

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

C.P.(IB)No.345/BB/2019  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**In the matter of:**

**M/s. Cotmac Industrial Trading  
Private Limited.**

No.169/2, Above Central Bank  
Mumbai-Pune Road, Akurdi,  
Pune – 411035

- Petitioner/Operational Creditor

**Versus**

**M/s. Karthik Roofings & Structurals  
Private Limited**

#76, Byraveshwara Industrial  
Estate Entrance Andrahalli  
Main Road, Peenya 2<sup>nd</sup> Stage,  
Bangalore 560 091

- Respondent/Corporate Debtor

**Date of Order: 22<sup>th</sup>November,2019**

**Coram:** 1.Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri Abhay

For the Respondent : Shri D. T. Jayaswamy

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)


1. C.P.(IB)No.345/BB/2019 is filed by M/s. Cotmac Industrial Trading Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') U/s 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution



Process in respect of M/s.Karthik Roofings & Structural Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground, that it has committed default for total amount of Rs.03,09,068/-(Rupees Three Lakh Nine Thousand and Sixty-Eight Only)along with the interest amount of Rs. 84,068.

2. Brief facts of the case, which mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. Karthik Roofings & Structural Private Limited is a Company incorporated on 21.06. 2011 with Registrar of Companies ,State of Karnataka
- (2) M/s. Cotmac Industrial Trading private Limited, the Operational Creditor herein, a Company incorporated under the Companies Act, 1956 and it is engaged in the business of industrial trading, industrial automation, machine tools such as electric saws, wires and welding tools. The Corporate Debtor is a company incorporated under the Companies Act, 1956.
- (3) In the ordinary course of business, the Corporate Debtor approached the Operational Creditor for supply of Welding wire, Lincoln EM wire and Lincoln Electric Saw (hereinafter collectively referred to as the "Products"). Accordingly, the Operational Creditor Products were supplied from 9<sup>th</sup> August, 2017 to 7<sup>th</sup> September, 2017 under various invoices to the Corporate Debtor. The Corporate Debtor has not raised any objections with respect to the quality and quantity of the products supplied.
- (4) The terms under which the Products were such that the payment to the Operational Creditor was to be made from 30 (thirty) day from the date of issuance of the Invoice.



However, till date the Corporate Debtor has failed to make timely payments. The Operational Creditor has constantly sent reminders to pay the outstanding amounts due and payable to the Operational Creditor.

- (5) The total amount payable to the Operational Creditor was Rs. 6,33,654/- (Rupees Six Lakh Thirty Three Thousand Six Hundred and Fifty Four only), as on the date of filing this Petition. However, the Corporate Debtor has paid only Rs. 4,08,068/- (Rupees Four Lakh Eight Thousand and Sixty Eight only). Therefore, total outstanding is to the tune of Rs. 2,25,000/- (Rupees Two Lakh Twenty-Five Thousand only) exclusive of interest.
- (6) Since the Corporate Debtor has defaulted in paying the debt, the Operational Creditor duly issued a notice of demand dated 26<sup>th</sup> April, 2019 as per Form 4 of the Insolvency and Bankruptcy Code and the same was received by the Corporate Debtor on 3<sup>rd</sup> May, 2019. Despite receipt of the demand notice by the Corporate Debtor, no communication disputing the demand has been received from the Corporate Debtor. The Corporate Debtor has defaulted in paying the aforesaid debt that has become due and payable to the Operational Creditor but has not repaid. Therefore, the Operational Creditor has filed the instant Petition to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
3. Heard Shri Abhay learned Counsel for the Petitioner, and Shri D.T. Jayaswamy (Finance Manager) for the Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the Code.



4. Shri Abhay, learned Counsel for the Petitioner while reiterating pleadings raised in the petition, as briefly stated supra, has further submitted that the debt and default is not in dispute, the Corporate Debtor did not respond to the Demand Notice and application is filed in accordance with law. Therefore, he urged the Tribunal to initiate CIRP as prayed for.
5. Shri D. T. Jayaswamy the Finance Manager of the Company has submitted that the claim relates to invoices dated 22.08.2017, 07.09.2017 and 30 days' time was prescribed for payment..However, the Petitioner has issued a demand notice only on 26 April 2019, after waiting for so much time. He has also submitted that the Company having 15 employees, and if the CIRP is initiated, all the employees, who are low paid employees and their dependent will be on roads.
6. It is not in dispute that the alleged outstanding amounts arise on account of invoices bearing Nos. 1202/17-18 dated 22.08.2017. Invoice bearing No. 1267/17-18 dated 07.09.2017. Invoice bearing No. 1268/17-18 dated 07.09.2017. The Petitioner admittedly failed to initiate any legal proceedings till statutory demand notice dated 26<sup>th</sup> April, 2019 was issued to the Respondent by demanding to pay total of amount of Rs. 3,09,068/ which includes interest for Rs. 84,068/- @ 24 % . However, by perusing of purchase orders and invoices in question, it is noticed that element of interest was not mentioned. The contentions of petitioner that they could not initiate legal action as they Respondent promise to pay outstanding and they are continuous correspondence with the Corporate Debtor is not at all tenable. It is not in dispute that the Respondent paid Rs. 4,08,068/ out of total claim of Rs. 6,33,654/ It is not known whether the said payment of Rs. 4,08,068 constitute interest amount or not. The pleadings of the petitioner



clearly show that the instant petition is filed in order to recover alleged outstanding rather to initiate CIRP, which is object of Code., It is settled position of law that provisions of Code cannot be invoked for money recovery. So far as the limitation is concerned, it is a settled position of law that provisions of Limitation Act would be applicable to the provisions of Code. The Hon'ble Supreme Court in the case of *B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates*<sup>1</sup>, has, inter alia, held that provisions of Limitation Act will apply to proceedings or appeals before NCLT/NCLAT. Section 238A of the Code make provisions of Limitation Act would apply to proceedings under the Code. The Petitioner failed to explain as to how the instant Company Petition is within limitation since the alleged debt and default occurred as early in the year, 2014.

7. In view of the facts and circumstances, we are of the considered opinion that the instant case is not a fit case to admit and it is liable to be dismissed by granting liberty to the parties to settle the issue in the interest of business relationship.
8. In the result, C.P.(IB)No.345/BB/2019 is hereby dismissed. However, this order will not come in the way of parties to settle the issue since the Respondent paid part payment. No order as to costs.



**(ASHUTOSH CHANDRA)  
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL**

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<sup>1</sup>(2018) SCC Online SC 1921