

In the National Company Law Tribunal
Mumbai Bench.

C.P.(IB)-3234/MB/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Benteler Trading International GmbH : Petitioner/ Operational Creditor
V/s

Western India Metal Processors Ltd. : Respondent/ Corporate Debtor

Heard on : 07.03.2019
Order delivered on: 13.03.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Ms. Almira Lasrado, Advocate, i/b. Indialaw.

For the Respondent(s) : (None)

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition has been filed in Form No.5 on 27.07.2018 by M/s. Benteler Trading International GmbH, in the capacity of **Operational Creditor** by invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor M/s. Western India Metal Processors Ltd., Mumbai-400021, to claim an outstanding Operational Debt of **USD 10,99,115/-** + Interest **USD 3,24,508/-** at 15% on the defaulted amount from their default dates till 06th March, 2018. reproduced below:-

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<i>Inv No.</i>	<i>Date</i>	<i>Due Date</i>	<i>Amount Due</i>	<i>Interest @15%</i>	<i>Total</i>	<i>Request Date</i>	<i>No. of Days</i>
940033211	01-Dec-15	27-Mar-16	\$ 873,403	\$ 258,018	\$ 1,131,421	06-Mar-18	709
940033960	01-Dec-15	29-Mar-16	\$ 225,712	\$ 66,491	\$ 292,203	06-Mar-18	707
		Total	\$ 1,099,115	\$ 324,509	\$ 1,423,624		

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2. **Brief history of the case:-** The Petitioner/ Operational Creditor submitted that it had entered into a Sale Contract No.B405.056 dated 29th September 2015 with the Operational Debtor for sale of 3,800 m.t. +/- 10% tolerance on quantity

of the Hot Rolled Steel Coils, Mill Edge, on the price, terms and conditions appearing in the Sale Contract No. B405.056 dated 29th September 2015.

2.1. According to the Petitioner, the Corporate Debtor had agreed to pay for the cargo within 120 days from the Bill of Lading date by telegraphic transfer to Seller account.

2.2. On 28.11.2015, the Petitioner Creditor shipped 2,817.156 m.t. of Hot Rolled Steel Coils from Bayuquan Port, China to Mumbai and raised a Commercial Invoice No. 940033211 dated 01.12.2015 for USD 873,402.89 wherein the due date of payment was mentioned as "till 27.03.2016".

2.3. Another consignment of 728.034 m.t. of Hot Rolled Steel Coils from Bayuquan Port, China was shipped on 30.11.2015 also by the Operational Creditor for which a Commercial Invoice No. 940033960 dated 01.12.2015 for USD 225,712.38 was raised on the Corporate Debtor, with due date of payment "till 29.03.2016".

2.4. According to the Petitioner Creditor, the Corporate Debtor, vide its email dated 29.03.2016 forwarded a Letter dated 29.03.2016 to the AGM & Relationship Manager, State Bank of India, acknowledging the import of Hot Rolled Coils from the Corporate Debtor and requested the Bank to effect payment of USD 873,402.89 and USD 225,712.38, totalling to ₹119,115.27.

3. Since no payment was received, the Operational Creditor issued several reminder Letters dated 12.04.2016, 19.04.2016 and 26.4.2016 to the Corporate Debtor requesting for the said outstanding amount.

4. The Corporate Debtor had also issued a Letter dated 03.05.2016 to the Operational Creditor confirming receipt of materials against the Invoices *supra* and also acknowledged the said Invoices as due and payable. The Corporate Debtor had also agreed to pay @ 15% for the delayed payment.

5. Subsequently, vide email dated 13.05.2016, the Corporate Debtor agreed to pay the outstanding amounts in three instalments and confirmed that they are committed to clear the outstanding invoices/ dues.

6. The Corporate Debtor entered into a Debt Acknowledgement and Settlement Agreement with the Operational Creditor dated 16.11.2016 wherein the Corporate Debtor acknowledged the monies owed to the Operational Creditor amounting to USD 1,250,055.53 inclusive of Principal amount and the ancillary obligations @ 15% per annum from the payment default till the agreed repayment date of 20.02.2017 and agreed to a repayment plan.

7. The Petitioner/ Operational Creditor submitted that no payment was received against the impugned Invoices of USD 873,402.89 and 225,712.38, total amounting to USD 1,099,115.27 so far.

8. As the Corporate Debtor failed to pay the said outstanding amount of USD 1,099,115.27 so far, the Petitioner/ Operational Creditor issued Demand Notice on 06.03.2018. However, no reply has been sent by the Corporate Debtor against the said Demand Notice nor disputed the claim.

FINDINGS:-

9. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established. Demand Notice has been issued to the Respondent Debtor, however, not replied to the said Demand Notice within the prescribed time period of 10 days u/s.8(2) of The Code nor made the payment.

10. The Petition was listed on 02.01.2019, however, none appeared from the side of the Respondent Debtor. Therefore, the matter was adjourned to 07.03.2019 and the Petitioner was *inter alia* directed to intimate the next date of hearing to the Corporate Debtor. Learned Representative of the Petitioner/ Operational Creditor intimated the said next date of hearing by Speed Post to the Corporate Debtor. Even

then, none appeared from the side of the Corporate Debtor on next date (07.03.2019) to defend its side.

11. As a consequence, keeping the admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor so far and that the formalities as prescribed under The Code have been completed by the Petitioner/ Operational Creditor, it is my conscientious view that this Petition deserves "Admission".

12. The Petitioner/ Operational Creditor has proposed the name **Mr. Jeetendra Rajpal Daryani** Address: 501, Tulip CHS Ltd., Satguru Gardens, Chendani, Thane-400 603, **Registration No. IBBI/IPA-001/IP-P-00678/2017-2018/11146**, as the Interim Resolution Professional. The IRP has submitted his consent in Form No.2 and also certified that no Disciplinary Proceedings are pending against him. The said IRP is hereby appointed.

13. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

14. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium** Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

15. Accordingly, this **CP (IB)-3234/(MB)/2018 stood** Admitted.

16. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 13.03.2019.
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