

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 14/CTB/ 2021

In the matter of:

An application 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;

-And-

In the matter of:

Rourkela Steel Syndicate, (A partnership firm represented through its partner Mr. Manish Patodia) Gaffor Colony, Opp. SBI, Udit Nagar Rourkela, Odisha-769 012;

... **Operational Creditor/Applicant**

-Versus-

Metistech Fabricators Private Limited, 47/10, Nehru Nagar (east) Bhilai, Chhattisgarh - 490 020.

... **Corporate Debtor**

Order reserved on: 09.10.2023

Order pronounced on: 01.11.2023

Coram:

Shri P Mohan Raj
Shri Kaushalendra Kumar Singh

Member (Judicial)
Member (Technical)

Counsel on Record (Through video conference)

For the petitioner : Mr. Nikhil Kumar, Adv.
Mr. Milan Negi, Adv.
Mr. Swayamjit Rout, Adv.

For the Respondent : -Nil-

ORDER

1. This application has been filed by Ms. Rourkela Steel Syndicate an unregistered partnership firm as an Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and bankruptcy Code, 2016 (Application to Adjudicating Authority) seeking to

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initiate Corporate Insolvency Resolution Process CIRP against Metistech Fabricators Private Limited, a Company registered under the provision of Companies Act, 1956.

2. This Adjudicating Authority by an order dated 09.06.2022 dismissed this petition holding that petitioner/Financial creditor being an unregistered partnership firm barred to file the petition in view of bar provided under section 69(2) of Partnership Act 1932. In an appeal preferred by the petitioner the NCLAT-Delhi in C.A.No.924 of 2022 by order dated 06.02.2023 set aside the order of this Authority dated 9.6.2022 holding that section 69(2) of Partnership Act 1932 is not attracted in the present case since the application under section 9 cannot be treated as suit. Further the NCLAT directed this Authority to revive the petition CP(IB)No.14/CB/2021 and decide the petition in accordance with law.

3. After revived the petition, petitioner and respondent counsels appeared, then after few hearings respondent side failed to appear hence notices were sent to the respondent and counsel. The counsel appeared for the respondent after the receipt of notice sent by petitioner counsel by e-mail reported by reply e-mail that he no longer represents the respondent. Notices sent to the party/respondent were served, despite of service the respondent not turned up. The reply already filed by the respondent is available on record, hence we inclined to decide the petition on merit.

4. **Brief facts of petition are as follows:** The petitioner engaged in business of supplying finished steel for fabrication purposes. In the year 2016 the respondent approached the petitioner for supply of steel. The respondent sent e-mail dated 04.08.2016 for supply of goods, it was confirmed by the petitioner by reply e-mail dated 04.08.2016 after quoting the price. The petitioner started to supply the desired goods to the respondent, in this regard 17 invoices were raised to the amount of Rs.2,00,86,015/-. The goods were supplied from Rourkela, Odisha to Bhilai, Chattisgarh, through lorries. The respondent accepted all the e-

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way bills and corresponding invoices have been duly received by the respondent. When the respondent failed to make the payments for the goods supplied, repeated requests were made through telephone and by e-mail. The respondent belatedly paid a total sum of Rs.94,67,318/-still a sum of Rs.1,06,18,697/- is due towards the principal amount and interest at 24% per annum of Rs.77,84,307/- The balance amount is confirmed by the Respondent on 01.04.2019 and 01.04.2020.The petitioner sent statutory demand notice to respondent on 13.02.2021 through an e-mail as well as by speed post. The notice sent by post was delivered on 18.02.2021. The respondent not sent any reply to the statutory notice, it shows that the respondent has committed default, hence filed this petition.

5. **Brief contents of the reply are as follows:** There is no written contract between the parties, levy of interest at 2% per month was mentioned only in the invoice dated 04.08.2016. The contention of petitioner claiming interest at 2% per month is denied. The claim of petitioner pertaining to invoices dated 05.06.2018,09.06.2018and 12.06.23018 to the extent of Rs.1,05,35,284 /-are barred by limitation. The goods that were supplied on various dates hence the date of delivery of last goods cannot be taken for limitation. The date of delivery of each item of goods to be taken separately for the purpose of limitation. After deducting the supra amount of Rs.94,67,318/-as barred by limitation, then the application is hit by section 4 of IBC 2016, since the remaining amount does not cover the threshold amount.

6. **The point for determination is:**

Whether the part of the claim amount is barred by Limitation and consequently the petition is hit by section 4 of IBC 2016?

7. The petition is filed on the strength of 17 invoices commencing from 05.06.2018 to 02.11.2018. The total value of the goods supplied under 17 invoices is Rs. 2,00,86,015/- out of which a sum of Rs.94,67,318/- has been paid by the respondent. The balance amount is Rs. 1,06,18,697/-the petitioner claims interest

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of Rs.77,84,307/- at 24% per annum and the total amount claimed as due under the petition is Rs. 1,84,03,004/-.

8. On the petitioner side stated that the goods were delivered as and when orders were placed. Thus, the respondent maintained running account and made last payment on 21.10.2020. The respondent admitted the due amount by confirmation of debt dated 01.04.2019 and 01.04.2020. This petition was filed on 21.06.2021, within the period limitation.

9. On the respondent side stated that the limitation starts from the date of delivery of materials accordingly claims pertaining to the first ten invoices dated 05.06.2018,09.06.2018 and 12.06.2018 totaling for a sum of Rs.1,05,35,284/- is barred by limitation. After deducting the supra time barred amount the balance amount is Rs.95,50,731/-, no interest to be added because there is no interest clause in the invoices and there is no agreement for payment of interest. The balance due amount is Rs.95,50,731/- is below the threshold limit prescribed under section 4 of IBC 2016 hence the petition is liable to be dismissed.

10. The contention respondent is not acceptable because the respondent confirmed the due amount in writing on 1.4.2019 & 1.4.2020, part payments were also made on 15.09.2018, 16.10.2018, 21.02.2019, 02.04.2019 & 21.10.2020. These part payments were made prior to expiry of limitation; hence these payments extended the period of limitations. Further as per Apex court Suo motu Writ petition No.3 of 2020 In Re-cognizance case by order dated 10.01.2022 the period from 15.03.2020 to 28.02 2022 to be excluded from the period of limitation. As per the said judgment petitioner is entitled to exclusion of period from 20.03.2020 to 20.02.2021. Thus, in any event no portion of claim is barred by limitation and consequently not hit by section 4 of IBC 2016. This point is answered accordingly.

11. As regards of interest is concerned the petitioner claims 24% interest per annum for the delayed payment. This is disputed by the respondent. There is no

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agreement for the payment of interest. In the invoices on the top in terms of payment it is mentioned that within 10 days, but there is no clause found regarding charging of interest for payment made after 10 days. The petitioner side relies upon e-mail dated 4.08.2016. This is the e-mail sent by the petitioner to respondent in response to the order placed by the respondent for supply of materials by e-mail 04.08.2016. In this e-mail dated 04.08.2016 sent to the respondent quantity and prices are quoted. In the said e-mail it is mentioned that for credit the interest of 2% per month extra.

12. As pointed out by the respondent in reply this is the proposal made by the petitioner while quoting the rates, but there is no proof that the proposal was accepted by the respondent, in the absence of any acceptance it is not binding upon the respondent. Further it is submitted by the respondent in reply that even if the proposal of 2% interest per month quoted in the e-mail dated 04.08.2016 is presumed to be accepted by the respondent, that acceptance will be applicable only to the payment payable to the materials supplied in pursuance of e-mail dated 4.08.2016 but it will not extend to subsequent orders placed by the respondent. In this petition 04.08.2016 invoice is not subject matter, here the petitioner claims amount from the invoice dated 05.06.2018. In all the 17 invoices filed in this petition does not speak about levying of interest, in the situation claiming interest on the basis of order placed earlier will not extend to the subsequently placed distinct and separate orders. In the absence of any written arrangement the interest claimed by the petitioner at the 24% per annum is not maintainable.

13. In this petition the principal claim by the petitioner is Rs.1,06,18,697/-. This itself satisfy the threshold amount stipulated under section 4 of IBC 2016, so disentitlement of interest by the petitioner will not stand on the way to admit the petition.

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14. In the circumstances it is answered that no amount of debt is barred by limitation and the petition is not hit by section 4 of IBC 2016.

15. In view of the answers arrived we are of opinion that the application filed by operational Creditor, is required to be admitted under section 9 (5) of the Insolvency and Bankruptcy Code 2016 and Corporate Insolvency Resolution Process to be initiated in relation to the corporate debtor. The operational creditor suggested Mr. Ajay Gupta as interim resolution professional, the same is accepted. In view thereof we pass the following order:

(i) The Corporate Debtor Metistech Fabricators Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

(a) *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;*

(b) *transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.*

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(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) Mr. Ajay Gupta having registration No. IBBI/IPA-001/IP-P00140/2017-2018/10304, having address at: 7-A, Sidhartha Extension, Pocket-B, New Delhi- 110014, email: ajaygupta1969@gmail.com to act as an Interim Resolution Professional under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any

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personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Operational Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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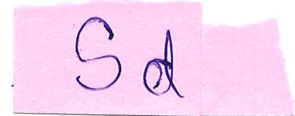
In res: Rourkela Steel Syndicate Vs. Metistech Fabricators Private Limited

16. Interim Resolution Professional shall file 1st Progress Report within six weeks from the date of this order.

17. Let the certified copy of the order be issued upon compliance with requisite formalities.



Kaushalendra Kumar Singh
Member (Technical)



P. Mohan Raj
Member (Judicial)

Signed on this, the 1st day of November 2023.

Kaushal P.s. / Supriya_P. S