



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **28.11.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/211(CHE)/2022
NAME OF THE PETITIONER(S) : Ambal Agencies
NAME OF THE RESPONDENTS : Sargam Metals Pvt Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Shri. P. Giridharan for the Petitioner.

Ld. Counsel Shri. Anirudh for the Respondent.

Vide separate order pronounced in Open Court, Corporate Debtor M/s. Sargam Metals Pvt Ltd is admitted to CIRP. Shri. K.J. Vinod is appointed as IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/211(CHE)/2022

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, RULE 6
of the Insolvency and Bankruptcy Rules, 2016)*

In the matter of M/s. Sargam Metals Private Limited.

Mr. Neeraj Agarwal,
(Proprietor of Ambal Agencies)
Registered office at 63, Srinidhi,
Thattankulam, Madhavaram,
Chennai, Tamil Nadu – 600 060.

and also residing at
T401, The Metrozone,
44, Pilliyar Koil Street,
Jawaharlal Nehru Road,
Anna Nagar, Chennai,
Tamil Nadu – 600 040

... Petitioner / Operational Creditor

-Vs-

M/s. Sargam Metals Private Limited,
Plot No. 7A, Sipcot Industrial Part,
Chellaperumbulimedu village,
Cheyyar, Tiruvannamalai,
Tamil Nadu – 631 701

... Respondent / Corporate Debtor

Present:

For Applicant : C. Thyagarajan, Advocate
P. Giridharan, Advocate
For Respondent : Nithyaesh Natraj, Advocate

Order Pronounced on 28th November 2024



CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

ORDER

(Heard through Hybrid Mode)

This Application under Section 9 of IBC has been filed by Shri. Neeraj Agarwal, proprietor of Ambal Agencies, Petitioner / Operational Creditor herein against M/s. Sargam Metals Private Limited, Respondent / Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. Part I of the Application contains the particulars of the Petitioner i.e. Shri. Neeraj Agarwal, proprietor of Ambal Agencies. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 25.05.1970 having paid up share capital of Rs. 4,50,000/- and address at plot No. 7A, Sipcot Industrial Park, Tiruvanamalai within the jurisdiction of this Tribunal. Part IV of the petition sets out the details of the debt being Rs. 4,05,86,876/- including an amount of Rs. 1,87,81,876/- towards interest and date of default as 01.07.2018. This petition has been filed on 16.08.2022. In Part III of the application, the Operational Creditor has not proposed the name of IRP.



3. It is averred in the Application that the Petitioner, engaged in the business of supply of Aluminum ingot, sheet / coil and scraps had supplied the above items to the Corporate Debtor engaged in the business of manufacturing of unitized system, semi unitized system and aluminum composite panel cladding. It raised the invoices with the Corporate Debtor which made the part payment against the goods / invoices. An amount of Rs. 2,65,00,000/- remained outstanding. Thereafter, the Petitioner entered into a memorandum of understanding with the Respondent / Corporate Debtor on 21.07.2018 whereby the remaining outstanding was transferred into a loan by the Corporate Debtor. The Corporate Debtor paid a part amount of Rs. 46,95,000/- and an amount of Rs. 2,18,05,000/- remained outstanding. He placed on record the MoU as Annexure 1, copy of ledger as Annexure II (6). It is stated that the Corporate Debtor sent a mail dated 21.05.2019 confirming the outstanding amount as per the ledger as Annexure A-II(8) and issued postdated cheques for payment of Rs. 2,15,00,000/-, however the cheques on presentation got dishonored with the remarks account closed. The Petitioner then sent a statutory demand notice dated 18.06.2022 under Section 8 calling upon the Respondent / Corporate



Debtor to make the payment. It also sent a mail but despite service, the Corporate Debtor did not make the payment. In part V of the petition, the Petitioner enclosed the copy of the documents as referred above. It is stated that as per the MoU, the Corporate Debtor was liable to pay an interest at the rate of 18% per annum on the outstanding amount with annual rest.

4. We have heard Ld. Counsels for the parties.

5. Ld. Counsel for the Respondent submits that the Petitioner had earlier filed an application under Section 7 of IBC vide IBA/64/2020 which was dismissed on 14.09.2021 on the ground that the Petitioner does not qualify to be Financial Creditor. The Tribunal while dismissing the petition did not grant any liberty to the Petitioner to file a petition under Section 9 of IBC. It is stated that the Petitioner does not disclose this fact in the petition and is thus guilty of suppression of facts.

6. Ld. Counsel further submits that the alleged invoices as could be seen from the annexures were raised between 19.07.2016 and 14.10.2017. The MoU was entered into on 21.07.2018. Ld. Counsel submits that in



the petition, the due date has been mentioned as 01.07.2018 which is taken as the date of default. The petition has been filed on 16.08.2022 and is thus barred by limitation which is three years from the date of default.

7. Ld. Counsel submits that in the Rejoinder, the Petitioner stated the date of default as 16.06.2021, the date when the cheques issued by the Corporate Debtor for the said sum were dishonored, thus tried to set up altogether a new case. Ld. Counsel submits that mere issuance of cheques would not extend the limitation. Ld. Counsel referred the case of *Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 2024* to contend that any attempt to set back the date of default is plainly untenable and is contrary to the disclosure made in the demand notice. This dictum was also followed in the case of *Ramdas Dutta Vs. IDBI Bank & Ors. (Relevant Para 19) and Yatra Online Limited Vs. Ezeego One Travel and Tours Limited (Relevant Paras 16-18)*. Further he referred the order of this Tribunal in the case of *M/s. Asia (Chennai) Engineering Company Pvt. Ltd Vs. M/s. Jayabheri Properties Private Limited* which is also directly relevant to



the facts of the case and the relevant portion of the said judgment is extracted hereunder:

“22. We may mention that this application for amendment has been filed after the entire pleadings in the petition are completed. The rejoinder was filed on 11.07.2023 and at that time the applicant / petitioner did not take a plea that the date of default mentioned in Form 5 was a mistake on the part of the applicant. In this case, in Form 3 demand notice the date of default was stated as 07.06.2019 but in Form 5 the date of default is stated as 24.01.2022. It is well settled law that amendment can be allowed to avoid multiplicity of proceedings provided the amendment does not result in injustice to the other side or where the amendment is sought to introduce an additional or a new fact or the amendment changes the nature of the suit or the cause of action. In the case of Ramesh Kymal supra it was held that an attempt to set back the date of default to either 21.01.2020 or 23.03.2020 is plainly untenable for the reason that it is contrary to the disclosure made by the appellant in the demand notice which has been issued in pursuance of the provisions of Section 8(1) and Section 9 of the IBC.”

8. Further, he also referred the order of Hon’ble Supreme Court in the case of **Sant Lal Mahton Vs. Kamala Prasad 1951 SCC 1008** where it was held as under.

“11. It would be clear, we think, from the language of section 20 of the Limitation Act that to attract its operation two conditions are essential: first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. We agree with the Subordinate Judge that it is the payment which really extends the period of limitation under section 20 of the Limitation Act; but the payment has got to be proved in a particular way and for reasons of policy the legislature insists on a written or signed acknowledgment



as. the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail."

9. Ld. Counsel submits that the Petitioner has not spelt out how he is an Operational Creditor under IBC as the MoU dated 21.07.2021 characterizes the transaction as a fresh loan. Ld. Counsel submits that each of the invoices have separate due dates and the date of default has to be determined with reference to each invoice. Ld. Counsel submits that the Petitioner has already filed a complaint under Section 138 of Negotiable Instrument Act, 1881 for the alleged dishonored cheques.

10. Ld. Counsel for the Petitioner per contra submits that the goods were supplied during the period from 2016-17 and accordingly the Petitioner had raised the invoices. The Corporate Debtor had made the part payments against the invoice, leaving a balance of Rs.2,65,00,000/-. The Corporate Debtor then entered into MoU for the said sum on 21.07.2018 admitting the liability and paid Rs. 25,00,000/-. It failed to adhere to the terms of the MoU. The last payment was made on 30.07.2019 for Rs. 1,80,000/-. Ld. Counsel submits that due to oversight



and inadvertence, the Petitioner failed to disclose the details of the earlier proceedings. Ld. Counsel submits that the Corporate Debtor had issued five cheques on 16.06.2021 admitting the liability which got dishonored. Ld. Counsel submits that acknowledgment was made within the period of three years from the date the debt became due and as such the petition is within the limitation. He referred the case of **Lakshmi Pat Surana Vs. Union Bank of India and Ors, MANU/SC/0221/2021** where it was held as under.

"Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability."

11. Ld. Counsel submits that the Hon'ble NCLAT in the case of **Rajendrakumar Kundanmal Jain Vs. Vijal A. Jain and others (2021 SCC Online NCLAT 175)** has held that issuance of cheque amounts to acknowledgment of debt, although the cheque dishonored for the reason payments stopped by the drawer. He also referred the case of



ACI Wonderwood Product Vs. Ad Mart Pvt. Ltd, 2021 SCC Online NCLT

2823. Ld. Counsel referred Section 3(12) of IBC to submit that a default occurs only when the amount becomes due and the same is not paid by the Debtor. The date of default in the present case is 16.06.2021 when the five cheques were issued towards partial discharge of debt and not 01.07.2018 as alleged by the Corporate Debtor.

12. We have given thoughtful consideration to the rival contentions and perused the record.

13. It is not in dispute that the Petitioner had supplied aluminum strips, coils and other products to the Corporate Debtor and raised various invoices during the period from 2016-17. The Petitioner has placed on record the copy of the invoices. Against the invoices, the Corporate Debtor made the part payment and as on 21.07.2018, a sum of Rs. 2,65,00,000/- remained outstanding. It is not the case that the Corporate Debtor made the payments invoice wise. Record shows that the Corporate Debtor had made on account payment towards the invoices. The Corporate Debtor while entering into MoU on 21.07.2018



had admitted the liability towards the Petitioner. The MoU / acknowledgment in the MoU was within the period of three years from the date the payment became due against the invoices. The Petitioner in the present case in part IV has given the due date as per the MoU as 01.07.2018 taking the date as the date of default.

14. It is also not in dispute that after the MoU, the Corporate Debtor made the part payment of Rs. 46,95,000/- leaving a balance of Rs. 2,18,05,000/- against which it issued cheques on 16.06.2021 which on presentation got dishonored with the remarks account closed. The said cheques were issued within the period of three years from the date the parties entered into MoU / part payments made.

15. Hon'ble NCLAT in the case of *Rajendrakumar Kundanmal Jain Vs. Vijal A. Jain and others (2021 SCC Online NCLAT 175)* has held that issuance of cheque amounts to acknowledgment of debt, although the cheque dishonored for the reason payments stopped by the drawer which was also reiterated in the case of *Laxmi Pat Surana Vs. Union Bank of India (2021) 8 SCC 481*.



16. Though, the Petitioner in the Rejoinder alleged the date of default as 16.06.2021 when the cheques were issued but even if the date mentioned in the petition as 01.07.2018 is taken as the date of default, the petition is within the limitation in view of the judgment of Hon'ble Supreme Court in *Suo Moto Writ Petition (Civil) No. 3 / 2020* whereby the Petitioner is entitled to benefit of limitation for the period from 15.03.2020 till 28.02.2022. Taking this fact into account, the petition having been filed on 16.08.2022 cannot be said to be barred by limitation.

17. Now coming to the contention that the Petitioner had earlier filed the petition under Section 7 of IBC which fact the Petitioner suppressed in the present petition, Ld. Counsel for the Petitioner has submitted that due to inadvertence and oversight, the factum of filing and dismissal of the petition could not be disclosed in the petition. It is pertinent to mention that this Tribunal in its order dated 14.09.2021 on the petition filed under Section 7 of IBC on 24.12.2020 dismissed the petition holding that the Petitioner is not a Financial Creditor in relation to the Corporate Debtor.



18. There is no denial of the fact that the Petitioner had supplied the goods to the Corporate Debtor and raised the invoices. The Corporate Debtor made the part payments and a sum of Rs.2,65,00,000/- became due on 01.07.2018 on which date the parties entered into a MoU. The nature of transactions which happened between the parties clearly shows that the Petitioner is an Operational Creditor and not a Financial Creditor in view of Section 5(8) of IBC. Before filing this petition, the Petitioner had sent a notice under Section 8 of IBC which the Respondent despite service did not reply. The operational debt in the present case is more than one crore. The petition is within the limitation. No disputes have been raised by the Respondent / Corporate Debtor as to the quantity / quality of goods supplied by the Petitioner to the Corporate Debtor.

19. We are of the view that the petition meets all the requisites of Section 9 of IBC. As regards suppression of facts about the dismissal of earlier petition, the said petition was filed under Section 7 of IBC. After the order dated 14.09.2021, the present petition has been filed under Section 9 of IBC which is also within the limitation from the date the



debt became due / acknowledged. The dismissal of earlier petition cannot be said to be a ground for not entertaining this petition. The Petitioner has explained that due to oversight and inadvertence, the petition under Section 7 was filed which should have been filed under Section 9 of IBC.

20. In the light of above discussions, we admit the petition and order for initiation of CIRP against the Corporate Debtor.

21. In the present case, the Operational Creditor has not named the Insolvency Resolution Professional in Part – III of the Application and accordingly this Tribunal appoints **Mr.K.J.Vinod** with *Registration No: IBBI/IPA003/ICAI-N00291/2020-2021/13451* (*email id: kjvinod05@rediffmail.com*) who is having Authorization for Assignment till **30.06.2025** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of



Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

22. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other



law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

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

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in



consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6



of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)