

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.858/MB-IV/2022

Under Section 9 of the IBC, 2016

In the matter of

M/s Matrix Grating Private Limited
R. S No. 526/1 Plot No. 13, Samrat Nagar,
Near BSNL Exchange, E Ward, Kolhapur,
Maharashtra, India

[CIN: U27100PN2011PTC139052]

...Operational Creditor

v/s.

Stelmec Limited

Office No. 506/507, 55, Corporate
Avenue, Saki Vihar Road, Andheri East,
Mumbai- 400072.

[CIN: U31200MH2000PLC124565]

...Corporate Debtor

Order Delivered on: 05.03.2024

Coram:

Ms. Madhu Sinha
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Amey Hadwale, Ld. Counsel.

For the Corporate Debtor:

Mr. Shyam Kapadia a/w Mr. Soura
Ghosh i/b Induslaw, Ld. Counsel.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **M/s Matrix Grating Private Limited** (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of **Stelmec Limited**, the Corporate Debtor.
2. The Corporate Debtor is a private company limited by shares incorporated on 29.02.2000 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is Office No. 506/507, 55, Corporate Avenue, Saki Vihar Road, Andheri East, Mumbai- 400072,. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Company Petition is filed on 15/06/2022 claiming that an amount of 1,04,87,945/- (Rupees One Crore Four Lakhs Eighty-Seven Thousand Nine Hundred and Forty- Five Only) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 28.06.2021 as per Last Invoice.

Submissions advanced by the Operational Creditor are as follows:

4. The Corporate Debtor is involved in the business of manufacturing of Low, Medium Voltage Switchgear and other value-added Power Products for T&D Networks, provision of Integrated Design, Engineering, Procurement, Construction and Project Management Solutions for Transmission & Distribution Substations and Lines, offering of Power IT Solutions for maximising automation in energy infrastructure to achieve Quality Power Supply continuously at Optimum Cost. Since more than two decades It has been a trusted partner to various State-Owned Power Utilities as well as Private Power Utilities in India. The Corporate Debtor has a Corporate Office at

Bandra, Mumbai, has employee strength of 650+ employees located at three Strategic Business Units, One in Ahmedabad (Gujarat) and Two on the outskirts of Mumbai (Maharashtra) and also has a Pan India Marketing and Customer Care Centres.

5. The Operational Creditor is involved in the business of manufacturing, supplying and trading of engineering products used in the industry wide Steel & Transmission line sector. In 2018, Corporate Debtor was in need of Steel Structure Material which was required in its industrial activity and after searching the vendors, Operational Creditor was chosen, and Corporate Debtor started placing orders for the same with the Operational Creditor. The parties started their business since 2018 agreeing to the terms and conditions with respect to material supply as mutually decided by them. Operational Creditor agreed to supply the said material to the Corporate Debtor and in return raised invoice with respect to the payment for the same.
6. The Corporate Debtor has not been regularly paying payments against the supplied material. Synopsis of relevant Invoices along with the respective Payment cum Delivery Challans are tabulated below:

Date of Supply/Delievery	Date of Invoice	Amount of Invoice (in INR)	Outstanding Payment (in INR)
24.02.2021	24.02.2021	24,07,552/-	7,29,720/-
13.03.2021	13.03.2021	29,74,767/-	10,00,000/-
21.03.2021	21.03.2021	29,91,028/-	29,91,028/-
24.03.2021	24.03.2021	6,44,693/-	6,44,693/-
27.03.2021	27.03.2021	16,24,780/-	16,24,780/-
29.04.2021	29.04.2021	10,41,163/-	10,41,163/-

28.06.2021	28.06.2021	24,56,561/-	24,56,561/-
Total Outstanding Dues (in INR)			1,04,87,945/-

7. The Operational Creditor further submits that as per mutually agreed terms between Operational Creditor and Corporate Debtor the payment terms set for 90 days with issuing Post Dated Cheque (PDC). However, the amount was not paid within the stipulated time period. On multiple occasions, the Corporate Debtor sought more days to deposit the PDC and sometime even after cheque being deposited, few were bounced / Dishonoured and returned back. The Operational Creditor has requested and reminded several times about timely payment, but Corporate Debtor continued to default and/or delay payments.
8. The Operational Creditor due to the nature of its business activities is constantly in need of working capital. This default on the part of Operational Creditor is adversely affecting its working capital of the business.
9. The outstanding as on 5th March 2022 is Rs. 1,04,87,945/- (Rupees One Crore Four Lacs Eighty-Seven Thousand Nine Hundred and Forty-Five Only). In spite of several follow-up communications for the payment, this accumulated outstanding principal balance after all the part payment received from the Corporate Debtor till the March 2022. The last default invoice date is of 28th June, 2021 which is also considered as the last date of default for the purpose of this petition. Details of Post-dated cheques provided by the Corporate Debtor are mentioned below which was bounced/ Dishonoured during the last 2 year period:

Cheque No	Cheque Date	Cheque Amount
438002	27.04.2021	10,00,000/-
405867	24.01.2022	10,00,000/-

10. The Interest working on the Outstanding Dues (Considered the interest of 18%) amounts to Rs.61,60,632/- (Rupees Sixty One Lakh Sixty Thousand Six

Hundred and Thirty Two Only) in addition to the Principal outstanding of Rs.104,87,945/- (Rupees One Crore Four Lakh Eighty Seven Thousand Nine Hundred and Forty Five Only).

11. The Operational Creditor served a demand letter to Corporate Debtor dated 29th March, 2022 for the amount payable demanding the entire amount within a period of 10 (Ten) days from the date of issuance of the letter.
12. Lastly, the Operational Creditor submits that since no further response received from the Corporate Debtor, Operational Creditor is left with no option but to reach this tribunal for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

Submissions advanced by the Corporate Debtor are as follows:

13. The Corporate Debtor submits that the Petitioner had suppressed the fact that it deliberately did not deposit a post-dated cheque dated 26 March 2023 bearing Cheque No. 405463 for Rs. 23,69,291/- (Rupees Twenty Three Lakhs Sixty Nine Thousand Two Hundred and Ninety One Only) ("Cheque") drawn on Canara Bank, which it had received from the Petitioner.
14. The email dated 15 February 2022 reflects that the Petitioner had received the Cheque from the Respondent is evident from the petition itself. The Petitioner does not, and cannot, deny receipt of the cheque. The Petitioner has admittedly not deposited the Cheque, and the Cheque has, since then, expired.
15. It is submitted that the Petitioner has deliberately not deposited the Cheque to meet the minimum threshold required to file insolvency proceedings under the Code. If the Petitioner would have deposited the Cheque, the outstanding debt would have fallen below INR 1,00,00,000/- (Rupees One Crore Only), and the

captioned Company Petition shall not be maintainable under the Insolvency and Bankruptcy Code,2016.

16. This Tribunal, by way of its order dated 16 February 2023, directed the Respondent's counsel to file evidence of delivery of the Cheque to the Petitioner. The Petitioner itself has admitted in its petition at page 88, that it is in receipt of the Cheque. This Tribunal also directed the Petitioner's counsel to confirm if the Petitioner received any communication in writing to the fact that this Cheque was not to be deposited. The Petitioner could not confirm the same.
17. Thereafter, this Tribunal, by way of its order dated 24 July 2023, directed the Respondent's counsel to produce the Respondent's bank statement for March 2022, from where the Cheque was issued, to show whether the Respondent had sufficient balance, on the date of the Cheque, to clear the Cheque amount.
18. The Respondent's Additional Affidavit dated 14 August 2023 contains the bank statement of its Canara Bank account from which the Cheque was drawn. The same reflects that on the date of the Cheque, the Respondent's bank account had a credit balance of INR 1,77,08,134.82 (Rupees One Crore Seventy Seven Lakhs Eight Thousand One Hundred and Thirty Four and Eighty Two Paise Only). Therefore, if the Petitioner had deposited the Cheque, the same would have been processed, and the money would have been duly credited and received by the Petitioner.
19. The Corporate Debtor submits that there is a real dispute with respect to the Petitioner's failure to deposit the Cheque prior to filing the Company Petition against the Respondent. It is settled law that the Code is not to be used as a mechanism to recovery payments, and that the object of the Code is to bring the Corporate Debtor back on its feet. The intent of the Petitioner herein is apparently only to enforce recovery of amounts from the Respondent. The

Respondent submits that the Petitioner is abusing the process of law under the Code as an arm-twisting tactic against the Respondent.

Findings

20. The bench has heard the arguments of Learned Counsel for Operational Creditor and the Corporate Debtor and had perused the record.
21. This bench is of the considered view that the Invoices raised by the Operational Creditor on 24.02.2021, 13.03.2021, 21.03.2021 & 24.03.2021 falls within an ambit of 10A period and therefore Invoices raised on 27.03.2021, 29.04.2021 & 28.06.2021 by the Operational Creditor does not meet the requirement of minimum threshold limit of Rs. 1,00,00,000/-.
22. The bench takes note of the fact that the Corporate Debtor with the bonafide intention has given the cheque to the Operational Creditor but due to the Negligence of the Operational Creditor the cheque was not presented for that the Corporate Debtor cannot be penalised for the negligence of the Operational Creditor.
23. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be dismissed as disposed off.

Sd/-

**MADHU SINHA
MEMBER (TECHNICAL)
05.03.2024**

Sd/-

**KISHORE VEMULAPALLI
MEMBER (JUDICIAL)**