

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P. (I.B) No. 327/9/NCLT/AHM/2019

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL ,
AHMEDABAD BENCH ON 18.03.2020**

Name of the Company: Jaydevbhai Rajubhai Rathod
V/s
Shree Saibaba Ispat (India) Pvt Ltd

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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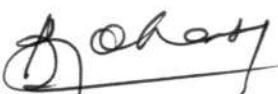
1.


2.

ORDER

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 18th day of March, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 327/9/NCLT/AHM/2019

In the matter of:

JAYDEVBHAI RAJUBHAI RATHOD
Having its Registered Office at:
High Court Road, Oghad No Khacho,
Bhavnagar-364002
Gujarat.

..... Petitioner

Versus

M/S SHREE SAIBABA ISPAT (INDIA)
PRIVATE LIMITED
Having its Registered Office at:
Plot No.2137, Near Golden Arc,
Atabhai Circle, Bhavnagar,
Gujarat-364002

.....Respondent

Order delivered on 18.03.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Kristy Baptist, Advocate for the Petitioner/Operational
Creditor

Mr. Nikhil Gupta, Advocate for the Respondent



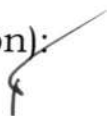
[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, Jaydevbhai Rajubhai Rathod under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, M/s Shree Saibaba Ispat (India) Priavte Limited.
2. The Respondent/Corporate Debtor, namely M/s Shree Saibaba Ispat (India) Private Limited was incorporated on 17.04.2000 with CIN: U27100GJ2000PTC107231. The authorised capital of the company is INR.17,500,000.00 and the paid-up capital is INR.11,500,000.00. The registered office of the Corporate Debtor Company is situated at: Plot No.2137, Near Golden Arc, Atabhai Circle, Bhavnagar, Gujarat-364002.
3. The present petition has been preferred by the Operational Creditor, Jaydevbhai Rajubhai Rathod under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor

Company namely, M/s Shree Saibaba Ispat (India) Private Limited. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for **INR.6,00,000.00** (Rupees Six Lakhs Only) **along with interest @ 18 % per annum** (Interest not included in the amount of INR.6,00,000.00) pending payment. It is submitted that the amount is overdue on account of labour services provided to M/s Shree Saibaba Ispat (India) Pvt. Ltd. (CD) for providing the said services over a period of six months. In this regard, one invoice dated 01.03.2019 is raised by the Operational Creditor in proportion to the labour work for which Contractor provided labour for working in the factory by the Operational Creditor and the same were duly accepted by the Corporate Debtor.

4. It is submitted that the said invoice is still outstanding and have remained unpaid till date. That as on date there is an outstanding amount of INR.6,00,000.00 (Rupees Six Lakhs Only) which is **due and defaulted and payable by** the Corporate Debtor. **Date on which the first Default occurred is 01.03.2019.**

Details of Invoice raised to the Corporate Debtor is produced herein below (Invoice raised from Page no. 10 of the application):



Invoice No.	Date	Particular	Amount (INR)
2	01.09.2018 to 28.02.2019	Contract Charges Bill towards Labour Work	6,00,000.00

6. It is submitted that Form 3 Demand Notice was issued by the Operational Creditor on 15.03.2019 which was duly served at the registered office of the Corporate Debtor and the said demand notice was received by the Operational Debtor on 13.04.2019.
7. It is submitted that inspite of the receipt of the said Demand Notice, the Corporate Debtor, neither paid the outstanding dues nor replied to the said Demand Notice. The Corporate Debtor after the receipt of the aforesaid Demand Notice on 13.04.2019, did not provide any record existence of and pendency of any suit or arbitration filed before the receipt of Demand Notice as contemplated under section 8(2)(a) of the Code.
8. It is submitted by the Petitioner that inspite of repeated requests and reminders, the Corporate Debtor failed and neglected to make payments of outstanding dues of INR 6,00,000.00.
9. In response to the present I.B. Petition filed by the Petitioner, the Respondent has filed its affidavit in reply/objections dated 04.09.2019, through its Managing Director, Mr.Pramod Yadav, who is authorised to represent the Corporate Debtor.

9.1 It is submitted by the Corporate Debtor that the Respondent Company is in the business of a manufacturer of a basic iron and steel business from last 19 years and currently Company operations are active. The Operational Creditor came in contact with the Respondent in 2018 when the business of the Corporate Debtor facing financial difficulties since 2015 due to lack of purchasers in the market for bulk sell of iron and steel and due to this state of the Company, most of its employees had left the employment which included the labourers, as the salaries were being affected and there was delay in payment of the salaries. Therefore the Corporate Debtor in good faith entered into business transaction with the Operational Creditor, whereby the Operational Creditor undertook to provide labourers for Six months with a promise that none of them shall leave the work in between and if at all they do the Operational Creditor shall provide for a replacement and make sure that the required number of labourers essential to finish the task are available to work in the factory. This service of Operational Creditor was taken for a period of six months from 01.09.2018 to 28.02.2019. It was decided before hand that the Operational Creditor shall get a total of INR 1,00,000.00 per month out of



which INR 50,000.00 shall be given as advance amount in the beginning of the month.

9.2 It is submitted that the Corporate Debtor had been running in great financial distress and the Operational Creditor was aware of the financial condition of the Corporate Debtor from the beginning of the business relations. After the default in payment of first four months, the Corporate Debtor gave a proposal of making the payments at the end of the financial year as the demand of steel all over country itself had decreased and therefore, there was delay in generating funds, but the said request was turned down by the Operational Creditor. The Corporate Debtor accepts that there has been some delay on the part of Corporate Debtor to make payments to the Operational Creditor due to financial crunches.

9.3 **It is submitted that the Corporate Debtor accepts the debt of total sum of INR.6,00,000.00 (Rupees Six Lakhs Only) pending on account of unpaid invoice to the Operational Creditor.** The Corporate Debtor accepts that there is no ongoing assignment in hand with the Corporate Debtor and therefore, it is not possible for the Corporate Debtor to pay the due amount to the Operational Creditor.



10. In light of the abovementioned facts and circumstance, the Petitioner's Prayer before this Adjudicating Authority is to cause Public Announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 and be pleased to pass any further order in the interest of justice.
11. Now, the Petition is filed on 29.04.2019 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.6,00,000.00**
12. The case was taken up by this Adjudicating Authority on 31.05.2019. The matter was heard on 16.07.2019, 04.09.2019, 09.10.2019, & 04.11.2019. Mr. Nikhil Gupta, Manager of the Corporate Debtor appeared on 04.09.2019 and submitted the Affidavit on behalf of Corporate Debtor was submitted. **The said Affidavit dated 03.09.2019 is signed by Shri Pramod Yadav, Managing Director of the Corporate Debtor admitting the Debt of INR.6,00,000.00.**
13. The matter was finally heard on 04.11.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is

submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium may also be declared.

14. Further, **the Operational Creditor has suggested the** name of an Interim Resolution Professional (“IRP” for short). If, this I.B. Petition is admitted, IRP needs to be appointed.

15.

OBSERVATIONS

- 15.1 The Application has been filed on 29.04.2019 for **operational debt due** and defaulted of INR.6,00,000.00 (Rupees Six Lakhs Only) as per the respective Invoices enclosed.
- 15.2 Date of invoice is 01.03.2019.
- 15.3 Date of first default is **01.03.2019**.
- 15.4 **The Corporate Debtor has acknowledged the Debt of INR.6,00,000.00 by filing Affidavit on 03.09.2019 signed by the Managing Director of the Corporate Debtor Shri Pramod Yadav.**
- 15.5 Application is filed within the limitation period **as the date of default is 01/03/2019 and the date of filing of this petition under Section 9 of IBC is 29/04/2019.**
- 15.6 No pre-existing dispute before the filing of this application is observed.

ORDER

16. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **15, 15.1, 15.2, 15.3, 15.4, 15.5, & 15.6** this Adjudicating Authority is **satisfied that,**

- a) Existence of debt is above **Rs. One Lac;**
- b) **Debt is due;**
- c) Default has occurred on **01/03/2019;**
- d) Petition has been filed within the limitation period as the date of default is **01/03/2019** whereas, the petition has been filed on **29/04/2019.**
- e) **The Corporate Debtor has acknowledged the Debt of INR.6,00,000.00 by filing Affidavit on 03.09.2019 signed by the Managing Director of the Corporate Debtor Shri Pramod Yadav.**

Hence, the **present IB petition is admitted on 18.03.2020 with the following directions:**

17. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority shall declares moratorium for prohibiting all of the following, namely: -

I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.*
- II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*


19. Hence, this Adjudicating Authority here by appoints **Shri Tejas Shah, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P0089/2017-18/10185, Email ID - tejasshah44@yahoo.com, Address: B-201, Narayankrupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahmedabad, Gujarat-380006 an Interim Resolution Professional.**


The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor shall be under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code

and shall perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

20. An authenticated copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP(IB)No.327/9/NCLT/AHM/2019 is admitted on **18.03.2020** with the **above Observations and Directions.**


(Prasanta Kumar Mohanty),
Adjudicating Authority
Member (T)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)