



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

CP(IB) No. 2023 /KB/2019

In the matter of:

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:

BCPL International Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No- L51909WB1985PLC186698 and its registered office at 4, Synagogue Street, Room No. 810, 8th Floor, Kolkata-700001, in the State of West Bengal.

.....Operational Creditor

-Versus-

Kalimata Ispat Industries Private Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No- U27310WB1987PTC042985 and its registered office at 14/2 Old China Bazar Street, Room No. 213, 3rd Floor, Kolkata-700001, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 21st April, 2022

Date of pronouncing the order: 25th May, 2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing):

For Operational Creditor : Mr. Ratnanko Banerji, Sr. Advocate

Mr. Pranit Bag, Advocate



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Mr. Debsoumya Basak, Advocate
Mr. S.C. Jana, Advocate
Mr. Debductta Saha, Advocate
Mr. Viswajit Neogi, Advocate
For Corporate Debtor : Mr. Joy Saha, Sr. Advocate
Mr. Rijul Banerjee, Advocate
Mr. Snehashis Sen, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by Somesh Rustgi, authorized signatory on behalf of **BCPL International Limited** (Operational Creditor), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Kalimata Ispat Industries Private Limited** (“Corporate Debtor”).

Submissions on behalf of the Operational Creditor:

3. The case of the Operational Creditor is that pursuant to orders placed by the Corporate Debtor in the year 2017-2018, it duly sold, supplied and delivered to Corporate Debtor various steel products including but not limited to CR sheet, CR coil, GC coil, GC sheet. The Operational Creditor raised forty- six invoices against the said sale. The Corporate Debtor has also issued confirmation of Accounts in favour of the Operational Creditor.
4. The debt fell due and payable on and from 1st June 2017 and continued thereafter. The default in payment occurred on and from 1st June 2017. A demand notice dated 28th June 2019 under section 8 of the Code was issued by the Operational Creditor.
5. At present, a sum of ₹3,01,89,141/- (Rupees Three Crore One Lakh Eighty-Nine Thousand One Hundred and Forty-One only) is due from the Corporate Debtor in favour of the Operational Creditor. The said amount comprises of a principal debt of ₹2,20,00,724/- (Rupees Two Crore Twenty Lakh Seven



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Hundred Twenty-Four Only) and an interest of ₹81,88,417/- (Rupees Eighty-One Lakh Eighty- Eight Thousand Four Hundred and Seventeen Only) payable @18% per annum upto 26th June 2019. The Operational Creditor is entitled to further interest till the date of actual realisation of payment.

Submissions on behalf of the Corporate Debtor:

6. The Corporate Debtor is involved in the process of manufacturing cast iron and other allied materials. The manufacturing process of cast iron castings inter alia requires C.R. Sheets, C.R. Coils, G.C. Sheets and G.P. Coils. The Corporate Debtor sources such C.R. Sheets, C.R. Coils, G.C. Sheets and G.P. Coils from various suppliers.
7. On or about the end of February 2017, the Operational Creditor approached the Corporate Debtor and represented and/or held out to the Corporate Debtor that it was engaged in the business of supplying such C.R. Sheets, C.R. Coils, G.C. Sheets and G.P. Coils to various cast iron foundries and would be able to supply substantial quantities of the said materials of the desired quality and specifications to the Corporate Debtor. The Corporate Debtor duly informed the Operational Creditor about the specifications and quality standards required to be maintained and with effect from 1st March 2017 started purchasing diverse quantities said goods from the Operational Creditor.
8. Between 1st March 2017 and 31st October 2017, the Operational Creditor supplied said goods to the Corporate Debtor spanning 129 invoices. However, when the Corporate Debtor tested the goods supplied by the Operational Creditor, it was revealed that the Operational Creditor was unable to adhere to the required quality and the specifications of the said goods. Consequently, by a letter dated 1st July 2017 the Corporate Debtor called upon the Operational Creditor to improve the quality of its supplies and to ensure that the same adhered to the specifications provided.
9. Pursuant to the said letter dated 1st July 2017 the Operational Creditor duly deputed its representative Sri K.G. Rathi to the factory site who, upon due inspection assured the Corporate Debtor that the consignments which did not conform to the required quality and specifications would be duly replaced by



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the Operational Creditor. In spite of promises made, the Operational Creditor neither improved the quality of the materials supplied nor replaced the materials rejected by the Corporate Debtor.

10. By a letter dated 3rd October 2017, Corporate Debtor called upon the Operational Creditor to take back the rejected materials and once again informed the Operational Creditor that unless the quality of the supplies improved and the specifications were adhered to, the Corporate Debtor would be compelled to terminate its relationship with the Operational Creditor.
11. Materials worth of ₹2,25,53,051/- (Rupees Two Crore Twenty- Five Lakh Fifty- Three Thousand and Fifty-One Only) were duly rejected by the Corporate Debtor upon necessary tests being carried out.
12. The total value of the 129 number of invoices was for a sum of ₹10,16,11,515/- (Rupees Ten Crore Sixteen Lakh Eleven Thousand Five Hundred Fifteen Only). The Corporate Debtor has already made payment to the Operational Creditor of a sum of ₹7,96,10,791/- (Rupees Seven Crore Ninety-Six Lakh Ten Thousand Seven Hundred Ninety- One Only) on account of the supplies, the quality of which was found to be satisfactory and which were duly consumed by the Corporate Debtor in its manufacturing process. The Corporate Debtor, between the period of 8th June 2017 and 8th February 2019, cleared the just and legitimate dues and bills of the Operational Creditor.
13. Thereafter, by letter dated 25th April 2019, the Corporate Debtor terminated the relationship with the Operational Creditor and called upon the Operational Creditor to remove the rejected materials from the factory premises of the Corporate Debtor within one month, failing which the Corporate Debtor would be constrained to throw away the said goods.
14. The Corporate Debtor states that each of the said three letters dated 1st July 2017, 3rd October 2017 and 25th April 2019 were duly received by the Operational Creditor. The Operational Creditor did not take back the said rejected materials from the factory premises of the Corporate Debtor and as a result whereof the same had to be thrown away by the Corporate Debtor. The Corporate Debtor has suffered extensive business loss and damage due to the



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substandard goods supplied by the Operational Creditor. Such damage is reasonably assessed at ₹ 2,70,00,000/- (Rupees Two Crore Seventy Lakh Only).

15. The Corporate Debtor has a total claim of ₹2,92,00,000/- (Rupees Two Crore Ninety Two Lakh Only) against the Operational Creditor comprising of the loss and damages suffered due to substandard quality of goods and the Compensation due for storing the said materials at the factory between 25th April 2019 and 30th May 2019.
16. Further, it is relevant that although the last invoice was raised on 31st October 2017, till the issuance of the notice dated 28th June 2019 under section 8 of the Insolvency and Bankruptcy Code, 2016 virtually no demands were made by the Operational Creditor which by itself will go to demonstrate that the purported claim of the Operational Creditor is completely unmeritorious and made by way of an afterthought.
17. The Corporate Debtor is a profit making entity and has always made payment of undisputed debts. The Balance Sheet of the Corporate Debtor will demonstrate that the Corporate Debtor is a profit-making entity and consequently requires no corporate insolvency resolution process at the instance of an Operational Creditor whose claims are fictitious and disputed.
18. In response to the demand notice dated 28th June 2019, the corporate debtor had clearly disputed the alleged amount claimed to be in default and also pointed the fact that there were pre-existing disputes in relation to the alleged claim. The said reply dated 10th July 2019 was initially sent on 13th July, 2019 and the same was returned undelivered. The said letter dated 10th July 2019 was against served on 25th July 2019 and the same was duly delivered on 26th July 2019.
19. Further, the stamps and signature on the purported confirmation of accounts are fabricated. Further, the letter dated 5th June 2019 was never received by the Corporate Debtor and the name of the Corporate Debtor on the postal receipt of the said letter appears to be incorrect. The contents of the said letter are false untrue and incorrect and that the claim made therein is based on fabricated



documents. A complaint regarding the attachment of false confirmation of accounts to the instant petition has been made by the Corporate Debtor with the Hare Street Police Station. A case bearing No. Hare Street P.S. case No. 241 dated 3rd November 2020 has been started by the said police authorities.

Rejoinder on behalf of the Operational Creditor:

20. The Operational Creditor has highlighted the alleged attempt on part of the Corporate Debtor to mislead the Adjudicating Authority by fraudulently manufacturing letters dated 1st July 2017, 3rd October 2017 and 25th April 2019.
21. According to the Operational Creditor, the corporate debtor has attempted to manufacture its defence on the basis of some alleged letters purportedly dated dated 1st July 2017, 3rd October 2017 and 25th April 2019 wherein an attempt has been made to raise disputes *vis-à-vis* the supplies and such letters as per the documents produced by the corporate debtor with their affidavit at page 68 had been purportedly posted from an alleged "HIDE ROAD" post office on dated 1st July 2017, 3rd October 2017 and 25th April 2019.
22. In reply to an application filed by the Operational Creditor with the Department of Post, South Kolkata Division, Government of India, seeking clarification on the issue, the said Department of Post has clarified vide a letter dated February 3, 2021 that there has never been a post office named —HIDE ROAD within their Division and that —HYDE ROAD Post Office had been closed on and from 28th February 2017. As such, the Corporate Debtor has produced forged and fabricated documents before this Tribunal which have all been manufactured and generated after 28th February 2017, i.e. after the Hyde Rode Post Office was closed.
23. According to the Operational Creditor, in the course of the business transaction between the parties, goods were sold and delivered by the operational creditor on and from 1st June 2017 till 26th June 2019. The Corporate Debtor has admitted to the existence of 129 invoices raised by the Operational Creditor aggregating to a sum of ₹10,16,11,515/- and that they have admittedly made payment of ₹7,96,10,791/-, thereby admitting that a substantial sum, well over



the threshold limit for approaching this Adjudicating Authority, is due and payable to the Operational Creditor by the Corporate Debtor.

24. According to the Operational Creditor, the Corporate Debtor has made passing reference to test certificates which would be produced at the time of hearing and has deliberately not disclosed any such certificate since no independent test was conducted contemporaneously by the corporate debtor and no objection was ever raised about the quality of the goods supplied by the operational creditor to the corporate debtor. Further, the very fact that the goods supplied by the operational creditor were not refused or rejected by the corporate debtor and the corporate debtor did not terminate the contract and continued to receive goods from the operational creditor evinces that no contemporaneous dispute had arisen between the parties and all the allegations made in the affidavit are mere afterthoughts
25. Further, the letter of termination dated 25th April 2019 would not change the fact that the transaction between the parties during the period under consideration has given rise to a debt which is due and payable in favour of the operational creditor by the corporate debtor to the tune of ₹3,01,89,141/- only as detailed in the petition.

Supplementary Affidavit by the Corporate Debtor

26. According to the Corporate Debtor, the Operational Creditor, upon being notified by it, had agreed that some of the consignments supplied by the Operational Creditor do not conform to the required quantity, quality and specifications of the Corporate Debtor and had further agreed to take return of such consignments, and to replace the same, by making subsequent deliveries.
27. Further, the Operational Creditor in acceptance of the default on its part, by way of an email dated 4th April 2018, had issued credit notes both dated 31st January 2018 for a sum of ₹7,96,809/- (Rupees Seven Lakh Ninety-Six Thousand Eight Hundred Nine Only) and ₹6,03,663/- (Rupees Six Lakh Three Thousand Six Hundred Sixty-Three Only) respectively, in favour of the Corporate Debtor. Thereafter, the Corporate Debtor made several requests to take the defective supplies made and further called upon the Operational



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Creditor to supply proper materials or in the alternative issue credit notes for the balance amount of defective supplies to the tune of ₹2,11,52,579/- (Rupees Two Crore Eleven Lakh Fifty-Two Thousand Five Hundred Seventy-Nine Only).

28. However, having full knowledge of the fact that there were defects in the materials supplied and that the same have been duly rejected and also having knowledge of the fact that no further sum remain due and payable, the Operational Creditor has proceeded to file the instant application under section 9 of the Code.

Analysis and Findings

29. Heard the Ld. Sr. Counsel for the Operational Creditor and the Ld. Sr. Counsel for the Corporate Debtor and perused the records.
30. According to the Sr. Counsel of the Corporate Debtor, the instant application is riddled with pre-existing disputes between the parties with regard to the quality of the materials supplied by the Operational Creditor. In support of its claim, the Corporate Debtor has produced the following documents:-
- a. Letter by CD to OC disputing quality dated 1st July 2017,
 - b. Letter by CD to OC disputing quality, rejecting goods and threatening to terminate unless quality improves dated 3rd October 2017; and
 - c. Letter by CD to OC calling upon the OC to remove the goods from the factory premises of the CD dated 25th April 2019.
31. The OC contends that the letters evidencing “pre-existing disputes” dated 1st July 2017, 3rd October 2017 and 25th April 2019 were never received by the OC and the proof of delivery of the said letters is fabricated.
32. According to the Operational Creditor however, the abovementioned letters were never received by the OC and the proof provided of delivery of the said letters is fabricated. In the rejoinder, the Operational Creditor has relied on the letter of the Department of Posts dated 23rd February 2017 which provides:
“In pursuance of the order of the Postmaster General Kolkata Region, Memo No.PLG/X-5/2016-17 dated 16/01/2017 Hyde Road SO, Kol-88 under South Kolkata Division, Kolkata - 700029 will be relocated to Magurdaha area under



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name “MADURDAHA” DSO KOLKATA 700029 with effect from 28/02/2017 (Fore Noon).”

“The existing work of Hyde Road SO, Kol-88 will be tagged with Brace Bridge PO, Kol-88 and Hyde Road SO will be closed on relocation on 28.02.2017 (Fore Noon).”

33. The aforesaid portion of the said letter indicates that the said Hyde Road Post Office was operating from an alternate location being “Brace Bridge” Post Office. Regarding the said issue, we would like to rely on the decision taken by the Hon’ble National Company Law Appellate Tribunal in the matter of **Shelendra Kumar Sharma versus D.S.C.Ltd.** [Company Appeal (AT) (Insolvency) No.1459 of 2019] wherein it was held that that the question as to whether the documents are forged or not is concerned, it cannot be decided by the Adjudicating Authority(Paragraph 5). Hence, the genuineness of the letters in question cannot be decided in a summary proceeding such as this and must be adjudicated in a civil court by leading evidence.
34. Further, the Corporate Debtor has also placed on record the email dated 4th April, 2018, credit notes dated 31st January 2018, as issued by the Operational Creditor as well as the subsequent letters issued by the Corporate Debtor on 2nd May 2019 and 4th June 2019, thereby requesting the Operational Creditor to issue further credit notes for the balance sum of ₹2,11,52,579/-. The email id that sent the credit notes is birdhi123@gmail.com¹, the genuineness of which can be questioned as the email id does not match the email id reflected in the master data of the Operational Creditor, but the Board Resolution filed in the Rejoinder² reflects birdhi123@gmail.com to be the email id of the Operational Creditor. Hence, the credit notes sent *via* email are genuine and the issuance of the said letters further confirms the Corporate Debtor’s contention that the instant petition has pre-existing disputes.
35. Further, it is to be noted that the purpose of the Code is the resolution of the insolvency of a Corporate Debtor. In the instant matter, the total value due

¹ Page 6 of the Supplementary Affidavit.

² Page 19 of the Rejoinder



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under the 129 invoices was ₹10,16,11,515/-, out of which a total payment of ₹7,96,10,791/- has been admittedly made. The balance amount of ₹2,20,00,724/- is disputed by the Corporate Debtor. As such, the Corporate Debtor cannot be deemed to be insolvent and should not be admitted into Corporate Insolvency Resolution Process at this point.

36. In light of the above facts and circumstances, this adjudicating authority is not satisfied of the existence of any operational debt or the default of the same. Hence, application bearing *CP (IB) No. 2023/KB/2019* is *rejected*. The petitioner is, however, at liberty to pursue other available means under the law for recovery.
37. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order signed on 25th day of May, 2022

Suman M(LRA)