

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**CP (IB) No.1219/MB/2022**

*[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:

**RALCO EXTRUSION PRIVATE LIMITED**

[CIN: U27107MH2011PTC220564]

**Registered Office:** Office No. 59, 2<sup>nd</sup> Floor

Balkrishna Niwas, 2<sup>nd</sup> Panjrapole Lane

Mumbai-400004, Maharashtra.

**...Operational Creditor**

V/S

**CENTECH ENGINEERS PRIVATE LIMITED**

[CIN: U29190MH2005PTC150911]

**Registered Office:** Flat No.103 Regency

A-Wing, Sec No.3A Plot No.146

Kandivali(W), Mumbai-400055

Maharashtra.

**...Corporate Debtor**

**Pronounced:17.04.2024**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances : Hybrid**

Operational Creditor: Adv. Vedchetan Patil a/w. Sunayana Kashid

Corporate Debtor : Adv. Kingston D'Souza.

**ORDER**

***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]***

**1. BACKGROUND**

- 1.1 This Application bearing C.P.(IB) No.1219/MB/2022 was filed by Ralco Extrusion Private Limited, the Operational Creditor on 05.03.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Centech Engineers Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor is engaged in the business of supplying various Aluminium products. The Corporate Debtor has been procuring various Aluminium profiles and sections from the Operational Creditor against purchase orders issued from time to time. The Operational Creditor raised invoices against supply of goods to the Corporate Debtor. However, the Corporate Debtor failed to pay the outstanding dues for certain invoices to the Operational Creditor.
- 1.3 An amount of Rs.8,00,000/- was due to the Operational Creditor from the Corporate Debtor for pending invoices as on 25.10.2016, which is mentioned as the date of default in Part-IV of the Application. Additionally, the Operational Creditor has claimed interest of Rs.13,76,452/- at the rate of 24% per annum from the due date of invoices until 15.01.2022, bringing the total operational debt to Rs.21,76,452/- (Twenty-One Lakh Seventy-Six

Thousand Four Hundred and Fifty-Two Rupees) owed by the Corporate Debtor.

- 1.4 The Operational Creditor issued a Demand Notice dated 05.02.2020 to the Corporate Debtor, as required under Section 8 of the Code, seeking payment of the outstanding operational debt within 10 days of receiving the notice. In response, the Corporate Debtor sent a letter dated 19.02.2020 disputing the claim of the Operational Creditor. No payment was made by the Corporate Debtor. Consequently, the Operational Creditor preferred the present Application seeking commencement of CIRP in respect of the Corporate Debtor.

## **2. AVERMENTS OF THE OPERATIONAL CREDITOR**

- 2.1 Since December 2014, the Corporate Debtor has been placing purchase orders for various Aluminium products, which have been duly delivered to their factory/unit at Chintu Pada. The details of the purchase orders are as under:

<b>S. No.</b>	<b>Purchase Order No.</b>	<b>Date of Purchase Order</b>	<b>Amount (Rs.)</b>
1	41/FAC/16-17	15.10.2016	8,07,084/-
2	59/FAC/17-18	18.05.2017	1,11,475/-

- 2.2 The Operational Creditor raised following three invoices on the Corporate Debtor for the supply of aluminium profiles and sections:-

- a) Invoice No. 160 dated 09.12.2014 for an amount of Rs.2,45,187/-
- b) Invoice No. 229 dated 18.10.2016 for an amount of Rs.9,03,631/-
- c) Invoice No. 78 dated 22.05.2017 for an amount of Rs.70,955 /-

- 2.3 The Corporate Debtor paid an amount of Rs.2,50,000/- on 02.12.2014 which was adjusted against Invoice No.166 dated 09.12.2014 leaving an outstanding advance of Rs.4,813/-. Subsequently, the Operational Creditor raised Invoice No.229 dated 18.10.2016 for an amount of Rs.9,03,631/- against Purchase Order dated 15.10.2016. The said goods were delivered to the Corporate Debtor and the same were accepted by the Corporate Debtor without raising any dispute over the quantity and quality of the goods. The total outstanding as on 31.03.2017 due from the Corporate Debtor was Rs.8,98,818/- (Rs.9,03,631- Rs.4,813).
- 2.4 Thereafter, the Corporate Debtor raised another purchase order dated 18.05.2017 for supply of certain Aluminium products which were supplied *vide* invoice dated 22.05.2017 for an amount of Rs.70,955/-. The Corporate Debtor made payment of Rs.70,955/- on 07.06.2017 towards the said invoice. Thereafter, on 04.07.2017, the Corporate Debtor made a part payment of Rs.98,818/- towards the invoice dated 18.10.2016. Consequently, the principal outstanding amount due and payable by the Corporate Debtor worked out to Rs.8,00,000/-. The Operational Creditor *vide* letter dated 04.09.2019 sent a balance confirmation as on 31.08.2019 to the Corporate Debtor, which was never disputed by the Corporate Debtor. Despite repeated reminders by the Operational Creditor, the Corporate Debtor failed to make further payments.
- 2.5 Thus, the outstanding principal debt owed by the Corporate Debtor amounted to Rs.8,00,000/- as on 15.01.2022, which is borne out from the ledger account maintained by the Operational Creditor. Further, as per the terms of contract, the Corporate Debtor was liable to pay interest at the rate

of 24% per annum after the due date of respective invoices. Thus, the total amount of interest on the outstanding invoices has been calculated by the Operational Creditor as Rs.13,76,452/- as on 15.01.2022. Consequently, the Corporate Debtor owed an operational debt of Rs.21,76,452/- to the Operational Creditor.

2.6 A Demand Notice under Section 8 of the Code dated 05.02.2020 was issued by the Operational Creditor and served on the Corporate Debtor. The Corporate Debtor replied to the said notice *vide* letter dated 19.02.2020 by merely denying the claim but failed to bring any proof of pre-existing dispute between the parties. Nor did the Corporate Debtor produce any proof of payment made towards the invoices under which the debt was owed and claimed by the Operational Creditor.

2.7 It is submitted that the default occurred for the first time on the date on which the respective invoices were raised by Operational Creditor and when last payment was received from the Corporate Debtor. The Operational Creditor submits that the present Application is filed within limitation period as limitation period was suspended by the Hon'ble Supreme Court from 23.03.2020 till the date of filing of the present Application as per various orders passed by the Hon'ble Supreme Court in *Suo-Motu* Writ Petition No.3/2020.

### **3. CONTENTIONS OF CORPORATE DEBTOR**

3.1 The Corporate Debtor in its oral submissions on 04.01.2024 and written submissions dated 18.01.2024 has vehemently challenged the maintainability of the present Application. As stated above, the present

Application was filed by the Operational Creditor on 05.03.2022. The alleged debt claimed by the Operational Creditor is Rs.21,76,452/- inclusive of interest. However, existence of any debt is denied by the Corporate Debtor. The Corporate Debtor has invited attention to Notification No.1205(E) dated 24.03.2020 issued by the Central Government under which the minimum amount of default for the purposes of Section 4 of the Code was specified at Rs.1 Crore. It is submitted that the present Application was filed on 05.03.2022 which was almost two years after the said Notification dated 24.03.2020. The Corporate Debtor strongly contends that the alleged default amount falls below the threshold of Rs.1,00,00,000/- (One Crore Rupees), rendering it insufficient to meet the mandatory requirement under Section 4 of the Code.

3.2 The Corporate Debtor has relied on the following judgments of Hon'ble NCLAT wherein it has been repeatedly held that a Company Petition filed after 24.03.2020 which does not fulfil the threshold limit of Rs.1 Crore has to be rejected:-

(i) **Rajesh Sabharwal v. Desein Pvt. Ltd.** [Judgment dated 08.08.2023 in CA (AT)(Ins.) No.773 of 2021]

(ii) **Hyline Mediconz Pvt. Ltd. v. Anandaloke Medical Centre Pvt. Ltd.** [Judgment dated 20.09.2022 in CA (AT)(Ins.) No.1036 of 2022]

Further, referring to the aforesaid judgments, the Corporate Debtor asserts that the date of service of the Demand Notice under Section 8 of the Code holds no significance if the default amount is below One Crore Rupees at the time of filing the Application and that no application could have been

initiated after 24.03.2020, irrespective of the date of default if the threshold of One Crore Rupees is not fulfilled.

3.3 Objecting to the Operational Creditor's Written Submissions, the Corporate Debtor argues that said submissions were filed without permission from the Tribunal and beyond the granted time limit. Further, the Corporate Debtor submits that the Operational Creditor has sought to misguide this Tribunal. Instead of candidly disclosing that the present Application has been heard only on maintainability under Section 4 of the Code, the Operational Creditor has sought to deal with the merits of the case which are not relevant at this stage and are denied by the Corporate Debtor. The Operational Creditor has deliberately not disclosed the date of filing of the Application and the fact that the present stage is restricted only to the maintainability of the Application under Section 4 of the Code. The Corporate Debtor reserves its right to file a Reply and deal with the merits of the case at a later stage, if necessary.

3.4 Additionally, the Corporate Debtor disputes the applicability of judgments cited by the Operational Creditor such as the order of NCLT, Kochi Bench in *Tharakan Web Innovations Pvt. Ltd. Vs. Cyriac Njavally* which was set aside by the Hon'ble High Court of Kerala on 01.02.2022 in W.P.(C) No.27636 of 2020 and 14158 of 2021 and *Vishal Agrawal Vs. ICICI Prudential Real Estate AIF-I & Anr.* which is distinguishable from the present case. It is further submitted that these two cases were never produced or relied on by the Operational Creditor during the course of arguments and hence cannot be considered without the Tribunal's permission.

**4. ANALYSIS AND FINDINGS**

- 4.1 Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor and the Corporate Debtor, our findings in the matter are as under:-
- 4.2 At the outset, it is proposed to deal with the preliminary issue of maintainability of the present Application so vociferously raised by the Corporate Debtor in view of the amount in default being far below the minimum threshold limit as mandated under Section 4 of the Code, because it goes to the root of the matter. In this connection, it is noted that the Ministry of Corporate Affairs, exercising its powers had issued a Notification No.1205(E) dated 24.03.2020 by which the pecuniary jurisdiction of this Tribunal to trigger CIRP under the Code was enhanced from Rs.1 lakh to Rs.1 crore. It is a matter of record that the present Application was filed on 05.03.2022 which was nearly two years after the said Notification came into effect. It is noticed from the record that the amount of debt claimed to be in default as per Part-IV of the Application is Rs.21,76,452/- which is much less than the threshold limit of Rs.1 Crore as prescribed under Section 4 of the Code.
- 4.3 It is now settled that the threshold limit of Rs.1 crore will be applicable for applications filed under Sections 7, 9 and 10 on or after 24.03.2020, even if the debt in default is on a date earlier than 24.03.2020. From the said date of amendment, Part II of the Code can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 crore. Moreover, the threshold of Rs.1 crore has to be fulfilled by an applicant under Section 7 or Section 9 on the date of filing of the application. The fact that default was committed prior to 24.03.2020 and the statutory

notice under Section 8 was issued and served prior to 24.03.2020 are not determinative or material, although these are conditions precedent for filing an application under Section 9 of the Code. What is relevant for determining the minimum threshold is not the date of giving notice under Section 8 but the date when the application is filed. Thus, Part II of the Code becomes applicable and an operational creditor can initiate CIRP against the corporate debtor w.e.f. 24.03.2020 only when the amount of default is Rs.1 crore or more. No application can be initiated after 24.03.2020 irrespective of the date of default if the minimum threshold of Rs.1 crore is not met.

4.4 Merely because the Demand Notice in the present case was served on the Corporate Debtor on 10.02.2020 i.e., before 24.03.2020, it will not be a relevant or crucial factor in determining the maintainability of the present Application filed on 05.03.2022 i.e., after almost 2 years of the Notification dated 24.03.2020. The amount in default in instant case being less than Rs.1 Crore, we are satisfied that the present Application fails to fulfil the monetary threshold limit laid down under Section 4 of the Code and is accordingly not maintainable under Section 9 of the Code. Hence, it is liable to be dismissed on this ground alone. In view of this position, we do not propose to examine the merits of the case.

### **ORDER**

In view of the aforesaid findings, this Application bearing C.P.(IB) No.1219/MB/2022 filed under Section 9 of the Code by Ralco Extrusion Private Limited, the Operational Creditor, for initiating CIRP in respect of Centech Engineers Private Limited, the Corporate Debtor is **rejected**.

However, the rejection of this Application shall not cause any prejudice to the right of the Applicant to pursue such other remedies as may be available in accordance with law.

**Sd/-  
SANJIV DUTT  
MEMBER (TECHNICAL)**

**Sd/-  
K. R. SAJI KUMAR  
MEMBER(JUDICIAL)**

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