

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.782/MB-IV/2023

Under Section 9 of the IBC, 2016

In the matter of

M/s. SHRUMANI STEELS PRIVATE
LIMITED.

[CIN: U51101MH2012PTC228018]

...Operational Creditor

v/s.

M/s. HARSHIKA TRADING PRIVATE
LIMITED

[CIN: U51101MH2015PTC264760]

...Corporate Debtor

Order Delivered on: 06.06.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr.Raina Birla, Ld. Counsel.

For the Corporate Debtor:

None present.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s. Shrumani Steels Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Harshika Trading Private Limited., the Corporate Debtor.

1.1. The Company Petition is filed on 06.09.2023 claiming that an amount of Rs. 1,25,25,545.41/- due towards invoices raised for doing civil work for the Corporate Debtor is due and payable. The date of default as specified in Part IV of the petition is 21.07.2021 (*as per the 1st date of invoice i.e. 07.06.2021 which is to be paid within 45 days from the date of invoice*)

2. **Submissions of the Operational Creditor :**

2.1. The Operational Creditor is into the business of interior designing.

2.2. The Corporate Debtor approached the Operational creditor and issued work order and the Operational Creditor has purchased goods on behalf of the Corporate Debtor for carrying out interior work at the registered office of the Corporate Debtor.

2.3. The Operational Creditor submits that, the invoices were raised for goods purchased on behalf of the Corporate Debtor. The payment was to be made within 45 days from the date of the Invoice. The first invoice among other invoices was raised on 07.06.2021 which remain unpaid. Therefore, the debt first fell due on 21.07.2021.

2.4. Furthermore, the Operational Creditor has issued several reminder letters i.e. on 23.09.2021, 25.01.2022, 05.04.2022, 02.09.2022 and 28.12.2022 . Pursuant to which the Corporate Debtor had requested for extension of time to clear the dues .

2.5. Apart from this, the Corporate Debtor had requested for the payment several times through phone calls and personal meetings and also mentioned that he will be forced to take legal action if the commitments are not fulfilled. On 06.02.2023 Operational Creditor has sent final reminder for payment but not received any reply from the Corporate Debtor

2.6. As Corporate Debtor completely failed to pay the balance amount of its. 1,25,25,545.41/- even after repeated calls and follow ups, Operational creditor had no other option but to take legal action against the Corporate Debtor. On 23.06.2023 a demand notice was sent in Form 3 under rule 5 through registered post for demanding payment under the Insolvency and Bankruptcy Code, 2016. However, the said Notice was returned with a remark "*No such person in the address*"(as per the endorsement of the tracking report). The said Statutory Demand Notice was also sent through an email on the registered email address of the Corporate Debtor on 11.07.2023. The said was replied on 13.07.2023 stating that they are not in the position to pay the debt of Shrumani Steels Private Limited due to financial stringency in the company. Hence, this application is being filed for initiating the corporate insolvency process under Section 9 of the Insolvency & Bankruptcy Code, 2016.

Findings

3. The bench has heard the arguments of Learned Counsel for Operational Creditor.

3.1. None has appeared for the Corporate Debtor despite the fact that a notice dated 09.10.2023 was issued to the Corporate Debtor to cause appearance in this case. The matter was listed on 22.11.2023, the counsel submitted that the said Notice was returned with a remark “*addressee “LEFT” without instruction*”(as per the endorsement of the tracking report). The counsel for the Operational Creditor sought permission for substituted services. The Operational Creditor issued notice by way of an substituted service on 05.01.2024, even after issuance of the same there was no representation on the behalf of the Corporate Debtor. Therefore the Corporate Debtor was set *ex-parte* on **06.02.2024**. In the aforesaid peculiar circumstances, we proceed to decide the matter as per the basis material available on record.

3.2. Having weighed the contentions raised by the Counsel for the Operational Creditor, we are of the considered view that in this case the Operational Creditor has been able to establish that the Corporate Debtor has not paid the operational dues of Rs. 1,25,25,545.41/- against the invoices issued between 07.06.2021 and 02.12.2021. It has also been proven on record that Statutory Demand Notice sent through an email on the registered email address of the Corporate Debtor on 11.07.2023 was duly served upon the Corporate Debtor and in reply dated 13.07.2023, the Corporate Debtor has admitted its liability to pay the claim amount and it has only been stated that due to financial stringency in the company, the Corporate Debtor was not able to pay the amount. Therefore, there is no doubt about the existence

of the operational debt and its default by the Corporate Debtor. As stated above the Corporate Debtor has been acknowledging its liability from time to time by issuing balance confirmation of accounts of every year from 01.04.2011 till 31.03.2022. Therefore, the Petition seems to have been filed within the period of limitation and, therefore, deserves to be admitted.

4. Since the Corporate Debtor has not appeared in this case and was proceeded against ex-parte, there is absolutely no defence in this case. Even otherwise, the existence of operational “*debt*” and its “*default*” by the Corporate Debtor has been established on record and further that the petition has been filed within the period of limitation. As a result of the brief discussion, we hold that it is a fit case for admission under Section 9 of Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:
5. The petition bearing **CP (IB) No.782/MB-IV/2023** filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s. Shrumani Steels Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Harshika Trading Private Limited., the Corporate Debtor is **Admitted**.
6. The bench hereby appoints **Mr. Arun Nandlal Agrawal**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-003/00282/2020-2021/13234** Email: **irparun@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- I. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.

- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.06.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)