

**IN THE NATIONAL COMPANY LAW TRIBUNAL, BENCH-VI, MUMBAI**

**CP (IB) No. 997/MB/2022**

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

IN THE MATTER OF:

**MAHAVIR STEEL INDUSTRIES LIMITED**

[CIN: U27104MH1979PLC021539]

**Registered Office:** Plot No. E-4

Bhosari MIDC Industrial Area

Pune-411026, Maharashtra.

**...Operational Creditor**

*versus*

**VIR ELECTRO ENGINEERING PRIVATE LIMITED**

[CIN: U32200MH1988PTC046104]

**Registered Office:** X-1-11 MIDC

Ambad, Nashik-422010

Maharashtra

**...Corporate Debtor**

Order Reserved on: 07.09.2023

Order Pronounced on: 13.12.2023

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

***Hearing: - (Hybrid)***

**Appearances : (Physical/ Video conference /Hybrid mode):**

Operational Creditor: Adv Komal Tripathi.

Corporate Debtor: None. (ex-parte)

**ORDER**

***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]***

**1. Background**

1.1 This Application bearing C.P.(IB) No.997/MB/2022 was filed by Mahavir Steel Industries Limited, the Operational Creditor on 09.09.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Vir Electro Engineering Private Limited, the Corporate Debtor.

1.2 The Operational Creditor is engaged in the business of manufacture and sale of mild steel flats, equal angles, channels, beams etc. The Corporate Debtor is carrying on the business of fabrication, galvanizing, spray painting and metalizing of steel structures. The Operational Creditor had supplied and delivered various goods to the Corporate Debtor as per the orders placed by the latter from time to time and raised necessary invoices in respect thereof during the period from February, 2020 to January, 2022. All the invoices became due and payable after credit period of 90 days. As per the terms of the invoices, interest @24 p.a. was to be paid in case of delayed payments.

1.3 The Operational Creditor maintained a running ledger account of the Corporate Debtor for the period from 01.04.2019 to 31.03.2022. An amount of Rs.1,49,37,590/- (One Crore Forty-Nine Lakhs Thirty-Seven

Thousand Five Hundred Ninety Rupees) comprising principal amount of Rs.1,15,85,472/- and interest of Rs.33,52,118/- fell due from the Corporate Debtor to the Operational Creditor on 16.04.2022 but the same was not paid. The principal amount is based on the unpaid fifteen invoices raised by the Operational Creditor on the Corporate Debtor during the period from 17.02.2020 to 16.01.2022. The date of default as mentioned in Part-IV of the Application is 16.04.2022 i.e., the date on which the period of ninety days from the date of last invoice, i.e., 16.01.2022 expired.

- 1.4 Despite issuance of Demand Notice dated 09.06.2022 by the Operational Creditor to the Corporate Debtor as required under Section 8 of the Code, the Corporate Debtor failed to make payment of the aforesaid amount of operational debt due and payable to the Operational Creditor. This led to the filing of the present Application by the Operational Creditor seeking initiation of CIRP against the Corporate Debtor.

## **2. Averments of the Operational Creditor**

- 2.1 The Operational Creditor has stated that the Corporate Debtor has not refuted the terms of invoices and, therefore, the same are deemed to be admitted. It is submitted that invoices are contracts the terms of which are binding and enforceable. It is also submitted that the Corporate Debtor has never raised any dispute regarding quality, quantity or rates of the goods supplied to it. However, the

Corporate Debtor failed to make payment of the total amount of the outstanding operational debt.

- 2.2 The Operational Creditor submits that the Corporate Debtor had also maintained a running ledger account of the Operational Creditor for the period from 01.04.2019 to 03.03.2022 wherein the Corporate Debtor admitted the fact of Rs.94,72,056.70/- being due and payable to the Operational Creditor on 03.03.2022. The Corporate Debtor had never raised any objection over the ledger account and interest calculation made by the Operational Creditor.
- 2.3 The Operational Creditor submits that in order to discharge its liability, the Corporate Debtor had issued four cheques bearing Nos. 100721, 101086, 101087 and 101089 dated 01.03.2022 of Rs.25,00,000/- each drawn on Bassein Catholic Co-operative Bank Ltd, Nasik Branch. The Operational Creditor points out that when it presented the aforesaid cheques for encashment, all the four cheques were returned dishonoured with the bank memos dated 05.05.2022 mentioning the reason as "Exceeds Arrangement".
- 2.4 Aggrieved by the fact of aforesaid cheques being dishonoured, the Operational Creditor sent the statutory notice as per Section 138 of the Negotiable Instruments Act, 1881 on 13.05.2022 as well as instituted criminal complaint under Section 138 thereof against the Corporate Debtor which is pending before the Metropolitan Magistrate, Mazgaon, Mumbai. The Operational Creditor submits that the Corporate Debtor claimed the pending dues to be only

Rs.94,72,056/- in its reply dated 27.05.2022 to the Operational Creditor's legal notice under Section 138.

2.5 The Operational Creditor issued a Demand Notice under Section 8 of the Code to the Corporate Debtor on 09.06.2022 which was delivered to the Corporate Debtor on 13.06.2022. The Corporate Debtor neither responded to the said Demand Notice nor released any payment in favour of the Operational Creditor till the date of the Application.

2.6 The Operational Creditor further submits that it has furnished the Affidavit under Section 9(3)(b) of the Code along with the Application affirming that there is not dispute between the parties.

### **3. Contentions of CD**

3.1 Despite the service of notice for next hearing by the Registry of the Adjudicatory Authority on 29.09.2022 and 21.08.2023 in addition to service of Operational Creditor's Petition to the Corporate Debtor through email communication as per Operational Creditor's affidavit of service dated 11.10.2022, the Corporate Debtor neither appeared nor filed any reply.

3.2 During the entire proceedings of the present Application, the Corporate Debtor remained absent. The Counsel for Operational Creditor argued that Corporate Debtor's conduct as demonstrated by its continuous non-appearance in the matter indicates that it has no respect for the law. In view of the above, there is absence of pleadings or arguments on behalf

of the Corporate Debtor and thus we have no option but to proceed with the matter as per the law.

#### **4. Analysis and Findings**

Upon due consideration of the pleadings along with the materials available on record and hearing the Counsel for the Operational Creditor, our findings in the matter are as under:-

**4.1** In spite of numerous opportunities granted by this Adjudicating Authority to the Corporate Debtor to appear before us to present its case, the Corporate Debtor failed to take any steps to furnish its reply or to present any defence. Consequently, the matter was heard on the basis of the pleadings made in the Application and arguments put forth by the Counsel for the Operational Creditor.

**4.2** We find that the debt of Rs.1,49,37,590/- owed by the Corporate Debtor to the Operational Creditor against the supply of various goods falls within the meaning of "operational debt" under Section 5(21) of the Code. The Operational Creditor has placed on record copies of relevant invoices along with statement of running account/ ledger transactions summary of the Corporate Debtor for the period from 01.04.2019 to 31.03.2022 showing outstanding amount of Rs.1,15,85,472/- due from the Corporate Debtor as on 04.03.2022.

**4.3** We also find that the Corporate Debtor defaulted in payment of the dues of the Operational Creditor and, therefore, the Operational Creditor issued a Demand Notice dated 09.06.2022 to the Corporate

Debtor as mandated under Section 8(1) of the Code in the prescribed Form, demanding payment of the outstanding amount. The said Demand Notice was duly served on the Corporate Debtor on 13.06.2022. However, it is noticed that the Corporate Debtor neither responded to the aforesaid Demand Notice nor made the required payment of the outstanding operational debt to the Operational Creditor.

**4.4** On perusal of the materials available on record, we find that there is nothing to show that any dispute existed between the parties before the issuance of the Demand Notice or there was pendency of any suit or arbitration proceedings relating to the amount of aforesaid operational debt. The Operational Creditor has filed an Affidavit under Section 9(3)(b) of the Code, *inter alia*, affirming that there was no dispute between the parties with respect to the transaction involving the operational debt in question. Hence, it can safely be inferred that there is no pre-existing dispute between the parties regarding the amount of operational debt in default. The mere fact that the Operational Creditor had instituted a case under Section 138 of the Negotiable Instruments Act against the Corporate Debtor which was pending before the Metropolitan Magistrate, Mazgaon does not indicate any pre-existing dispute between the Operational Creditor and the Corporate Debtor regarding the operational debt. Following the law laid down by the Hon'ble National Company Law Appellate Tribunal in ***Sudhi Sachdev v. APPL Industries Ltd***, [Judgment dated 13.11.2018 in Company Appeal (AT) (Insolvency)]

*NO. 623 of 2018]* pendency of the case under Section 138 of the Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute.

**4.5** It is also noticed from the record that Corporate Debtor had issued four cheques of Rs.25,00,000/- each dated 01.03.2022 drawn on Bassein Catholic Co-operative Bank Limited, Nasik Branch in favour of the Operational Creditor towards part payment of its liability. However, when the Operational Creditor presented the aforesaid cheques for encashment, all four cheques were dishonoured and returned to the Operational Creditor along with Bank Memo dated 05.05.2022 with the remark "Exceeds Arrangement". Thus, it is clear that the Corporate Debtor had no bona fide intention to clear the outstanding dues of the Operational Creditor and that the default on part of the former in payment of unpaid operational debt owed to the latter continued.

**4.6** The date of default mentioned by the Operational Creditor in Part-IV of the Application is 16.04.2022. This represents the date on which the period of 90 days from the date of last invoice expired i.e. 16.01.2022 and the amount of the said invoice fell due for payment. The Demand Notice also specifies the same date of default. The present Application filed by the Operational Creditor on 09.09.2022 is thus well within the period of limitation under Section 238A of the Code read with Article 137 of the Limitation Act, 1963 thereby making it maintainable for the purpose of adjudication.

**4.7** From the above discussion, it is very clear that there was a default on part of the Corporate Debtor in payment of operational debt to the Operational Creditor of more than Rs.1,00,00,000/- (Rupees One Crore) being the threshold monetary limit under Section 4 of Code. Thus, this Application preferred by the Operational Creditor under Section 9 of the Code is found to be maintainable. The Application is complete and has been filed in the prescribed form. In view of the above, we find that the matter is fit for admission under Section 9(5)(i) of the Code.

**4.8** It is observed from the record that the Operational Creditor had originally proposed the name of Mr. Prakash V. Kukreja, a registered Insolvency Professional having Registration Number IBBI/IPA-001/IP-P02599/2021-2022/13990 and valid Authorisation for Assignment up to 31.01.2024 as the Interim Resolution Professional (IRP) in the present Application followed by online filing of his consent form dated 08.09.2022. However, it was found that the Operational Creditor had not filed the physical copy of Form 2 of Mr. Prakash V Kukreja's consent form for IRP. At the time of hearing of the matter on 13.09.2023, the Operational Creditor physically filed Form 2 of Mr. S. Gopalakrishnan, another registered Insolvency Professional having Registration Number-IBBI/IPA-002/IP-N00151/2017-18/10398 and valid Authorisation for Assignment up to 22.11.2023 as IRP without submitting the no-objection certificate of its previously proposed IRP and without filing an Interlocutory Application (IA) to make the requisite amendment regarding the newly proposed Insolvency

Professional as the IRP of the Operational Creditor. In these circumstances, the IRP is being appointed from the latest panel of Insolvency Professionals for Mumbai Zone circulated by the IBBI.

**ORDER**

**This Application** bearing C.P.(IB) No.997/MB/2022 filed under Section 9 of the Code by Mahavir Steel Industries Limited, the Operational Creditor, for initiating CIRP in respect of Vir Electro Engineering Private Limited, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as follows:

- a) There shall be a moratorium under Section 14 of the IBC.
- b) The order of Moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicatory Authority approves the resolution plan under sub-section (1) of Section 31 of the Code or passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be.
- c) That public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and other Rules and Regulations made thereunder.
- d) That this Adjudicatory Authority hereby appoints **Mr. Sachin Shrinivas Bhattad, a registered Insolvency Professional having the**

**Registration Number IBBI/IPA001/IPP00680/2017-2018/11159 and email address sachinbhattadca@gmail.com** as the Interim Resolution Professional (IRP), having valid Authorisation for Assignment up to 05.02.2024 to carry out the functions under the Code in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Professional) Regulations, 2016.

- e) The fee payable to IRP/RP shall be in accordance with such Regulations, Circulars and Directions as may be issued by the IBBI. The IRP shall carry out his functions as contemplated under the provisions of the Code.
- f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/IP within a period of one week from the date of receipt of this Order, and shall not commit any offence punishable under Chapter VII of Part II of the Code.
- g) The IRP/IP shall submit to this Adjudicatory Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Operational Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on

priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

- i) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post and email and WhatsApp.
- j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- k) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP including by way of email and WhatsApp.
- l) Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.
- m) **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

//JNK//

Sd/-

**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**