

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**COURT - II**

**CP (IB) 430/NCLT/AHM/2019**

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the Matter of:**

**Shrimali Alloys  
Through its proprietor  
Mr. Dinesh Vyas**

**Applicant/  
Operational Creditor**

**Versus**

**KRN Alloys Private Limited**

**Respondent/  
Corporate Debtor**

**Order Pronounced on: 01/06/2022**

**Coram:**

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)  
Ajai Das Mehrotra, Hon'ble Member (Technical)**

**MEMO OF PARTIES**

**Shrimali Alloys**  
**Through its proprietor**  
**Mr. Dinesh Vyas**

Shop No. 15, Plot No. 397  
Ward 12B  
Gandhidham, Kutch  
Gujarat State

... **Applicant/Operational Creditor**

**Versus**

**KRN Alloys Private Limited**

Jimmy Tower Shop 209  
Opp. Gurukul Gondal Road  
Rajkot 360 002  
Gujarat State

... **Respondent/Corporate Debtor**

**Appearance:**

For Applicant : Mr. Monaal Davawala, Advocate  
For the Respondent : Mr. Dev Ashish Trivedi, Advocate

**ORDER**

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') on 03.05.2019 through Mr. Dinesh Vyas, Proprietor of **Shrimali Alloys** (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP) against **KRN Alloys Private Limited** (for brevity 'Corporate Debtor').

2. The applicant is a proprietorship firm having its office at Shop No. 15, Plot No. 397, Ward 12B, Gandhidham, Kutch engaged in supply of imported steam (non-cooking) Coal of Indonesian origin.
3. The corporate debtor is a company limited by shares, incorporated under the provisions of Companies Act, 1956 on 09.04.2008 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U63011GJ2001PTC040311, having registered office at Jimmy Tower Shop 209, Opp. Gurukul Gondal Road, Rajkot, Gujarat State. Authorised share capital of the corporate debtor is Rs. 1,30,00,000/- and paid up share capital of the company is Rs. 1,00,00,000/-. The corporate debtor is engaged in the business of manufacture of MS Billets.
4. It is submitted by the applicant that during the course of business the applicant had supplied M S Scrap to the corporate debtor and had raised invoices on different dates. Details of the operational debt payable by the corporate debtor as on 04.03.2019 are reproduced hereunder:

<b>Particulars</b>	<b>Amount in Rs.</b>
<b>Financial Year 2017-18</b>	
Total sales made during FY 2017-18 (Total number of sales invoices are 172	12,56,93,735/-
Less payment received/purchases made during	10,97,79,688/-

FY 2017-18	
<b>Total principal outstanding as on 31.03.2018</b>	<b>1,59,14,047/-</b>
<b>Financial Year 2018-19</b>	
Opening Balance as on 01.04.18 (Debit / Receivable)	1,59,14,047/-
Add: Sales made during the FY 2018-19 (Total number of Sales invoices are 112)	10,75,61,755/-
Less: Payment received/ purchases made during FY 2018-19	9,03,45,264/-
<b>Total principal outstanding as on 04.03.2019 (Debit/ Receivable)</b>	<b>3,31,30,538/-</b>

5. The applicant further states that on not receiving any outstanding payment from the corporate debtor, statutory demand notice under Section 8 of the IB Code in Form 3 dated 04.03.2019 was issued which was replied by the corporate debtor vide letter dated 21.03.2019.
  
6. The applicant filed application under Section 9 of the IB Code. As per Part IV Form 5 an amount of Rs. 3,31,30,538/- (Rupees three crore thirty-one lacs thirty thousand five hundred thirty-eight only) with further interest of Rs. 58,57,332/ (Rupees fifty-eight lacs fifty-seven thousand three hundred thirty-two only) calculated @ 12% per annum from the due date of respective invoices till the date of issuance of the statutory demand notice, is due and payable to the applicant by the corporate debtor.

7. Corporate Debtor filed affidavit in reply inter alia stating that:
- The person who has signed the application is not properly authorised;
  - No amount is legitimately payable to the applicant;
  - There are different qualities of MS scrap and the rates are different for different qualities;
  - The quality of the supplied MS Scrap found other than as against the confirmed terms and conditions of supply, and after discussions with the applicant the rates were confirmed and it was agreed that the difference of price either adjusted in the rate of the next supply or by issuing debit note;
  - During July, 2018, an offence was registered against the applicant by the Directorate General of GST Intelligence, Jamshedpur in connection with GST evasion wherein the applicant and his associate firms were found involved in huge GST evasion. The applicant was arrested by DGGI, Jamshedpur, sent to judicial custody and was granted bail on 25.09.2018. Hence, purchase of material from all the five firms where the applicant is associated, was stopped by the corporate debtor after July, 2018;
  - Considering the quantum of business, a sum of Rs. 5,80,22,541/- was paid to the applicant and its associate concerns during July, 2018, thus, an amount of Rs. 1.50 crores was paid in addition to what was payable.
  - There was an adjustment of Rs. 3,39,20,624/- against the inferior quality material supplied by the applicant worth Rs. 23,40,45,573/-, therefore, no amount is payable to the applicant by the corporate debtor;
  - There is not a single evidence available to show that the applicant had ever asked the corporate debtor to pay up their outstanding prior to issuance of form 3;

8. The applicant filed rebuttal documents and submitted copy of PAN card and licence. It is further stated that even if it is assumed that the applicant is involved in GST evasion, then there is a specific and separate law to deal with the same and the applicant will face the consequences arising out of the same.
  
9. Corporate debtor filed written submission inter alia stating that:
  - A comparison of account statements submitted by both the parties would show that Invoice No. SA/18-19/200 for Rs. 7,90,086/- is reflected in the books of the corporate debtor whereas said invoice is not reflected in the books of the applicant.
  
  - Affidavit in reply would show that the proprietor of applicant firm Mr. Dinesh Vyas is associated as proprietor/director of five different firms/companies viz. (i) Shrimali Alloys, (ii) Shrimali Industries Private Limited (Unit -I, Gandhidham), (iii) Shrimali Industries Private Limited (Unit II, Gandhidham/Rajkot), (iv) Shrimali Industries Private Limited (Unit III, Jodhpur) and (v) Vaibhav Enterprises. All the five units used to supply metal scrap to the corporate debtor. MS Metal scrap comes in different qualities. Applicant used to supply metal scrap from 2013-14 upto 2018-19. Initially, till 2016-17, the applicant had supplied appropriate quality of scrap under appropriate invoices. In 2017-18 and 2018-19, the applicant started supplying inferior quality of scrap. Because of this, more production loss was caused at the factory of the corporate

debtor and the final products were also found to be of inferior quality.

- During investigation carried out against the applicant firm by Directorate General of Goods & Service Tax Intelligence (DGGI), it was found that the applicant was engaged in issuing fake invoices without supply of goods. Because of the aforesaid, the corporate debtor discontinued doing business with the applicant. As the applicant was in need of money, the corporate debtor had made payment of Rs. 1.50 crores on account.
- If the debit notes issued by the corporate debtor are taken into account, the corporate debtor is supposed to receive an amount of Rs. 2.00 crores from all the five firms/companies of the applicant. As far as the applicant is concerned, net receivables by the corporate debtor would be Rs. 11,00,000/-
- The applicant had sent incorrect accounts by email dated 30.11.2018, 06.12.2018 and 13.12.2018 requesting the corporate debtor to confirm the same. In reply, vide email dated 14.12.2018, the corporate debtor had denied to accept the said accounts, thus, raising a bona fide dispute prior to notice.
- Form No. 5 of the application is signed by one Mr. Chandan Dave who is authorised to file the application whereas the demand notice is signed by proprietor of the applicant firm.

10. Registered office of the corporate debtor is situated in Rajkot, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
  
11. As per part IV, form 5 date of default occurred on different dates starting from 02.04.2018 to 20.07.2018, as per the table annexed to the application. The application is filed on 03.05.2019, which is within limitation and not barred by law.
  
12. Heard submissions and perused the documents on record. The corporate debtor has brought on record details of purchase and amount deductible towards inferior quality goods supplied by the applicant as well as revised bill amount payable as on 02.09.2018.
  
13. On perusal of the records it is found that the corporate debtor has contended that the applicant had supplied inferior quality scrap and but raised invoices of higher quality products. Mr. Chandan Dave from the applicant firm had visited the factory of the corporate debtor on 03.09.2018 and had accepted all the debit notes issued by the corporate debtor towards price difference and compensation of loss suffered due to poor

quality of goods. As a token of his acceptance, Mr. Chandan Dave has affixed rubber stamp of the applicant firm on the work sheet of debit notes. Said debit notes are accounted for in the balance sheet and in the 11<sup>th</sup> Audit Report of 2018-19 of the corporate debtor. Further, the auditor has mentioned that after considering the debit notes, net amount receivable by the corporate debtor from all the five firms/companies of the applicant would be Rs. 1,49,61,289/- and the amount receivable from the applicant would be Rs. 11,00,000/-. All the debit notes are entered in the ledger account based on which the Goods & Service Department had issued two different show cause notices to the corporate debtor demanding differential input-tax credits availed on the basis of the invoices of the applicant. Further, the applicant had sent incorrect accounts by email dated 30.11.2018, 06.12.2018 and 13.12.2028 asking the respondent to confirm the same. The corporate debtor had categorically denied to accept the said accounts and in reply to various emails of the applicant, corporate debtor had raised dispute dated 14.12.2018 which reads as under:

“Balance not confirmed”

The said email is prior to issuance of notice under Section 8 of the Code. The corporate debtor had also raised dispute while replying to said statutory notice and contested the debt.

14. From the above discussions it is clear that a dispute was in existence prior to issuance of the statutory demand notice under Section 8 of the Code. There is sufficient evidence to prove the pre-existence of dispute. We are supported by the judgement of the Hon'ble Supreme Court in the matter of "*Mobilox Innovative Private Limited vz. Kirusa Software Private Limited*" that in case of genuine dispute raised by the corporate debtor, the application cannot be admitted, the relevant para is reproduced hereunder:

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."*

15. Under the facts and circumstances and as discussed above, in our view, the instant application cannot be considered for

admission and needs to be rejected. The instant application stands rejected and disposed of.

16. A copy of the order shall be communicated to the Applicant and Corporate Debtor by the Registry.

**Sd/-**  
**Ajai Das Mehrotra**  
**Member (Technical)**

**Sd/-**  
**Dr. Deepti Mukesh**  
**Member (Judicial)**

**Nair**