Rs. 23,79,339/- and 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.
6. The learned counsel for the Respondent/CD caused appearance and submitted that the petition should be dismissed on the grounds of technical laches as there are some serious defects in the Application in Form- I filed by the petitioner and the amount in default and the principal outstanding amount shown is grossly erroneous. Annexure-1 notice dated 20.07.2017 is not proper notice as contemplated under Rule 5 of the Insolvency and Bankruptcy Code, 2016

the said notice is not issued by operational creditor. The signatory to the said notice was not authorised to issue such a notice to and the same is invalid and improper. The Hon'ble National Company Law Appellate Tribunal has held in Macquance Bank Limited Vs. Uttam Galva Metallics Limited that an advocate/ lawyer in the absence of any authority by the Operational Creditor; cannot issue notice under section 8 of the I & B Code, 2016. Further submitted that the claim in the above petition that the corporate debtor stated that the balance as on 05.04.2014 was Rs. 23,34,486/- is false and hence denied and the Operational Creditor has never acknowledged any such debt. The counsel submitted that the Corporate Debtor has denied the acknowledged of the balance Debt of Rs. 23,34,486/- on 02.05.2015 Annexure II (C) and II (D) produced by the operational creditor false and fabricated document. The person alleged to have signed the documents produced as Annexure II (C) and II (D) was not even in the service of the operational creditor at the alleged dated of acknowledgement and he was never a key management personnel of the corporate debtor and he was not authorised to give an acknowledgement of debt as binding on the company in terms of the Companies Act. In reply to the above the

counsel of the operational Creditor has submitted that no documentary proof has placed to substantiate the above default.

7. It is further submitted that there is a dispute existing between the Operational Creditor and Corporate Debtor. The learned counsel finally submitted that the Operational Creditor has committed default in supply of goods in quality and quantity and they have not initiated any legal proceedings in respect of the transaction within the limitation. Moreover, the Annexures attached to Form- 1 is false and fabricated.
8. As per the submission of the counsel for the petitioner, he has also been placed on record proof of sending notices and its deliveries and also filed an affidavit and bank statement under section 9(3)(b) and 9(3)(c) of I & B Code. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process.
9. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, this Adjudicating authority is satisfied that the petitioner has proved by placing overwhelming evidence that default has occurred which the Corporate Debtor was responsible to pay. In relation to the

objections raised by the Corporate Debtor to regarding issue notice under section 8 of the I & B Code, 2016, it is pertinent to mention that the petitioner has established clearly that the amount in default is genuine and is supported by the documentary evidence placed. The Supreme Court in the matter of **Macquarie Bank Limited vs Shilpi Cable Technologies Ltd, Civil Appeal No.15481 of 2017** it has been held that an Advocate/lawyer on behalf of the Operational Creditor can issue a demand notice of an unpaid operational debt. Hence, the objection raised is not sustainable. In the circumstances, having satisfied with the submissions put forth by the learned counsel for the petitioner, we hereby admit the instant petition.

10. The instant petition is admitted and we 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.

11. We 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. We 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.*

12. 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.

13. It is pertinent to mention herein that the Petitioner has not proposed the name of an IRP and prayed before the Adjudicating Authority to make a reference to the Insolvency and Bankruptcy Board of India (IBBI) for recommending the

name of an IRP. Therefore, the Registry is directed to make a reference to IBBI for recommending the name of an IRP.

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


(S. Vijayaraghavan)
Member (Technical)

TJS


(K. Anantha Padmanabha Swamy)
Member (Judicial)