



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 6
CP IB-695/ND/2022

IN THE MATTER OF:

Narender Steel and Alloys V/s. M/s. Jai Mata Engineering Ltd.

Order under Section 9 of Insolvency and Bankruptcy Code, 2016

Order delivered on 26.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

CP IB-695/ND/2022 stands dismissed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Bachu Venkat Balaram Das)

Member Judicial



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

IB-695/(ND)/2022

Section: 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:

NARENDER STEEL & ALLOYS.

REGISTERED OFFICE AT:

A- 93/24, GROUND FLOOR,
WAZIRPUR INDUSTRIAL AREA,
DELHI -110052.

...Applicant/Operational Creditor

Versus

JAI MATA ENGINEERING LIMITED

REGISTERED OFFICE AT:

PLOT NO. C-14 AND C-15,
KHASRA NO. 102/11/1,
AMAR COLONY, KAMRUDDIN
NAGAR, NANGLOI,
MUNDKA, DELHI - 110041

...Respondent/Corporate Debtor



CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER

(JUDICIAL)

SHRI.RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Counsel for the Petitioner

Mr. Piyush Kaushik, Adv.

Counsel for the Corporate Debtor

Mr. Rohit Tiwari, Mr. Shantanu
Devansh, Ms. Tanya, Advs..

ORDER

PER: BACHU VENKAT BALARM DAS, MEMBER (JUDICIAL)

Date: 26.09.2023

1. This is an application filed by the Petitioner i.e., Narender Steel & Alloys on 08.09.2022 to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent i.e., M/s. Jai Mata Engineering Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 1,16,78,018.48/- (Rupees One Crore Sixteen Lakh Seventy-Eight Thousand Eighteen Rupees and Fourty Eight Paise). The details



of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

- i. The Corporate Debtor (hereinafter as “CD”) approached Operational Creditor (hereinafter as “OC”), for Supply of steel products such as Pig iron (Alloy), S.S scrap etc.
- ii. That OC supplied steel products to the CD on purchase orders placed by CD
- iii. That net outstanding of Rs. 1,16,78,018.48/- was left due and payable, by the Corporate Debtor to Operational Creditor.
- iv. The Corporate Debtor issued cheque dated 31.07.2022 bearing no. 983246 drawn on Karnataka Bank Ltd. for an amount of Rs. 1,16,78,018/- towards discharge of aforesaid admitted liability, with an assurance that the said cheque would be honored on its presentation.
- v. However, the aforesaid cheque was dishonored on its presentation for the reason 'Exceeds Arrangement'.
- vi. Subsequently, the Corporate Debtor, tried to disown the cheque and claimed that the said cheque was not issued by Corporate Debtor and the same was allegedly a stolen



cheque. Thus, it has become clear that the Corporate Debtor has deliberately defaulted in making the payment towards discharge of operational debt.

- vii. Therefore, the Operational Creditor was constrained to send a legal notice under section 8 of IBC Code, demanding therein a total amount of Rs. 1,16,78,018.48/- with interest of 24% p.a. from the date the amount is due and payable till date of payment.
- viii. In response to above, the Corporate Debtor sent its reply, alleging therein that there was some purported dispute qua quality of the goods and therefore, due to non-settlement of the said disputes payments were stopped by Corporate Debtor. Pertinently, no specific averment apropos the alleged dispute was made, no written communication was sent by the Corporate Debtor, pointing out any such dispute, prior to the said reply. Thus, it is clear that only with a sole intent to avoid the consequences stipulated under IBC code.



- ix. Hence, the present Application under Section 9 of the IBC for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
2. The Corporate Debtor has filed its reply and made following submissions: -
- A. The Corporate Debtor approached the Operational Creditor for the supply of steel products such as Pig Iron (Alloy), S.S scrap etc, upon receiving the quotations from the Operational Creditor, the Corporate Debtor started business with the Operational Creditor.
 - B. That from time to time, the Corporate Debtor placed orders and used to make account payments timely. However, after certain period of time the Corporate Debtor noticed that the quality of goods was decreased and was not satisfactory as promised by the Operational Creditor.
 - C. That, in the course of time, the Corporate Debtor noticed constant delay in the delivery of the goods and further degradation of the quality of the goods. The Corporate Debtor noticed changes in the quality of the



goods during the inspection. Further, the Corporate Debtor shared the quality reports along with Debit Note to the Operational Creditor addressing the issue via courier on 28.07.2022, however, the Operational Creditor did not respond on the same. Such degradation in the goods has caused production loss/monetary loss to the Corporate Debtor. Details are as under: -

S.NO	PURCHASE ORDER NO.	QUANTITY IN KG	EXPECTED DATE OF DELIVERY	ACTUAL DATE OF DELIVERY ALONG WITH QUNATITY (IN KG
1.	RM/2122/44	25,000/-	4.02.2022	7.02.2022 (Material Delivered 24,720 kg.)
2.	RM/2122/101	50,000/-	10.03.2022	a. 23.03.2022 (Material Delivered 23,680 kg) b. 06.04.2022



				Material Delivered 24,440/-
3.	RM/2122/95	1,00,000/-	02.03.2022	a. 14.03.2022 (Material Delivered 24,675 kg) b. 05.03.2022 Material Delivered 23,300 kg c. 09.03.2022 Material Delivered 25,465 kg d 27.05.2022 Material Delivered 19,900 kg
4.	RM/2223/19	32,500/-	19.04.2022	a. 30.04.2022 (Material Delivered 24,735 kg) b. 05.05.2022 Material Delivered 7,730 kg



5.	RM/2223/37	95,000/-	27.05.2022	a. 29.05.2022 (Material Delivered 25,010 kg) b. 05.06.2022 Material Delivered 24,620 kg c. 06.06.2022 Material Delivered 25,520 kg d 14.06.2022 Material Delivered 23,240 kg
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D. That the Operational Creditor has filed this present petition with complete mala fide intention to deceive the Corporate Debtor and the Tribunal.

3. The Petitioner has filed its rejoinder and stated as under: -



- I. In order to mislead this Tribunal and to defeat the genuine claim of the Operational Creditor, the Corporate Debtor herein has indulged into committing forgery and using forged documents to mislead this Tribunal. Inasmuch as, the Corporate Debtor has filed some alleged debit notes as well as quality reports which are alleged to have been sent to the Operational Creditor through courier receipt.

- II. Noticeably, both the debit notes, quality reports as well as the courier receipts are forged and manipulated documents. As admittedly, neither the debit notes nor the said alleged quality reports were sent to the Operational Creditor either through courier or through any other mode, which is clearly discernible from the fact that the said courier receipts not only does not mention address of the Operational Creditor, but also there is no delivery report confirming the delivery of the alleged debit notes along with quality reports. Clearly, the Corporate Debtor has misused some old receipt and misused the same to show dispatch of the aforesaid debit notes as well as



quality reports which are nothing but an afterthought and forged documents.

III. That, debit note no. 174 allegedly issued for an amount of Rs. 6,32,385/- is purportedly issued for the Invoice no. 36, whereas for the same invoice the Corporate Debtor has issued debit note no. 131 for an amount of Rs. 1,30,124.60/-. This shows that the Corporate Debtor has manufactured these debit notes. Furthermore, in the purported ledger account statement Corporate Debtor has shown entry dated 31.03.2022, as per which two cheques have been issued to the issued to the Operational Creditor and surprisingly, the said cheques have been shown to be returned on 01.04.2022 in the account of the Corporate Debtor. As a matter of fact, no such cheques were never issued to the Operational Creditor.

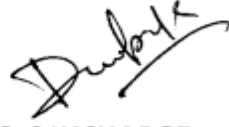
IV. It is denied that the Corporate Debtor is making tremendous profits or that it is capable of running its business, as alleged or at all.

4. We have gone through the documents filed by the Operational Creditor as well as Corporate Debtor and have heard the





arguments made by the counsels appearing for both the parties.

5. The Corporate Debtor has submitted that there was delay in delivery of goods and further that there were some defects in quality of goods. The Corporate Debtor has also placed on record quality report which was sent to the Operational Creditor. Copy of the same is reproduced below: -

JAI MATA ENGINEERING LTD.	
JMEL 21/22	RAW MATERIAL TEST REPORT
	DATE :- 18-02-2022
PARTY NAME	NARENDER STEEL AND ALLOY
ITEM NAME	CHITTAM (SCRAP)
INVOICE	NSA/185/2021-2022
VEHICLE NO	RJ26 GA-5745
GRN NO	118
QTY	26.730 MT
PHYSICAL	
% C	2.70
% Si	0.36
% Mn	9.50
% P	0.056
% S	0.010
% Cr	8.46
% Mo	0.081
% Ni	0.92
% Cu	0.95
% Sn	0.004
Remarks: Chittam Material having high Dust & Low Recovery up to 50%	
 Q.C INCHARGE	



JAI MATA ENGINEERING LTD.	
JMEL 22/23	RAW MATERIAL TEST REPORT
	DATE :- 19-07-2022
PARTY NAME	NARENDER STEEL AND ALLOY
ITEM NAME	S.S. BARTAN BUNDAL (MELTING SAMPLE)
INVOICE	NSA/047/2022-2023
VEHICLE NO	HR 47D-2286
GRN NO	386
QTY	24.775 MT
PHYSICAL	
	Remarks: Two Grade Material Recd. Having High Plastic & Dust Content Aprox. 20 & 15%, Material not Acceptable and of low Grade
	 Q.C INCHARGE

JAI MATA ENGINEERING LTD.	
JMEL 22/23	RAW MATERIAL TEST REPORT
	DATE :- 07-06-2022
PARTY NAME	NARENDER STEEL AND ALLOY
ITEM NAME	S.S. BUNDAL 201 (MELTING SAMPLE)
INVOICE	NSA/033/2022-2023
VEHICLE NO	RJ 05 GB-6884
GRN NO	210
QTY	24.620 MT
PHYSICAL	
	Remarks: 15% Plastic, 15% Dust in S.S. Bartan Bundle Grade 201, Mixed Material Recd.
	 Q.C INCHARGE



From the copy of the quality reports, it appears that there were some disputes with respect to defects in the products supplied by the Operational Creditor.

6. It is evident from the documents placed on record by the Corporate Debtor that there exists a pre-existing dispute between the parties before issuing the demand notice and it is the mandate of law that if there exists a pre-existing dispute between the parties the Adjudicating Authority must reject the application under section 9(5)(ii)(d). Reliance can be placed on the landmark judgement of Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited 2018 1 Supreme Court Cases 353*. Para 40 of the judgement which reads as under: -

*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.***

7. The Operational Creditor has submitted that these quality reports and Debit note submitted by Corporate Debtor are forged and denied its existence. The dispute with respect to forgery cannot be decided by this Adjudicating Authority. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal. This Adjudicating Authority is not expected to ascertain the veracity of documents in a summary proceeding, if the Tribunal starts adjudicating these types of issues, then the purpose of the statute of enacting speedy disposal by the



mechanism will be defeated. Therefore, the Applicant may explore other legal remedies.

8. It is also alleged in the rejoinder filed by the OC that neither the debit note nor the quality reports were sent to the Operational Creditor. The CD in its written submission has submitted that debit note along with the quality reports were sent to the OC through courier and WhatsApp. Further the OC has placed on tracking report and WhatsApp communication evidencing the delivery of debit note and quality report.

9. In the light of the above, this Tribunal dismiss the application filed by Operational Creditor. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.

SD/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER (JUDICIAL)