



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-459(ND)/2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

In the matter of:

Mr. Nitesh Bansal
Sole Proprietor of M/s. Maruti Sales Corporation

.... Operational Creditor

Vs.

Tirupati Coatings Private Limited

.... Corporate Debtor

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Order Delivered on: 12.07.2022

ORDER

PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

The instant petition is filed by Mr. Nitesh Bansal Sole Proprietor of M/s. Maruti Sales Corporation (hereinafter referred as 'Applicant'/ 'Operational Creditor') having registered office at Z-184, Loha Mandi, NARAINA New DELHI-110028 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Tirupati Coatings



Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor').

2. The Respondent Company M/s. Tirupati Coatings Private Limited having CIN: U24222DL1999PTC103031 incorporated under the provisions of the provisions of the erstwhile Companies Act, 1956 having its registered office situated at G - 208, 2ND Floor, Satya Shanti Apartments Sector - 13, Rohini New Delhi - 110085. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. The details of transactions leading to the filing of this application as averred by the applicant are as follows:
 - a) The applicant has been carrying on the business of Iron Plate, Steel Plate, Steel tube Pipe, M.S. Pipe. During the course of business, the applicant had supplied goods (Iron Plate, Steel Plate, Steel Tube Pipe, M.S.A. Pipe, HR Plate, M.S. Round and M.S. Flanges) to the respondent corporate debtor and has raised total 33 Sale Invoices between 24.06.2020 to 16.01.2021 for the goods supplied amounting Rs. 2,76,19,665 (Indian Rupees Two Crore Seventy Six Lakhs Nineteen Thousands Six Hundred Sixty Five Only).
 - b) The Applicant received part payment of Rs.1,20,13,198/- (One Crore Twenty Lakhs Thirteen Thousands One Hundred Ninety Eight Only) towards the outstanding dues. The remaining outstanding principal balance stands Rs.1,56,06,467 (Rupees One



Crore Fifty Six Lakhs Six Thousands Four Hundred and Sixty Seven only) which fell due on 24.06.2020.

- c) The applicant submits that in terms of the covenants of the sale invoices, interest at 18% amounting Rs. 13,54,860/- will be accrued on the outstanding amount from 24.06.2020 to 19.03.2021. Further, the respondent corporate debtor is liable to pay Rs. 25,000/- as expenses for the demand notice.
- d) Despite, several oral and written reminders, the respondent corporate debtor did not pay the outstanding amount of RS.1,69,77,327/- (Rupees One Crore Sixty Nine Lakh Seventy Seven Thousand Three Hundred Twenty Seven only).
- e) The applicant served demand notice upon the respondent corporate debtor under Form 3 on 20.03.2021 under the IBC, 2016 demanding payment of outstanding amount of Rs. 1,69,77,327 with interest @18% p.a. to the applicant.

4. The corporate debtor has filed its reply and the averments of the corporate debtor in the reply are stated below:-

- a) The respondent corporate debtor submits that all the properties of the respondent corporate debtor including the manufacturing unit of the respondent corporate debtor is sealed and in the custody of the receiver, duly appointed by the Learned DRT-III Delhi vide order dated 10/03/2021 in Original Petition No. 198 of 2021 filed by the HDFC Bank. Therefore, it is necessary to make the receiver a party in the present petition to secure the justice as present directors are not in the position to access the record of the corporate debtor.
- b) The respondent corporate debtor has not received any demand notice under section 8 of the IBC, 2016 allegedly issued by the applicant. The respondent corporate debtor submits that one legal notice was issued on 19.03.2021, however, the same was not received by the respondent



corporate debtor because the factory, administrative office and registered office of the respondent corporate debtor were all in *custodia legis* i.e., in possession of the court receiver from 17.03.2021. Therefore, the necessary qualification for maintaining an application under section 9 of the IBC has not been complied with.

- c) The applicant has relied on the invoices for the delivery of steel rounds without specifically mentioning the details of paid and unpaid bills. Moreover, if any product which is delivered at the site of the corporate debtor is without the knowledge of the corporate debtor.
- d) The corporate debtor submits that no debt is owed by the corporate debtor to the operational creditor in as much as the provisions of the Code would not apply at all.

5. The applicant filed the rejoinder to the reply submitted by the respondent corporate debtor. The submissions of the applicant in the rejoinder are stated herein in brief:-

- a) The applicant had issued the demand notice under section 8 of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the corporate debtor on its official address/ mail as maintained with the office of the registrar of company and the same was delivered to it but the corporate debtor deliberately ignored the service to avoid the liability.
- b) It is submitted that the total 33 Sale Invoices for the amount of Rs.2,76,19,665/- were raised by the Operational Creditor against the goods sold to the Corporate Debtor. But the total payment received over the period is only Rs.1,20,13,198/-. Thus, there is remaining outstanding amount of Rs.1,56,06,467/- which fell due on 24.06.2020 as principal sum from the Corporate Debtor. Thus the outstanding amount of Rs.1,69,77,327.00/- (Rupees One Crore Sixty Nine Lakh Seventy Seven Thousands Three Hundred Twenty Seven



only)including interest are pending against the aforesaid Sale Invoices raised by the Operational Creditor against the goods sold to the Corporate Debtor. It is submitted that despite several oral and written reminders, the Corporate Debtor did not pay the outstanding amount of Rs.1,69,77,327.00/-(Rupees One pay the Crore Sixty Nine Lakh Seventy Seven Thousands Three Hundred Twenty Seven Only) and the same is still due from the corporate debtor.

c) The applicant submits that the invoices furnished by the applicant is verified and reliable and therefore the operational creditor is entitled to recover Rs. 1,69,77,327.00/-(Rupees One Crore Sixty Nine Lakh Seventy Seven Thousands Three Hundred Twenty Seven only).

6. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, rejoinder and written submission filed by the parties.
7. On a perusal of Part-IV of Form V giving particulars of the operational debt claimed by the applicant in the instant application, we find that that the date from which debt fell due i.e., date of default is 24.06.2020 as admitted by the applicant. This fact has also been reiterated in the rejoinder filed by the Applicant. Further, the applicant had claimed interest @ 18% on the unpaid amount in terms of the sale invoices from 24.06.2020 to 19.03.2021(date of issue of demand notice).
8. Before embarking upon the detailed discussion on the facts of the case, it is relevant to examine the issue of maintainability of the present petition in the light of the provisions of section 10A of the Code 2016. The provision of Section 10A is reproduced herein verbatim:-



***“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*”**

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

9. Further going into the legislative intent and the proviso to Section 10A of the code, which stipulates that **“no application shall ever be filed”** for the initiation of the CIRP **“for the said default occurring during the said period**, noticed that the expression **“shall ever be filed”** is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified.
10. Therefore, relying upon the facts of the case, arguments advanced by both parties and the documents mentioned hereinabove, this Bench is of the considered view that because of insertion of Sec 10A in IBC as mentioned above, this case is clearly attracted by the provisions of Sec 10A as the date of default in this case as admitted by the applicant is 24.06.2020. As per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the period from 25/03/2020 till 24/03/2021, keeping in view of the extended period of Sec 10A. In view of this legal position, the application filed by the Operational Creditor against the Corporate Debtor cannot succeed and is hereby dismissed with a liberty



granted to the Operational Creditor to pursue his case before the appropriate forum.

11. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the applicant before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it is barred by the law, in view of insertion of Sec 10A of IBC 2016.
12. Resultantly, the present petition (Company Petition No. (IB)-459(ND)/2021) ***stands dismissed***. No order as to the costs.

Copy be given to the respective parties as per rules.

File be consigned to records.

-Sd-

(DR. BINOD KUMAR SINHA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)