

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 1038/IB/MB/2021

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6
of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rule 2016)

In the matter of

Alpine Stampings

322, Adhyaru Industrial Estate, Sun Mill
Compound, Lower Parel (West), Mumbai-
400013

..... Operational Creditor

Vs

**Vikarsh Stampings India Private
Limited**

Sr. no. 25, Vijaya Chambers, Office No. 5
& 6, Opp. SBI, Singhad Road, Hingne
Khurd, Pune- 411 051,

..... Corporate Debtor

Order Pronounced On: 15.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Mr. Ranjeev Carvalho, Advocate

For the Corporate Debtor: Mr. Maharshi Ganatra, Advocate

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above Company Petition is filed by **Alpine Stampings** hereinafter called as **Operational Creditor** seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Vikarsh Stampings India Private Limited** herein after referred to as **Corporate Debtor** by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs.1,07,33,947.51/- including interest.
2. The counsel for the Petitioner submits that in the year 2020-21, the Petitioner has issued Four Purchase orders for the purchase of electrical slit coils, to the Corporate Debtor. Pursuant to the said purchase orders, the Operational Creditor has supplied and delivered the goods to the Corporate Debtor. The Operational Creditor has also issued tax invoices upon the Corporate Debtor, in respect thereto, aggregating to Rs. Rs.1,26,29,767.21/-. Despite repeated reminders and acknowledgement of liability by the Corporate Debtor, the Corporate Debtor failed to make the payment of an amount of Rs.1,07,33,947.51/- The tax invoices provided that 24% would be charged as interest on "overdue unpaid bills" and the said tax invoices were accepted by the Corporate Debtor without any demur.
3. The counsel for the Petitioner further submits that owing to the default in repayment of the amounts due and payable by the Corporate Debtor, the Petitioner issued five debit notes to the Corporate Debtor, setting part of the amount due and payable towards the tax invoices.
4. On 9th February, 2021, the Petitioner has visited the office of the Corporate Debtor to urge the Corporate Debtor to make the payment towards the outstanding dues. On 10th February, 2021, the Petitioner had issued a letter to the Corporate Debtor seeking confirmation of the balance outstanding statement amounting to Rs. 1,06,41,292/- as on 10th February, 2021 and the same was duly confirmed and signed by a representative on behalf of the Corporate Debtor.

5. Subsequently, the Petitioner addressed an email dated 17th February, 2021 setting out the detail of the discussion held on 9th February, 2021 with regard to the payment of the amounts that remained outstanding in respect of the Tax Invoices. The Corporate Debtor responded to the aforesaid mentioned email, vide an email dated 18th February, 2021, *inter alia* admitting the amounts remained due and payable and had given assurance to make the payment by April, 2021. The Corporate Debtor attributed the delay in making the payments to the Covid-19 pandemic and the subsequent restrictions imposed by the Government of India in respect thereof.
6. At this juncture, it is pertinent to note that pursuant to the balance confirmation dated 10th February, 2021 towards the entire outstanding amount remained due and payable, the Corporate Debtor has sent a fresh proposal for payment of the outstanding amounts and an amount of Rs. 7,00,000/- has also been paid by the Corporate Debtor. Further, vide a letter dated 9th June, 2021, the Corporate Debtor issued 10 signed/undated cheques in favour of the Alpine Stampings i.e. the Petitioner towards an 'old outstanding'.
7. Thereafter, the Operational Creditor has once again issued a letter to Corporate Debtor seeking confirmation of the balance outstanding statement amount to Rs.1,07,33,947.51/-, as on 31st August, 2021, which is once again duly confirmed and signed by the Authorised Representative of the Corporate Debtor.
8. Subsequently, on 2nd September, 2021, the Operational Creditor visited the office of the Corporate Debtor to request the repayment of the outstanding amounts and the said outstanding amount has been admitted by the Corporate Debtor and they assured that the outstanding payment would be made by November, 2021 and the same was encapsulated in the email addressed by the Corporate Debtor dated 3rd September, 2021.
9. The Petitioner submits that since no payments have been made, despite the repeated reminder by the Petitioner, the Petitioner issued a demand notice dated 7th September, 2021 seeking the entire amount

outstanding as on 31st August, 2021. The Corporate Debtor has not filed any reply to the said demand notice.

Reply filed by the Corporate Debtor

10. The Corporate Debtor filed reply dated 13.01.2022 opposing the above Company Petition. The Corporate Debtor submits that the present Petition is filed for an amount of Rs. 87,71,110.51/- which is below the threshold envisaged in the Government Notification No. 1076 published in the Official Gazette (F.No.30/9/2020-Insolvency) dated March 24, 2020.
11. The Corporate Debtor further submits that the interest amount is a disputed amount and hence the claim is not maintainable.

Affidavit in Rejoinder

12. The Counsel for the Petitioner submits that the Corporate Debtor's plea is a misguided attempt to overcome and avoid the clear, express, unambiguous and unconditional admission of liability in its acknowledgment dated 31st August, 2021 of monies due and payable by the Corporate Debtor to the Petitioner. The Corporate Debtor has sought subterfuge of the Circular dated 24th March, 2020.
13. The Corporate Debtor has admitted the entire amount as claimed by the Petitioner. The amount of Rs. 1,07,33,947.51/- is crystalized debt within the meaning of the provisions of the IBC/ Act and hence the Corporate Debtor cannot feign ignorance before this Hon'ble Tribunal.
14. The defence of the Corporate Debtor that the claim of the Operational Creditor/ Petitioner is below the threshold limit of Rs. 1 crore is completely misconceived and contrary to the occurred facts and events.
15. The record will demonstrate that the Corporate Debtor has unconditionally acknowledged liability of Rs. 1,07,33,947.51 (inclusive of interest). The Corporate Debtor has paid T.D.S. to the State Exchequer ("The Government") and which is verified and reflected on the Form 26 AS available on the web portal of TRACES (TDS Reconciliation Analysis and Correction Enabling System of the Income

Tax Department). The Corporate Debtor has at all times, by its own conduct and actions always and expressly agreed, confirmed and understood that the amount of Rs. 1,07,33,947.51/- as the total outstanding principal amount.

16. The Petitioner denies that the principal amount claimed in the Petition is Rs. 87,71,110.51/- as alleged or for the reasons alleged or otherwise or at all. The bifurcation of Rs. 1,07,33,947.51/- is that it includes crystallized amount of interest accepted by the Corporate Debtor.
17. The Petitioner denies that interest in the present case is not a part of the Operational Debt as alleged or at all. As a result of the clear, express and unconditional admission of liability by the Corporate Debtor of the entire amount of Rs. 1,07,33,947.51/- vide the admission on 31st August, 2021, the Corporate Debtor is estopped from contending anything to the contrary.
18. The Petitioner denies that there can be any dispute to the claim in the Petition. The amount claimed is clearly explained in terms and in fact it is the Corporate Debtor who is seeking to avoid an admitted liability under the garb of the issue of maintainability or the pecuniary jurisdiction of this Tribunal which with respect does not apply in the facts of the present case. The defence of the Respondent is a moonshine and cannot be allowed to overcome the amount due to the Petitioner.

FINDING

19. Heard Mr. Ranjeev Carvalho, counsel appearing for the Operational Creditor and Mr. Maharshi Ganatra, counsel appearing for the Corporate Debtor and perused the material available on record.
20. After hearing the submissions of both sides, this Bench notes that the issue qua the maintainability of the present Petition in respect of the definition of Operational Debt read with the circular issued by the Government of India dated 24th March, 2020, has been laid to rest by a catena of Judgments delivered by the Hon'ble NCLAT as well as the

Apex Court. It is pertinent to note that the Code itself settles the question of maintainability in the present Petition.

21. With regard to the contention raised by the Corporate Debtor that the present Petition is not maintainable as the principal amount i.e. Rs. 87,71,110.51/- does not exceeds the threshold limit specified under Section 4 of the Code, this Bench observes that the tax invoices produced by the Petitioner itself provides the interest clause which is @ 24% p.a., thus, the claim amount aggregates to Rs.1,07,33,947.51/- which is inclusive of interest and forms the part of the subject invoices raised in question. Therefore, this contention of the Corporate Debtor is not tenable.
22. The aforementioned crystalizes that any amounts due and payable in respect of any contract would constitute a claim. The Hon'ble NCLAT in its judgment in the matter of *Prashant Agarwal Vs. Vikash Parasrampuria & Anr. Has held that;*

“In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment.....interest on delayed payment was clearly stipulated in the invoice and therefore, this will entitle for ‘right to payment’”(Section 3(6) of the Code) and therefore will form part of the ‘debt’.” Section 3(11) of the Code)”.
23. Further, the Petitioner has placed reliance on the various emails sent to the Corporate Debtor demanding the outstanding amount owed to them and the Corporate Debtor has reverted to the same admitting the debt vide an email dated 18.02.2021 and the same is reproduced below;

Santosh Potdar

Subject: FW: Vikarsh Payment Schedule

Begin forwarded message:

From: accounts vsipl <accounts@vikarshstampings.com>
 Subject: Payment Schedule
 Date: 18 February 2021 at 5:06:18 PM IST
 To: rkl@alpinestampings.com
 Cc: laxmikant trivedi <ltrivedi@vikarshstampings.com>

Due to covid situation our payments are delayed. We are giving assurance on our future receipts.

PERIOD	AMOUNT
BY MARCH 1 ST WEEK	30 – 35 LAKHS THROUGH LC / RTGS
BY MARCH END	20 – 25 LAKHS THROUGH LC / RTGS
BY APRIL END	BALANCE PAYMENT

Hoping for your kind co-operation.
 Thanks & Regards
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Accounts Department

VIKARSH STAMPINGS INDIA PVT.LTD.

REG. OFFICE: - SR.NO.25.HINGNE KHURD,VIJAYA CHAMBER,OFFICE NO.5 &
 6,OPP.SBI BANK, SINHAGAD ROAD, PUNE- 411051

WORKS: GATE NO 269/7 DHANGARWADI VILLAGE TAL. KHANDALA,
 SHIRWAL,DIST-SATARA 412801.

24. It is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, the Petition u/s 9 of the Code deserves to be admitted.
25. Considering the above facts, the Bench comes to conclusion that the nature of Debt is a “**Operational Debt**” as defined under section 5(21) of the Code. It has also been established that there is a “**Default**” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’, for admission of a Petition under Section 9 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
26. As a consequence, keeping the aforesaid facts in mind, it is an undisputed fact that the Petitioner has not received the outstanding amount from the Corporate Debtor and that the formalities as prescribed under the Code have been complied by the Petitioner, we are of the considered view that this Petition deserves ‘Admission’.

Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. 1038/IB/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Vikarsh Stampings India Private Limited.
- b. Since the Operational Creditor has not suggested the name of any Interim Resolution Professional (IRP) in the petition, this Bench is hereby appointing an IRP from the panel of RP's furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Vallabh Narayandas Sawana** (vallabhsawana@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-02652/2022-2023/14114 (mobile No. 7900044051) as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses only and not towards fee till his fees is decided by COC.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any

property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)