

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB) No. 250/KB/2021

In the matter of:

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

SRF Limited

[CIN:L1810DL1970PLC005197]

... Operational Creditor

-Versus-

Birla Tyres Limited

[CIN: L25209WB2018PLC228915]

... Corporate Debtor

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via hybrid mode):

For the Operational Creditor : Ms. Meenakshi Manot, Advocate

Ms. Iram Hassan, Advocate

Mr. Sanket Sarawgi, Advocate

For the Corporate Debtor : Ms. Manju Bhuteria, Advocate

Mr. Debarga Basu, Advocate

Date of Hearing: 05.04.2022

Date of pronouncing the order: 05.05.2022

ORDER

Per: Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.

2. Time lines are the essence of Insolvency and Bankruptcy Code 2016, herein after referred as Code, to achieve objects as enshrined in the preamble of this Code and proceedings before this Adjudicating Authority are summary proceedings and this aspect is intrinsic in provisions of the Code.
3. Before coming to merits of this CP it is relevant to record here;
 - a. When this matter came up for consideration on 20 October 2021, this Adjudicating Authority issued a notice to Corporate Debtor by speed post and e-mail. The notice was sent by the registry through speed post and e-mail. Next date was fixed for 22 December 2022.
 - b. As per the tracking report, the notice was received by the Corporate Debtor on 25 October, 2021 and by e-mail on 22 December 2021 along with the copy of Company Petition.
 - c. When the matter came up again for hearing on 22 December 2021, Counsel for the Corporate Debtor appeared and sought further three weeks' time to file reply affidavit.
 - d. It is evident as per the order dated 22 December 2021 passed by this Adjudicating Authority that a schedule for completion of pleadings was fixed on this date. Corporate Debtor was granted three weeks' time to file the reply affidavit and upon filing this affidavit the Operational Creditor was granted two weeks to file rejoinder, if any. The matter was directed to be listed on 28 February, 2022.
 - e. When the matter was taken for consideration on 28 February, 2022, Ld. Counsel appearing for the Corporate Debtor again sought further time to file its reply affidavit; Two weeks further time was granted to file the reply affidavit and the matter was directed to be listed on 5 April, 2022.
 - f. On 05 April, 2022 when the matter came up for consideration the Corporate Debtor sought further time to file the affidavit. The Ld. Counsel for the Corporate Debtor stated that there was some Dharna at factory premises from 03 January, 2021 to 12 March, 2021 by workers demanding payment of workers of wages and other financial benefits

and the proceedings were pending before the office of Divisional Labour Commissioner Balasore.

- g. It was stated by Ld. Counsel for Corporate Debtor, that in view of this agitation by the workers, petition had been filed before SDM Balasore for promulgation of Section 144 of CRPC against the workers and their family members on 28 September, 2021. In view of these reasons the Corporate Debtor is unable to have access to the records in filing the reply affidavit in this application.
 - h. On 5 April, 2022, after considering the submissions of the Ld. Counsel for the Corporate Debtor for grant of further extension of time this Adjudicating Authority not satisfied with the reasons stated, declined to grant further time and the matter after hearing Counsel for operational creditor was reserved for orders.
 - i. No application/motion however has been filed before this Adjudicating Authority for seeking any further time.
 - j. There is nothing shown to us the relevant record for filling reply was/is lying in the factory premises and the same situation as in September 2021 continues in April 2022.
4. In view of the facts and circumstances based on record, we are of the considered opinion that it was a very casual attempt made by the Corporate Debtor to seek further adjournment for the 4th time consecutively since October, 2021 and reference to agitation by workers and families in September, 2021 was merely an attempt by the Corporate Debtor to prolong the proceedings. Keeping in view, this matter under Insolvency and Bankruptcy Code, 2016 wherein the very object of the Code is to finalize the Insolvency proceedings in a time bound manner for maximization of value of assets, granting adjournment after another and that too without any basis cannot be permitted by this Adjudicating Authority and this Adjudicating Authority thus declined to further extend the time for filling reply affidavit by Corporate Debtor.

5. From the above fact on record, it is clear that the Corporate Debtor was afforded reasonable opportunity to file its Affidavit-in-Reply, however, the Corporate Debtor has failed to file the Affidavit-in-Reply despite repeated opportunities.
6. ***It is significant to note***, when the matter was reserved for judgment on 05 April 2022 an affidavit by Shri Anant Gupta on behalf of Birla Tyres Limited appears to have been sent to the Registry at 10:27 P.M through an e mail.
7. In this affidavit, stated to be the supplementary affidavit, permission was sought to bring on record that the Corporate Debtor has now propounded a Scheme of Arrangement for reconstruction and for compromise with its creditors and members. The Scheme also provides for resolution of debts of the unsecured creditors of the Corporate Debtor which includes the Operational Creditor.
8. It is further stated in paragraph 8 of the said supplementary affidavit that the Corporate Debtor had applied for seeking no objection from National Stock Exchange Ltd. on 02 February 2022 and from Bombay Stock Exchange Ltd. on 14 February 2022. However, till date the Corporate Debtor is still awaiting the no objection letters from the concerned stock exchanges.
9. It is further stated in paragraph 10 of the said supplementary affidavit that the Corporate Debtor has made an application under rule 11 of the National Company Law Tribunal, 2016 which has not been numbered and the Diary number for the same is 1098134008532022 dated 08 March 2022.
10. In paragraph 11 of the said supplementary affidavit it is mentioned that it is necessary that the section 9 petition which was filed by the Operational Creditor may be kept in abeyance for some time, so that the Operational Creditor gets an opportunity to participate to express its views in the proposed Scheme of Arrangement and compromise with the creditors of the Corporate Debtor Company along with other creditors both secured and unsecured.
11. We are of the view that the stand taken by the deponent is not permissible while considering a petition under section 9 of the Code and also this affidavit could not be filed ***after*** the matter was reserved for judgement.
12. The permission to place the supplementary affidavit on record by Corporate Debtor is declined for the reasons recorded herein above.

13. Now advertng to merits of this petition under Section 9, on the basis of record before us, we find that:

- i. The notice under section 8 (1) of Code has been duly served by the operational creditor upon Corporator Debtor on 23 July 2021. Requirement of Section 8 (1) notice of Code was duly complied.
- ii. The Corporate Debtor did not reply to the notice under section 8 of the Code.
- iii. Demand/Invoice under section 9 (3) (a) of the Code delivered for an unpaid operation debt for an amount of Rupees Rs.15,84,53,695.75p (Rupees Fifteen Crore Eighty Four Lakh Fifty Three Thousand Six Hundred and Ninety Five and Seven Five Paisa) which includes Rs.10,06,42,246.75p (Rupees Ten Crore Six Lakh Forty-Two Thousand Two Hundred and Forty-Six and Seven Five Paisa) on account of principal and Rs.5,78,11,449/- (Rupees Five Crore Seventy-Eight Lakh Eleven Thousand Four Hundred and Forty-Nine only) as interest calculated @24% p.a. as on 08 July 2021 for the supply of Tire Cord Fabric.
- iv. Operational Creditor raised invoices for the supply of Tire Cord Fabric to the Corporate Debtor (For the period 2018-2019 arising out of work order dated 6-04-2018 Copies of 44 invoices along with e way bills are Annexed with the petition at pg 36.
- v. Chart containing details of Invoices is Annexed at pg 265 of petition.
- vi. An Email dated 3-06-2020, wherein the Corporator Debtor *admitted the* sum of Rs.10.18Crore due and payable to Operational Creditor is annexed at page 268-269 with this petition.

- vii. E mail dated 19-06-2020 from Corporate Debtor to Operational Creditor proposing payment plan is annexed with this application at page 270:



- viii. Last payment made by Corporate Debtor to Operational Creditor is Rs. 10,00,000 on 31-10-2020. Bank entry in this regard is annexed at pg. 457 Vol III of application under section 9 of the Code.

- ix. Application made under sub-section (2) of section 9 of the Code is complete, there is no payment of the unpaid operational debt by Corporate Debtor to the Operational Creditor.

- x. The affidavit under section 9 (3)(b) of the Code has been filed by the Operational Creditor.

- xi. There is no record to show any pre-existing dispute.

- xii. **Admission of debt:** there is a categorical admission on the part of the Corporate Debtor regarding unpaid debt in e mail shown above.
 - xiii. This application under section 9 of the Code has been filed within the period of limitation.
 - xiv. The amount in default is above the threshold limit of Rs 1 crore.
 - xv. The Operational Creditor has not proposed the name of the Interim Resolution Professional.
14. We are satisfied upon the basis of documents including pleadings of parties i.e. default has occurred and the debt due remains unpaid despite the demand made and also the admission by the corporate debtor of the debt due.
15. It is, accordingly, hereby ordered as follows: -
- a. The application bearing CP (IB) No. 250/KB/2021 filed by SRF Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Birla Tyres Limited, the Corporate Debtor, is **admitted**.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. **Mr. Seikh Abdul Salam**, registration number **IBBI/IPA-003/IP-N00250/2019-2020/12966**, email: ipsalanmkol2019@gmail.com, mobile no. **7318868526** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and

WhatsApp immediately, and in any case, not later than two days from the date of this Order.

- j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

16. **CP (IB) No. 250/KB/2021** to come up on **29 June 2022** for filing the periodical report.

17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 05th day of May 2022

GGRB[LRA].