IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

CP 1499/I&BP/NCLT/MAH/2017

Under Section 9 of the I&B Code, 2016

In the matter of
SHRI KARVIR NIVASINI MAHALAXMI ISPAT PVT. LTD.

.... **Operational Creditor**

v/s.

ABHISHEK CORPORATION LTD.

.... **Corporate Debtor**

Order delivered on 17.11.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Phiroze Merchant, Advocate for Petitioner

For the Respondent: Mr. Anup Khaitan, Advocate for Respondent

राष्ट्रीय कम्पनी विधी अधिकरण NATIONAL COMPANY LAW TRIBUNAL सत्यमेव जयते मुंबई न्यायपीठ MUMBAI BENCH

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral order dictated in the open court on 10.11.2017

1. The Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor on the ground that the Corporate Debtor failed to make payment in respect to the goods supplied namely Metal TMT Bars, hence this petition against the Corporate Debtor for initiation of Insolvency Resolution Process.

2. The case of the Petitioner is, it supplied Metal TMT Bars on the invoices for the period from 9.9.2008 to 8.5.2009 amounting to ₹54,77,873. For the Corporate Debtor was unable to make payment, the Debtor Company executed a Memorandum of Understanding on 1.11.2014 stating that the total outstanding as on 1.11.2014 is ₹54,77,873. In this aggregate amount the payment of ₹20,00,000 made on 4.8.2014 has also been included, which is reflected as follows.

- ₹20,00,000/- upfront payment (already paid on 04.8.2014)
- ₹5,00,000/- on six monthly intervals starting from 31.3.2015
- ₹4,77,873/- the last payment being payable on 30.9.2017.

3. This Memorandum of Understanding was signed by the Petitioner as well as the Corporate Debtor Company. When the Corporate Debtor failed to make payment as agreed in the Memorandum of Understanding, this Petitioner issued Section 8 Notice on 15.9.2017 stating that the Corporate Debtor failed to make payment of ₹64,79,888 due outstanding as on 14.9.2017 on calculation of interest at the rate of 12% over ₹34,77,873, but no reply to section 8 notice has come from the Corporate Debtor.

4. Today, when this Bench has put it to the Corporate Debtor whether the company has any plan to make payment to the Petitioner, the Counsel appearing on behalf of the Corporate Debtor has

categorically mentioned that the company is in bad shape, therefore not in a position to make payment to the Petitioner.

5. In view of the admission made by the Debtor herein, this Bench on seeing the Memorandum of Understanding dated 1.11.2014 entered into basing on the invoices raised in the year 2008 to 2009, section 8 notice issued by the Petitioner, the Bank statement and the Bank Certificate filed by the Petitioner reflecting that payment towards claim has not come from the Corporate Debtor after 04.8.2014, is satisfied that the petitioner has proved the existence of debt and occurrence of default to the satisfaction of this Bench, accordingly this petition is hereby admitted by declaring Moratorium against the company with the reliefs as mentioned below :

(a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) That the order of moratorium shall have effect from 17.11.2017 till the 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.

(e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(f) That this Bench hereby appoints Mr. Sandeep Singhal, Registration No. IBBI/IPA-001/IP-P00519/2017-18/10920,

having address at 313/314, Giri Shikhar, Plot No.8891, Opposite Goenka Hall, J.B. Nagar, Andheri East, Mumbai 400 059, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

4. Accordingly, this Petition is admitted.

5. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B.S.V. PRAKASH KUMAR
Member (Judicial)

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MUMBAI BENCH

Certified True Copy
Copy Issued "free of cost"
On 21.11.17

Assistant Registrar
National Company Law Tribunal Mumbai Bench