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

(IB)-2527(ND)2019
& IA-2741/2022

IN THE MATTER OF:

M/s. Vikas Stainless Steel India Pvt. Ltd.
Registered Office at :
Plot No. 286, Sector-24
Faridabad-121005.

...Applicant/Operational Creditor

VERSUS

M/s. Meenakshi Associates Private Limited
Registered Office at :
Chamber No. 103, Kaley Ram Chambers,
1st Floor, Plot No. 2, East Guru Angad Nagar,
Laxmi Nagar, New Delhi-110092

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 17.08.2022

CORAM:

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

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Mr. Om Prakash Shekhawat
For the Respondent	: Adv. Shweta Garg

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Vikas Stainless Steel India Private Limited (for brevity **'Applicant/Operational Creditor'**) through its Authorised Representatives Mr. Vijender Kumar Gupta (Director) and Mr. Chunni Lal (Assistant Manager Accounts) with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Meenakshi Associates Private Limited (for brevity the **'Respondent/Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. Meenakshi Associates Private Limited is a Company incorporated on 19.12.1985 with CIN U28910DL1985PTC022829 under the provisions of the erstwhile Companies Act, 1956 presently having its registered Office at Bhagwati Business Centre, Office No. 1, First Floor, S-565, School Block-2, Shakarpur, New Delhi-110092, which falls within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 350,00,000/- and Paid-up Share Capital is Rs. 350,00,000/- as per the Master Data of the Corporate Debtor.

4. It is averred by the Applicant that Corporate Debtor shared a long business relationship, whereby the Corporate Debtor made orders of HR Plate of SS and the Operational Creditor made supplies to the Corporate Debtor against those orders as per the invoices annexed.

5. That the particulars of the Operational Debt as mentioned by the Applicant in the Part IV of the application are reproduced below :

PART-IV

PARTICULARS OF CORPORATE DEBTOR

1.	TOTAL AMOUNT OF DEBT DETAILS OF	A.Principal amount: Rs. 13,05,675/- B.Interest accrued @18% p.a. till

	TRANSACTION ON ACCOUNT OF WHICH DEBT FELL DUE AND THE DATE FROM WHICH SUCH DEBT FELL DUE.	24.09.2019: Rs. 3,50,310/- Total Rs.16,55,985/- 1. That M/s Vikas Steel Inc. was/is a partnership firm and is registered under the Indian Partnership Act, 1932 and is maintaining its office at Plot No.286, Sector- 24, Faridabad-121005 and S/Shri Vijendra Kumar Gupta @ V. K. Gupta and Vikas Gupta are its partners. A copy of the Form "A" of Register of Firms being maintained by the Registrar of Firms and Societies, Faridabad in the name of the Vikas Steel Inc is **Annexure -4.** 2. That the corporate debtor through its directors/ authorised representatives approached erstwhile M/s Vikas Steel Inc. for the purchase of HR Plate of SS etc. 3. That it was agreed that the corporate debtor shall make the payment on time of the amount of the goods supplied by M/s Vikas Steel Inc. and that on the failure to do so, the corporate debtor shall pay interest @ 18% p.a. for the period of delay on the amount payable by the corporate debtor to M/s. Vikas Steel Inc. beyond 30 days from the date of supply of the goods. 4. That when all the terms and conditions were agreed and understood by the corporate debtor and its directors and M/s Vikas Steel Inc.; M/s Vikas Steel Inc. supplied the ordered goods to the

		corporate debtor from time to time and lastly supplied the goods vide Tax Invoice No. 2984 dated 05.03.2018 for a sum of Rs.5,94,021/- and the same was duly acknowledged and utilized by the corporate debtor and the copy of the same is **Annexure -5.** 5. That thereafter the operational creditor was incorporated and registered under the Companies Act, 2013. Shri Vijendra Kumar Gupta @ V. K. Gupta and Shri Vikas Gupta erstwhile partners of M/s Vikas Steel Inc. are the promoters/ directors of the operational creditor and the day to day working, conduct and business affairs of the operational creditor are being looked after, controlled and managed by them, jointly and severally and both of them, jointly and severally are in charge of and responsible for its all acts of omission and commission. 6. That the running business of M/s Vikas Steel Inc. till 31.03.2018 has been taken over by the operational creditor vide agreement dated 31.03.2018 and in terms of the said agreement, the operational creditor is legally entitled to recover the amount of the goods supplied till 31.03.2018 by M/s. Vikas Steel Inc. to its customers and a copy of the said agreement is **Annexure -6.** 7. That thereafter the operational creditor supplied the ordered goods to the corporate debtor and raised a tax

		invoice vide No. VSSIPL/18-19/133 dated 18.04.2018 for a sum of Rs.11.11,654/- in this regard and the same was duly acknowledged and utilized by the corporate debtor in its business and a copy of the said agreement is **Annexure -7**. 8. That the corporate debtor has made a part payment of Rs.4,00,000/- on 17.04.2018 to the operational creditor against the abovesaid tax invoice vide no. 2984 dated 05.03.2018 for a sum of Rs.5,94,021/- and thereafter was liable to pay a principal sum of Rs.13,05,675/- to the operational creditor besides interest accrued there at @18% p.a. up as mentioned above and a copy of the statement of account of the corporate debtor in the party ledger of the operational creditor is **Annexure-8(Colly).** 9. That despite the repeated requests and reminders made by the operational creditor, telephonically and personally on several occasions the corporate debtor has not made the payment of the above said amount till date. 10. That Corporate Debtor is wrongfully withholding the payment of the above said legitimate amount due of the operational creditor. 11. That when the Corporate Debtor despite the repeated requests, demands and personal visits and

		reminders did not make the payment of the abovesaid amount due to Operational Creditor then the Operational Creditor sent a legal notice dated 02.01.2019 in Form No.3 U/s 8 of Insolvency & Bankruptcy Code, 2016 by registered post and speed post to the Corporate Debtor to pay a sum of Rs. 13,05,675/-(Rupees Thirteen Lac Five Thousand Six Hundred Seventy Five Only). After the receipt of the said legal notice, the corporate debtor approached the operational creditor and assured that it will make the payment of the entire amount due but did not made the payment. The office copy of the said Legal Notice, Original Registered Post and Speed Post Receipts are annexed herewith as **Annexure-9 Colly).** 12. That when the Corporate Debtor again did not make the payment as demanded in the abovesaid legal notice dated 02.01.2019 to Operational Creditor, the Operational Creditor sent the legal notice dated 25.05.2019 in Form No.3 U/s 8 of Insolvency & Bankruptcy Code, 2016 by Registered Post and Speed Post to the Corporate Debtor and its directors calling upon them to pay a sum of Rs. 13,05,675/-(Rupees Thirteen Lac Five Thousand Six Hundred Seventy Five Only). The office copy of the said Legal Notice,

		Original Registered Post and Speed Post Receipts and tracking reports are annexed herewith as **Annexure 10 (Colly).** 13. That the corporate debtor despite of serving the legal notice dated 25.05.2019 of raising the demand of Rs. 13,05,675/- has neither made the payment of the amount demanded in the said notice nor has replied to the said demand notice either to the operational creditor or to its counsel. 14. That the corporate debtor is still liable to pay a principal sum of Rs.13,05,675/- to the operational creditor besides interest accrued there at @18% p.a. up to 24.09.2019 of Rs.3,50,310/- as mentioned above. The corporate debtor is further liable to pay interest @18% p.a. till the date of actual realisation of the abovesaid amount. 15. That an affidavit of the Operational Creditor that no reply of Legal Demand Notice Dated 02.01.2019 and 25.05.2019 was/is received from the Corporate Debtor relating to a 'dispute' of the unpaid operational debt is attached herewith as **Annexure 11.**
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR	Principal sum of Rs. 13,05,675/-(Rupees Thirteen Lac five Thousand Six Hundred Seventy Five Only) The working for computation of default in tabular form is given in Calculation of Interest and the same is **Annexure- 12**

	COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	

6. That from the perusal of the Part IV of the Application, it is observed that the Applicant has claimed an amount of Rs. 16,55,985/- as an unpaid operational debt and the date of default mentioned is as 24.09.2019.

7. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his operational debt, it had issued two Demand Notices dated 02.01.2019 and 25.05.2019 under section 8 of IBC, 2016 at the registered office of the Corporate Debtor, which was served by speed post and email dated 25.05.2019.

8. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016 stating that no notice of any dispute with regard to the unpaid operational debt has been received by the Operational Creditor in response to the Demand Notices dated 02.01.2019 and 25.05.2019.

9. The applicant has also submitted that despite repeated requests, the CD neither made any payment nor replied to the said notices of the applicant and or its counsel. Accordingly, the Applicant/Operational Creditor has prayed for initiation of CIR Process against the Corporate Debtor.

10. From the perusal of the records it is seen that on 17.12.2021, Ld. Counsel for the Corporate Debtor has appeared and was asked to file reply within 10 days. During the course of hearing on 21.03.2022, Ld. Counsel appearing for the Respondent submitted that he had filed the Reply but it was not on record. Therefore, the right to file Reply was closed. Subsequently, the Corporate Debtor has filed an IA-2741/2022 under Rule 11 of the NCLT Rules, 2016 to place on record its Reply on behalf of the Corporate Debtor. Both the main petition and the IA-2741/2022 were heard together on 14.07.2022 and orders were reserved. While going through the records, we notice that the Reply dated 07.05.2022 filed by the Respondent is available on DMS. In the interest of justice, the Reply on the DMS and filed through the IA is taken on record for consideration for adjudication of the present matter. **With this, the IA-2741/2022 stands disposed of.**

11. In its Reply, the Respondent has stated that the CD had entered into a business transaction with the Applicant for purchase of HR plates of SS etc. The Applicant had supplied the ordered goods vide Tax invoice no. 2984 dated 05.03.2018 for the sum of Rs. 5,94,021/- and vide Tax Invoice No. VSSIPL/18-19/133 dated 18.04.2018 for a sum of Rs. 11,11,654/- (Rupees eleven lakh eleven thousand six hundred fifty-four only).

12. The corporate debtor has stated that out of the total outstanding amount, he has made the part-payment of Rs. 4,00,000/- (Rupees four lakh) only on 17.04.2018 to the operational creditor against the tax invoices and thereafter, it is liable to pay a principal sum of Rs. 13,05,675 (Rupees Thirteen lakh five thousand six hundred seventy-five) only.

13. Further, it is stated by the Respondent that the Directors of Operational Creditor and Directors of Corporate Debtor had entered into a settlement deed dated 02.12.2019 and as per the terms of the Settlement Deed, the Corporate Debtor had agreed to pay of Rs. 15,00,000/- towards the full and final payment of the outstanding amount due and all claims in whatsoever account and nature arising out of all the transactions till that date and the same was agreed to be paid in 15 monthly installments of Rs. 1,00,000/- each starting from 15.12.2019 and ending on 15.02,2021.

14. The Respondent has further submitted that he had released Rs. 1,00,000/- through NEFT on 07.01.2022 vide NEFT UTR No. BARBS22007946186 and would pay the balance amount in equal monthly installments of Rs. 1,00,000/- in the second week of every month.

15. Lastly, it is stated by the Respondent that due to nationwide lockdown, the Corporate Debtor's financial condition has become very

bad, but it has *bona fide* intention to clear the entire remaining dues of the operational creditor.

16. On perusal of the Affidavit filed by the Operational Creditor under Section 9(3)(b) of IBC, 2016, it is observed that it has been averred by the Applicant that no notice of dispute has been given by the Respondent/Corporate Debtor. However, during the course of hearing, the Ld. Counsel for the Operational Creditor confirmed that the notice of dispute was received, which is enclosed with the Petition. Therefore, we are of the view that since the notice of dispute has been annexed by the Petitioner with the Application, no prejudice shall be caused to anyone.

17. That on issuance of notice, the Corporate Debtor has not responded. However, it has filed the reply and admitted that the debt is due and default has been committed by it in making the repayment of these dues to the Operational Creditor.

18. Accordingly, in light of the debt of more than the threshold limit being due and payable by the Corporate Debtor, we are of the considered view that the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and 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 by all and sundry:

"(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 Securitisation 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."

19. As proposed by the Operational Creditor, this Bench appoints Mr. Naresh Kumar Bansal as IRP having IBBI/IPA-002/IP-N00486/2017-18/11448 (Email: adv.naresh@gmail.com) having Mobile No. 9810157418 as an IRP of the Corporate Debtor with immediate effect subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

"Mr. Naresh Kumar Bansal is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes."

20. 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 for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

21. A copy of this Order shall be communicated immediately by the Registry/Court Officer to the Operational Creditor, the Corporate Debtor and the IRP named above. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their record.

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(L. N. GUPTA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)