

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

IB-2262/ (ND) /2019

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:

Venessa Metals and Alloys Private Limited

Registered office at:
A-93, South Extension Part-2
New Delhi- 110049

...Applicant

Versus

M/s Terrence Alloys Private Limited

Registered office at:
Office No. 206, 2nd Floor,
Royal Palace G-55,
Laxmi Nagar, Vikas Marg
Delhi- 110092

...Respondent



Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Harshit Manktala, Advocate
Counsel for Respondent: Mr. Bhanu Gupta, Advocate



ORDER

Per DR. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 03.02.2020

1. This is an application filed by the Applicant Venessa Metals and Alloys Private Limited seeking to initiate corporate insolvency resolution process (“CIRP”) under Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) of the Respondent M/s Terrence Alloys Private Limited, for the alleged default on the part of the Respondent in clearing the debt of Rs. 6,32,47,628.17/- towards the material supplied by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant is engaged in the business of trading of nonferrous metals and into the wholesale trade of pure lead, lead alloys, lead scraps, aluminum scraps and other secondary products of non-ferrous metals. The applicant and the respondent have been dealing with each other since around December 2016.
- ii. The applicant claims that the Respondent placed orders on various dates for various quantities of lead Ingots with the applicant. The Applicant raised various invoices between 03.02.2017 – 13.02.2017 based on Respondent requirements.

- iii. The applicant claims that no quality claims/ disputes were raised by the Respondent after receipt of the goods nor any quality claims/ disputes have been received by the Applicant till date.
- iv. The applicant further claimed that the Respondent failed to comply with the payment terms i.e. clearing of payment towards the invoices within 90 days from the date of invoice. On failure on part of the respondent towards adherence to the payment terms the applicant was constrained to make various requests vide notices dated 20.05.2017, 15.03.2018 and 05.01.2019 demanding the outstanding amount of Rs. 6,32.47,628.17/- however the Respondent failed to clear the balance due.
- v. The applicant thereafter got issued a Demand Notice dated 18.04.2019 under section 8 of the Insolvency and Bankruptcy Code, 2016 which was served upon the Respondent by hand.
- vi. The applicant submitted that no reply has been received by the Applicant to the demand notice dated 18.04.2019 and further submitted that neither the payment has been made by the Respondent nor pendency of any suit or arbitration proceedings in relation to such dispute filed before the receipt of the demand notice dated

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18.04.2019 has been intimated by the Respondent to the Applicant within 10 days from the receipt of the demand notice.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its short reply in which the following contentions are made:
 - i. The Respondent submitted that the applicant has initiated the Corporate Insolvency Resolution Process with the malafide intention to harass and extort money from the Respondent. The Respondent further submitted that the applicant is aware of the fact that the goods were of the inferior quality therefore the applicant is not entitled to pay the amount claimed by the applicant and the amount which has to be paid is disputed and the same requires trial therefore, respondent humbly submitted that the present case is covered under section 8 (2) (a) of the Insolvency and Bankruptcy Code, 2016 and accordingly, the petition ought to be dismissed.
 - ii. The Respondent submitted that the applicant has provided false and frivolous facts in the petition, thereby, manipulating the Hon'ble Adjudicating Authority. The Respondent further submitted that the Applicant supplied goods of inferior quality and



the same were delayed beyond acceptable limits and in light of the aforesaid dispute the present petition is liable to be dismissed.

iii. The Respondent has raised the dispute which can only be tried in a civil court as disputed question of fact, whether the same amount is due or not requires evidence therefore the present petition is liable to be dismissed.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The Applicant had supplied nonferrous metals and lead ingots to the Respondent. The parties were dealing with each other since December 2016. The applicant claims the debt related to invoices which is Rs. 8,54,20,142.34/- (principal amount Rs. 6,32,47,628.17/- + interest of 18% p.a. of Rs. 2,21,72,514.17/-).

4. The learned counsel for the applicant on date 24.10.2019 contended before the Hon'ble bench that the talks of settlement have failed between the parties.

5. The Applicant has clearly established the existence of debt. The counsel for the Respondent has admitted the debt due to the applicant and has also



expressed the inability of the Respondent to repay that debt. In the above circumstances this Tribunal initiates CIRP of the Respondent company.

6. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

7. The interim resolution professional (“IRP”), named in the list provided by the IBBI, is Mr. Nitesh Kumar Sinha, email id: info@csnitesh.com being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.



8. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

-Sd-

(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd-

(DR. P.S.N. PRASAD)
MEMBER (JUDICIAL)

RDS