

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT-II)

Company Petition No. (IB)-472(ND)2023

IN THE MATTER OF:

Mr. Mujahid

Proprietor, Moon Traders

Having Office at:

Opp. Mool Chand, Meerut Road,

Muzaffarnagar, Uttar Pradesh 251-003.

... Applicant

VERSUS

U P Bone Mills Private Limited

Registered Office at:

108-109, Pratap Bhawan, Bahadur Shah

Zafar Marg, New Delhi-110002.

... Respondent

Section: 9 of the IBC, 2016

Order Delivered on: 26.10.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Advocate Yashu Gupta

For the Respondent : Adv. Brahm Datt Verma

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

Mr. Mujahid, Proprietor M/s. Moon Traders (for brevity, the '**Applicant**') has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s UP Bone Mills Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s UP Bone Mills Private Limited is a Company incorporated on 11.05.1999 with CIN U74899DL1999PTC099721 under the provisions of the Companies Act, 1956 having its registered office at 108-109, Pratap Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.3,00,00,000/- and the Paid-up Share Capital is Rs.2,56,98,250/- as per Master Data annexed.

3. It is submitted by the Applicant that it is a sole proprietor of M/s. Moon Traders since inception and is doing business in all kinds of Iron, Material, Ferrous and non-ferrous, Metal Scrap & PVC and Fiber Sheet, etc. from his office located at Opposite MoolChand, Meerut Road Muzaffarnagar, Uttar Pradesh 251003 and is registered with GST Department. It is further submitted that –

3.1 The Respondent is a Private Limited Company incorporated with the Registrar of Companies as per the Companies Act, 1956. The Respondent is engaged in the business of manufacturing M. S. Ingots and billets. The Respondent approached the Applicant in 2021 for the purchase of Iron Scrap and issued the purchase order to the Applicant on 15.02.2021 for the supply of M. S. Scrap. Accordingly, the goods were supplied by the Applicant to the Respondent under various invoices from 20.02.2021 to 26.03.2021 on a bill-to-bill basis and the Respondent promised to the Applicant to make the payment as per the terms and conditions printed on the bill and further admitted the terms and conditions of payment within 45 days otherwise an interest @ 18% per annum from the date of the bill would be leviable.

3.2 The material was supplied to Respondent regularly for the months of February and March 2021 and the total turnover during this period touched to Rs.16,12,23,532/-. The Applicant issued various invoices from time to time and supplied Iron Scraps to the Respondent as per their order. A payment of Rs.4,32,37,146/- was received by Applicant after a delay of two months, starting from 12.05.2021 to 14.09.2021 but thereafter, no payment has been made by the Respondent.

3.3 After many false promises for the due amount, the Applicant served the notice in Form-3 on the Respondent on 04.02.2023, against which no reply or payment was received from the Respondent. After the issuance of the demand notice, Respondent neither replied as required under Section 8(2) of I&B Code, 2016 within ten days of the receipt of the notice nor made the payment of the unpaid operational debt as claimed in the demand notice dated 04.02.2023.

4. The particulars of the Operational Debt claimed by the Applicant including the total amount of default and the date of default are mentioned in Part IV of the application, which is reproduced below -

Part IV

PARTICULARS OF OPERATIONAL DEBT		
1.	<p>Total Amount of Debt, Details Of Transactions On Account of Which Debt Fell Due, And the Date From Which Such Debt Fell Due</p>	<p>a) That the Corporate Debtor is a Private Limited Company incorporated with the Registrar of Companies as per Indian Companies Act, 1956. The Corporate Debtor is engaged in the business of manufacture of M. S. Ingots and billets.</p> <p>b) That the Corporate Debtor approached the operational creditor in February 2021 for the purchase of Iron Scrap and issued the purchase order to the Operational Creditor dated 15/02/2021 for the purchase of M. S. Scrap.</p> <p>c) That the material was supplied to Corporate Debtor regularly for the months of February and March, 2021 and the total turnover during this period touched to Rs. Rs.16,12,23,532/- (Rs. Sixteen Crore Twelve Lakh Twenty-Three Thousand Five Hundred and Thirty-Two Only. That the operational creditor issued various invoices from time to time and supplied Iron Scrap to the corporate debtor as per their order.</p>
2.	<p>Amount Claimed to be in Default and the date on which the Default Occurred (attach the workings for computation of amount and dates of default in tabular form)</p>	<p>a) Total amount of Debt in Default as per the ledger maintained by the Operational Creditor which is duly approved by the Corporate Debtor from the period 20/02/2021 to 15/09/2021 is Rs. Rs.11,79,86,386/- (Rs. Eleven Crore Seventy-Nine Lakh Eighty-Six Thousand Three Hundred and Eighty-Six Only) plus interest of Rs.2,65,46,936/- (Rs. Two Crore Sixty-Five Lakh Forty-Six Thousand Nine Hundred and Thirty-Six Only) calculated @18% P.A. equivalent to Rs. 14,45,33,322/- (Rs. Fourteen Crore Forty-Five Lakh Thirty-Three Thousand Three Hundred and Twenty-Two Only).</p> <p>b) That the date of default is when the last material was supplied and delivered to the CD on 26/03/2021.</p>

5. As per Part IV of the Application (ibid), the Applicant has claimed the Debt of Rs.11,79,86,386/- plus interest of Rs.2,65,46,936/- calculated @18% P.A. equivalent to Rs.45,33,322/- and relied on 26.03.2021 as the date of default.

6. It is stated by the Applicant that it had sent a Demand Notice dated 04.02.2023 under Section 8 of IBC 2016 to the Respondent. However, no proof of service of demand notice has been annexed by the Applicant.

7. On issuance of the notice, the Respondent filed the reply admitting receipt of the demand notice and commission of default in making payment -

“5. That though initially a payment of Rs.4,32,37,146/- (Rs. Four Crore Thirty -Two Lakh Thirty-Seven Thousand One Hundred and Forty-Six only) was made to the Operational Creditor but thereafter the financial position of the company deteriorated and we could not make any further payment despite receiving and a demand notice dated 24.12.2022 and a notice dated 04.02.2023 (in Form-3), from the Operational Creditor, for a payment of Rs. Rs.11,79,86,386/- (Rs. Eleven Crore Seventy-Nine Lakh Eighty-Six Thousand Three Hundred and Eighty-Six Only) plus an interest of Rs.2,65,46,936/- (Rs. Two Crore Sixty-Five Lakh Forty-Six Thousand Nine Hundred and Thirty-Six Only) collectively amounting to Rs. 14,45,33,322/- (Rs. Fourteen Crore Forty-Five Lakh Thirty-Three Thousand Three Hundred and Twenty-Two Only)

6. The default is not intentional, but the circumstances compelled us to commit the default.”

8. Further, vide order dated 06.09.2023, this Adjudicating Authority had directed the Applicant and Respondent to file separate affidavits stating therein that the present proceedings are not collusive and the parties i.e., OC and CD are not related to each other.

9. In compliance of the order dated 06.09.2023, the Applicant has filed its affidavit on 09.09.2023, which read thus -

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
(NEWDELHIBENCH- II),NEWDELHI.
CompanyPetitionNo.(IB) 472 Of 2023
IN
CASENO.IB-472 /2023

INTHEMATTEROF:
Mr. Mujahid Applicant/OperationalCreditor
Versus
UPBoneMillsPrivate Limited

CorporateDebtor

AFFIDAVIT IN COMPLIANCE OF THE ORDER DATED 06/09/2023

I, Mujahids/o Sh. Sadaqat, R/o 34, Meerut Road, Sujru, Muzaffarnagar, Uttar Pradesh, having Aadhar No.9075 8428 1859, is sole proprietor of proprietorship firm M/s. Moon Tradershaving office at Opposite MoolChand, Meerut Road Muzaffarnagar, Uttar Pradesh-251003 and I am filing this affidavit complying with the order passed by the Hon'ble Tribunal on 06/09/2023 in the present matter.

I do hereby solemnly affirm and declare as under: -

1. That I am The Petitioner (Operational Creditor) in the above noted case and filed the present petition as per section 9 of The Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule; 2016 and with Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
2. That the Hon'ble Tribunal has ordered to file an affidavit stating non-collusion with the opposite party in the present matter.
3. That I hereby declare and submit that I am neither in collusion with them nor related to them in any manner whatsoever and I have acted independently on my own free will and volition.

VERIFICATION:

Verified at Muzaffarnagar, Uttar Pradesh on this 8th,day of September,2023 that the contents of above affidavit are true and correct and nothing material has been concealed therefrom.

Deponent
For MOON TRADERS
Mujahid
Prop.

For MOON TRADERS
Mujahid
Deponent

KERNA YAGI
NOTARY
MUZAFFARNAGAR

9 SEP 2023

10. Similarly, the Respondent has also filed the following affidavit on 12.09.2023, which read thus -

AFFIDAVIT SUBMITTED IN COMPLIANCE OF ORDER DATED 06.09.2023

**BEFORE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
BENCH-II, NEW DELHI
Case No: IB/472/2023**

IN THE MATTER OF:

Mr. Mujahid, Proprietor
M/s. Moon Traders
Opp. Mool Chand, Meerut Road,
Muzaffarnagar, Uttar Pradesh 251-003

Operational Creditor

V/s

UP Bone Mills Private Limited
108-109, PratapBhawan,
Bahadur Shah Zafar Marg,
New Delhi-110002.

Corporate Debtor

AFFIDAVIT

I, Shamshad Ahmad, son of Shri Mohd Ayoob, Director (DIN No. 07981377) of U.P. Bone Mills Private Limited, having registered office at 108-109, PratapBhawan, Bahadur Shah Zafar Marg, New Delhi-110002, hereby solemnly affirm and declare as under:

1. That I am duly authorized by Board's Resolution dated 24.08.2023 to submit this affidavit before this Hon'ble Court as directed vide its orders dated 06.09.2023.
2. That U.P. Bone Mills Private Limited is not a party related to the Operational creditor in terms of Section 2(24) of the IBC, 2016 except for the purchase of iron scrap during the course of normal business.
3. That the present application has not been filed by the Operational Creditor in collusion with our company.

VERIFICATION

or U.P. Bone Mills (P) Ltd.
DEPONENT
[Signature]
[Signature]
with Sign/Director

Verified at New Delhi on this 3rd day of September 2023 that the contents of my above affidavit are true and correct and nothing material has been concealed therefrom.

DEPONENT



12 SEP 2023

or U.P. Bone Mills (P) Ltd
[Signature]
[Signature]
with Sign/Director

11. Though the Respondent has clearly admitted the debt and default through the pleadings and as well as during the course of the hearing, it has also filed an Affidavit on record (ibid) stating that the Respondent is not related to the Applicant/ OC in terms of Section 2(24) of IBC, 2016 and the Application is not a collusive one. The Applicant has also filed a similar Affidavit (ibid) on record stating that it is not related to the Respondent in any manner and the Application is not filed in collusion with the other party.

12. **In the aforementioned facts and circumstances, the present petition filed under Section 9 being complete, we have no other option but to admit the present Application in terms of Section 9(5) of the IBC 2016. Accordingly, the CIRP is initiated and order moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

- “(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 Financial 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.”

13. **Since the debt and default are admitted by the Corporate Debtor itself, which in other words, implies the consent of the Corporate Debtor for the commencement of CIRP; as a matter of abundant caution, we are not inclined to appoint the IRP as suggested by the Applicant. Hence, by exercising our power under Rule 11 of NCLT Rules 2016, we appoint IP from the panel of IPs suggested by IBBI.** Accordingly, Mr. Sanjay Gupta, IP having IBBI Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354 and (Email ID:s sanjay@sgaindia.in), Mobile No. 9810041074 is appointed as IRP subject to the condition that there is no disciplinary proceeding pending against the said IP and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The Adjudicating Authority further orders that:

“Mr. Sanjay Gupta IRP (Email ID: sanjay@sgaindia.in) having Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354, Mobile No. 9810041074 is directed to take charge of the CIRP of the Respondent with immediate effect. Further, the IRP is directed to take steps under Sections 15, 17, 18, 20, and 21 of the IBC, 2016.”

14. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

15. A copy of this Order shall immediately be communicated to the Applicant, the Corporate Debtor, and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)