

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

C.P. No. 351 of 2018

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

Shree Satya Minerals Private Limited,

Having its registered office at: 9B, Shree Krupa, 19A Road,
Anand Vihar CHS Ltd., Khar (W), Mumbai- 400052.

.....Petitioner/Operational Creditor

V/s.

M/s. Perfect Engineering Products Limited,

(CIN: U28920MH1964PLC012880)

Having its registered office at: 1101 Viraj Towers, Andheri-
Kurla Road Junction, Western Express Highway, Andheri
(E), Mumbai- 400069.

.....Respondent/Corporate Debtor

Reserved for order on: **23.08.2022**

Order Pronounced on: **11.10.2022**

Coram: Hon'ble Shri H.V. Subba Rao, Member (Judicial)

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

For the Petitioner: Mr. Sandesh R. Shukla, Advocate

For the Respondent: Mr. Ayush Rajani, PCA

Per: Hon'ble Shri H.V. Subba Rao, Member (Judicial)

1. This Company petition is filed by Shree Satya Minerals Private Limited (hereinafter called "Petitioner") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Perfect Engineering Products Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 8 & 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority claiming that the Corporate Debtor failed to make the payment for a sum of Rs. 76,01,262/-(Rupees Seventy-Six Lakhs One Thousand Two Hundred and Sixty Two Only) along with an interest @ 18% per annum (Rs 27,36,454.68/-).
3. The Corporate Debtor filed a detailed reply dated 03.01.2020 opposing the above Company Petition for which the Operational Creditor also filed rejoinder dated 09.03.2021 along with certain documents.
4. Heard the argument of Mr. Sandesh R. Shukla, Counsel appearing for the Petitioner and Mr. Ayush Rajani, Professional appearing for the Corporate Debtor and perused the material available on record.
5. Before going into the merits of the matter, it is very important to briefly mention the chequered career of the above Company Petitioner, since this is the third round of litigation. Initially, the Petitioner filed a Petition before the Hon'ble Bombay High Court under Section 434 (a) of the Companies Act, 1956 on 14.07.2015, thereafter with the enforcement of the Insolvency and Bankruptcy Code, 2016 (hereinafter as Code) w.e.f. 01.12.2016 and vide a Notification viz. 'Transfer of Pending Cases with High Court' dated

07.12.2016, this Petition got transferred to this Bench of NCLT for further proceedings under provisions of the Code.

6. Thereafter, the above-mentioned transferred Company Petition was abated and disposed of by the then NCLT, Division Bench comprising of Hon'ble Bhaskar Pantula Mohan, Member (Judicial) and Hon'ble M.K. Shrawat, Member (Judicial) vide its order dated 06.09.2017 with the following observations which are extracted hereunder for ready reference:

"2. The admitted factual position is that due compliance as per the Code has not been made so far by the Petitioner, hence in view of the Notification No. GSR-732(E) dated 30.06.2017, the last date for compliance was 15.07.2017, therefore, the transferred Petition from the Hon'ble High Court stood abated.

3. However, as per the 1st Proviso to the Notification, liberty is granted to the Petitioner to file Fresh Petition as prescribed under the Code."

FINDINGS

7. As mentioned above, the Corporate Debtor is resisting the admission of the above Company Petition primarily on the ground of Limitation and also on the ground of pre-existing disputes between the parties.
8. Let us deal with the plea of limitation raised by the Corporate Debtor. It is the contention of the Corporate Debtor that the claim arises out of the invoices pertaining to the period of 2011-2012 and the present company petition being filed in 2018 is barred by limitation. It is his further contention that the earlier Company Petition filed by the

Petitioner was abated for not complying the provisions of IBC after transfer of the above winding up petition from Hon'ble Bombay High Court and therefore the present petition cannot circumvent the law of limitation.

9. In order to examine the issue of limitation, it is observed that a meeting had taken place between the representatives of the Corporate Debtor and the Operational Creditor on 07.12.2012 in which both parties after negotiations resolved the following. The relevant minutes of the meeting is extracted hereunder;

Annexure II 'b'

PERFECT ENGINEERING PRODUCTS LIMITED

PLOT NO. 172, TUNGARLI, LONAVLA,

DISTRICT- PUNE

02114 270673 / 270674

E-mail-pepp@pn2.usnl.net.in

Minutes of meeting between Perfect Engg. Products Ltd. And Shree Satya Minerals Pvt Ltd. Regarding payments of their old dues, resumption of supplies and the mode of payment against these supplies.

Old outstanding comprises of Rs. 70,45,702 towards Material Supplies and Rs. 7,73,417 towards amount debited by LKB for recovery of interest/penal interest/service charges from Shree Satya Minerals under BDCC scheme.

A. *Old Outstanding Rs. 78,19,119/-*

Payments Schedule

December, 2012 Rs. 20,00,000/-

January, 2013 Rs. 20,00,000/-

February, 2013 Rs. 20,00,000/-

March, 2013 Rs. 18,19,119/-

(Rs. 4 to 5 lacs per week will be paid from 10 dec 2012)

B. New Supplies : Basic Rate Rs. 11/Kg + E.D. + VAT

<i>December, 2012</i>	<i>4 Trucks (60 tons)</i>	<i>Rs. 8,34,272/-/-</i>
<i>January, 2013</i>	<i>8 Trucks (120 tons)</i>	<i>Rs. 16,68,544/-</i>
<i>February, 2013</i>	<i>8 Trucks (120 tons)</i>	<i>Rs. 16,68,544/-</i>
<i>March, 2013</i>	<i>10 Trucks (150 tons)</i>	<i>Rs. 20,85,680/-</i>
	<i>Total</i>	<i>Rs. 62,54,040/-</i>

New Supplies will be made against 120 days PDC initially and try to bring it down to 90 days. Review in January, 13 to bring down to 60 days depending on market situation.

Amrish Shah

Perfect Engg. Products Ltd

07/12/12

Kunal Janwalikar/E.K. Merchant

Shree Satya Minerals pvt Ltd

10. Thereafter, the Operational Creditor got issued legal notice on 06.05.2015 for winding up under section 434 of the Companies Act for which there was no reply on behalf of the Corporate Debtor. Thereafter, the Operational Creditor filed winding up petition before the Hon'ble Bombay High Court in 2015 which was transferred to this Tribunal after establishment of NCLT.

11. The Operational Creditor had annexed the following email dated 02.02.2015 to the company petition.

From: "Amrish Shah" <avshah@perfectenginecomponents.com>

Date: 2 February 2015 6:16:04 pm IST

To: <satish@shreesatya.com>

Cc: "AMBRISH SHAH" <avshah@perfectenginecomponents.com>

Subject: Payment & restarting of supplies

Dear Satish,

This mail is regarding the payment of the overdue outstanding of Shree

Satya as well as restarting of supplies at the agreed price as per our various discussions.

Once again I apologise for the severe delay in completing the paying of the dues owed to your company. However I would like to assure you inspite of the continuing overall severe recessionary atmosphere in the automotive sector, we have been able to make arrangements to start making payments monthly as per following.

Your total outstanding was Rs. 80 Lacs, against which payment of Rs. 5 Lacs made on 29th Jan 15. We shall make payment of Rs. 7 Lacs in Feb & March 2015. We shall make a payment of Rs. 24 Lacs in April. This totals Rs. 38 Lacs, which clears 50% of your old outstanding as on date being 76 Lacs. Balance 36 Lacs will be cleared in 4 equal installments of May, June, July & August 2015

Once again I apologise for this delay and also re-assure you of our intensions of meeting above payment commitment.

Further as discussed we can resume supplies as per the following agreed price & terms

a) Price - Rs. 9.40 per kg + Excise + Tax

b) Delivery - Ex our factory Lonavala

c) Payment terms prior to shipment. -Advance against proforma

We are sending the purchase order as per above terms. Once again sincerely request you to accept the price of Rs. 9.40/ Kg for production supplies as well.

We thank you for your understanding and assure you of our sincere intent to overcome the current problem between our two companies

and take it back to the same level as we have enjoyed in this 25 years of our relationship.

*Best Regards,
Ambrish Shah*

12. It is very clear from the above e-mail that the Corporate Debtor had once again acknowledged the debt on 02.02.2015 and the above Company Petition can be filed within 3 years from 02.02.2015 i.e. on or before 01.02.2018. In addition to the above as rightly contended by the Petitioner the time spent by the Petitioner in prosecuting the winding up petition before the Hon'ble Bombay High Court till its dismissal on 06.09.2017 has to be excluded under Article 14 of the Limitation Act as per the law laid down by the Hon'ble Supreme Court in the case of *Seth Nath Singh and Another Versus Baidyabati Sheoraphuli Co-operative Bank Limited and Another in Civil Appeal No. 9198 of 2019*.
13. Apart from the above, this Tribunal while dismissing the early Company Petition granted liberty to the Petitioner to file fresh Petition after issuing demand notice and therefore the question of limitation does not arise in this case. Nothing prevented the corporate debtor from preferring an appeal against the order dated 06.09.2017 in granting liberty to the Operational Creditor to file fresh petition while dismissing the company petition as abated. Accordingly, the above Company Petition being filed on 06.03.2018 is within limitation.
14. The next issue is with regard to the pre-existence of disputes. In this regard, it is important to observe here that the Operational Creditor has got issue a legal notice before filing winding up petition before the Hon'ble Bombay High Court for which the Corporate Debtor did not choose to even send any reply. Even otherwise, the Corporate Debtor having admitted the liability through the minutes

of meeting dated 07.12.2012 as well as email dated 02.02.2015 is estopped from raising the issue of quality of goods and thus this bench is of the considered opinion that the above plea of pre-existence of disputes raised by the Corporate Debtor is a *palpable* defence that does not require any further investigation and is liable to be rejected.

15. For the aforesaid reasons, this bench is of the opinion that the above company petition is liable to be admitted and accordingly, the above Company Petition is admitted by passing the following;

ORDER

- a. The above Company Petition No. (IB) 351 (MB)/2018 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Perfect Engineering Products Limited.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Vikas Prakash Gupta (vikas.gupta@bngca.com)**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00501/2017-18/10889 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 Lakhs 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 and not towards fee till his fee 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)**

----Renuka----

SD/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**