

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP(IB) No. 677/Chd/Pb/2019
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Somal Pipes Private Ltd.

Village Giaspura, P.O. Lohara,
Near Sua Chowk, G.T. Road,
Ludhiana (Punjab)
CIN No. U28939PB1979PTC004094

...Petitioner-Operational Creditor

Vs.

1. M/s RPK Steels Rolling Mills Pvt. Ltd.

Village Jandiali, Pharuwal Road,
Near Kohara, Ludhiana (Punjab).
CIN No. U27100PB2008PTC032297

2. Union of India, Ministry of Corporate Affairs,

Through its Secretary,
5th Floor, A. Wing, Shastri Bhawan,
Dr. Rajender Prasad Road,
New Delhi-110001.

...Respondent-Corporate Debtor

Judgement delivered on: 17.03.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. A.S. Narang, Advocate

For the Respondent-
Corporate Debtor : Proceeded *ex parte* vide order dated 12.01.2023

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **M/s Somal Pipes Private Ltd.**, (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s RPK Steels Rolling Mills Pvt. Ltd. (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, M/s RPK Steels Rolling Mills Pvt. Ltd., is a Company incorporated on 22.09.2008 under the provisions of Companies Act, 1956 with CIN No. U27100PB2008PTC032297 with its registered office at Village Jandali, Pharuwal Road, Near Kohara, Ludhiana (Punjab). Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-1.

3. The facts of the case, briefly, as stated in the petition are that the corporate debtor was a regular purchaser of goods from the operational creditor and had a running account for the same. The operational creditor regularly fulfilled orders placed by the corporate debtor and raised invoices. The corporate debtor would make payments with the understanding that the payment would be adjusted against the first outstanding invoices first and the remaining balance would be adjusted against the next outstanding bill. However, the corporate debtor failed to make payments for the supply made during the period from 31.12.2017 to 09.02.2018 for B.P. sets worth Rs. 1,88,320/- vide invoices dating 31.12.2017, 18.01.2018 and 09.02.2018

bearing Nos. 994, 1096 and 1210 which were sold to the corporate debtor on credit. The last payment on account of goods were received on 15.05.2018 amounting to Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand Only).

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 2,57,995/- (Rupees Two Lakh Fifty Seven Thousand Nine Hundred Ninety Five Only) including interest on principal debt on account of sale of goods as on 29.07.2019. The default occurred on 09.02.2018 i.e. date on which the last sale took place and the complete principal operational debt claimed fell due. Copy of computation sheet (Annexure A-5), Bank Statement of Accounts in Punjab and Sind Bank, SSI Branch, Industrial Area, Ludhiana (Account No. 06991600000045) and Punjab and Sind Bank, SSI Branch, Industrial Area, Ludhiana (Account No. 06991300000302) (Annexure A-6/A) are attached with the main petition.

5. A demand notice dated 29.07.2019 in Form 3 and 4 is stated to be issued by the operational creditor. However, the said letter was received back undelivered to the Corporate Debtor with the remarks "Addressee has refused to accept. Return Sd/- 13.08.2019". The said demand notice was also emailed on the official email of the Corporate Debtor i.e. at rpksteels@gmail.com on 07.08.2019 (Annexure- A4). No response or any notice of dispute was received from the Corporate Debtor.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of service were filed vide Diary No. 1728 dated 03.03.2020 and 607/01 dated 03.01.2023. But, neither anyone appeared on behalf of the corporate debtor

nor any reply was filed. Vide order dated 13.12.2022, it was made clear if none appears, ex-parte proceedings will be taken. However, none appeared even thereafter, the respondent was proceeded ex-parte. The short written submissions were filed by the petitioner vide Diary No. 00607/2 dated 30.12.2022.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 and 4 dated 29.07.2019 was properly served. However, the said letter was received back undelivered to the Corporate Debtor with the remarks "Addressee has refused to accept. Return Sd/- 13.08.2019". The said demand notice was also emailed on the official email of the Corporate Debtor i.e. at rpksteels@gmail.com on 07.08.2019 (Annexure- A4). No response or any notice of dispute was received from the Corporate Debtor. Therefore, demand notice was duly served upon the corporate debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by petitioner-operational creditor that no response or any notice of dispute has been received from the Corporate Debtor. It is stated that the Corporate Debtor has failed to bring to the notice of the Operational Creditor any existing dispute or any payment of the unpaid operational debt as is mandated under Clause 2 of Section 8 of the IBC. It is further deposed that the payment of operational debt of Rs. 2,57,995/- (Rupees Two Lakh Fifty Seven Thousand Nine Hundred Ninety Five Only) or any part thereof, has not been received by the Operational Creditor. It is further deposed that the

petitioner has not filed any other application either before this Hon'ble Tribunal or before any other Court of law. Therefore, the operational debt was not disputed by the corporate debtor.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 29.07.2019 in Form 3 and 4 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default on 09.02.2018 i.e. date on which the last sale took place and the complete principal operational debt claimed fell due. This application was filed on 06.12.2019 vide Diary No. 6916. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 2,57,995/- (Rupees Two Lakh Fifty Seven Thousand Nine Hundred Ninety Five Only) including interest on principal debt on account of sale of goods as on 29.07.2019 is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of computation sheet (Annexure A-5), Bank Statement of Accounts in Punjab and Sind Bank, SSI Branch, Industrial Area, Ludhiana (Account No. 06991600000045) and Punjab and Sind Bank, SSI Branch, Industrial Area, Ludhiana (Account No. 06991300000302) (Annexure A-6/A) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the

amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. It is noted that the corporate debtor has expressed its inability to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s RPK Steels Rolling Mills Pvt. Ltd. and also direct moratorium to take effect and appoint Interim Resolution Professional as below :-

14. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arun Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Arun Gupta, Registration No. IBBI/IPA-001/IP-P01323/2018-2019/12055, E-mail: arunsapna.ca@gmail.com, Mobile No. 9878991186 from the list provided by Insolvency and Bankruptcy Board of India, panel valid from January 01,

2023 to June 30, 2023 (AFA Certification is valid upto 21.12.2023), the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Arun Gupta shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining

the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other

entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 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.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

18. The petitioner is directed to deposit an amount of 40,000/- (Rupees Forty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is accordingly admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

March 17, 2023
VN/TB