

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

**C.P. No. 1062/IBC/MB/2023**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016  
*In the matter of*

**VINAYAK TRADING CORPORATION**

Having registered office at:  
Shop no. 1, KH No. 238, NH 69, Saoner  
Road, Village: Manegaon, Tal: Saoner,  
Dist. Nagpur 441 107.

... Operational Creditor/Petitioner

Vs

**NANDANA METALS AND MINING  
LIMITED**

(CIN: U46620MH2021PLC362628)  
Registered office at: 501-E, 5<sup>th</sup> floor,  
Poonam Chambers, A-Wing, Dr. Annie  
Besant Road, Worli, Mumbai 400 018.

... Corporate Debtor

**Order delivered on: 13.03.2024**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance :-**

For the Operational Creditor : Mr. Rohit Gupta, Advocate

For the Corporate Debtor : Mr. Eashna Kumar, Advocate

*[Per: Justice (Retd.) V. G. Bisht, Member (J)]*

1. This is an application filed by Operational Creditor/Applicant under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IB Code"

for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

**Brief facts:-**

2. The Operational Creditor is involved in the business of wholesale and retail supply of TMT Bar, Cement, Sand Metal, Coal in and Building Material etc. Operational Creditor is also engaged as Goods Transport Agency (GTA) for transportation of goods.
3. The Corporate Debtor (formerly known as “**Winbuuild Metals Private Limited**”, on the other hand, is engaged in the business of import, export and commercial transaction dealings of all kinds of metal, iron, steel, coal carbon chemicals, petroleum and other allied items and industrial raw materials.
4. The Corporate Debtor vide Business Transfer Agreement dated 31<sup>st</sup> July, 2021 entered into between the Corporate Debtor (in capacity of the transferee) agreed and has taken over the business of Shree Balaji Tradelinks, which was engaged in the business of trading of coal, steel and chemical and other related goods, identical as the Corporate Debtor’s. The said business was acquired by the Corporate Debtor as a going concern, and the Corporate Debtor had also agreed to acquire the whole business including assets and liabilities of the transferor entity as well as all business contracts including all benefits and obligations there under.
5. According to the Operational Creditor the Corporate Debtor in view of the business transaction with Shree Balaji Tradelinks the Corporate Debtor was replaced to provide

necessary materials, such consumables and services as required by the Operational Creditor, even after the execution of the Business Transfer Agreement dated 31<sup>st</sup> July, 2021. Accordingly, the Operational Creditor had paid an advance amount of tune of Rs. 9,60,47,253/- to the Corporate Debtor from the period starting 16.05.2020 till 17.08.2020. However, the Corporate Debtor has only supplied the material worth Rs. 5,30,86,667.98/- (Rupees Five Crores Thirty Lakhs Eighty-Six Thousand Six Hundred Sixty-Seven and Ninety-Eight Paise Only) and inspite of multiple reminders, failed to supply the material against the outstanding advance amount as remitted by the Operational Creditor.

6. According to the Operational Creditor, suddenly on 18.05.2021 the Corporate Debtor transferred Rs. 5,00,000/- to it and Rs. 2,00,000/- which was transferred by it on 15.08.2021. However, Corporate Debtor miserably failed to honour the demand of the Operational Creditor to supply the materials. Accordingly, demand notice dated 18.08.2021 was served on the Corporate Debtor which was dully replied by the letter on 04.11.2022.
7. The Operational Creditor therefore claims Rs. 4,24,60,585.02/- i.e. the amount of default and same failed due on 18.08.2020 onwards and acquired for the financial year 2021-2022.
8. The Corporate Debtor has resisted the claim by filing affidavit-in-reply. The preliminary objections raised the by the Corporate Debtor are three-fold. First, outstanding

dues does not come in the definition of the list of Operational debt as per the I & B Code. Second, the alleged default is for a period for which no application can be filed for initiation of Corporate Insolvency in accordance with Section 10A of the Code and, third Form-3 demand notice does not provide exact date of default which is mandatory under the law.

9. Apart from the objection in law, the Corporate Debtor also claims about the existence of dispute between the parties. Therefore, on all these grounds petition is liable to be dismissed, contends Corporate Debtor.
10. The Operational Creditor and Corporate Debtor have filed the written submissions in support of their respective case. Perused.
11. We have heard Mr. Rohit Gupta, learned Counsel for Operational Creditor and Mr. Eashna Kumar, learned Counsel for Corporate Debtor. Learned Counsel have advanced submissions in the lights of pleadings and the documents in support thereof.
12. The Operational Creditor has come with a very specific case that it had entered into business transaction with Shree Balaji Tradelinks (hereinafter referred as "SBT" for short) whereby SBT had agreed to supply TMT Bars etc. against the amounts advanced by the Operational Creditor. Later on, Operational Creditor advanced payment of Rs. 9,60,47,252/- to SBT between 16<sup>th</sup> May, 2020 and 17.08.2020 for the supply of said materials. However, as

per Operational Creditor the SBT had only supplied the goods worth Rs. 5,30,86,667.98/- till 31<sup>st</sup> March, 2021.

13. It is further case of the Operational Creditor that vide Business Transfer Agreement dated 31<sup>st</sup> July, 2021 the Corporate Debtor (*formerly Winbuuild Metals Private Limited*) acquired the whole business of SBT as a going concern, including its assets and liabilities and therefore became responsible for the supply of the remaining goods to the Operational Creditor against the outstanding dues of Rs. 4,24,60,585.02/-. The Operational Creditor has filed the said agreement dated 31.07.2021 on record.
14. We have carefully gone through the said agreement. The relevant provisions in the Agreement which relate to the transfer of the liabilities of SBT (*referred to as the Transferor in the Agreement*) to the Corporate Debtor (*referred to as the Transferee in the Agreement*) are re-produced hereunder:

*“WHEREAS:*

*D. the Transferee is engaged in the business of ..... and has been approached by the transferor for the Transfer of Assets & Liabilities of the Business (as defined hereinafter) and*

*E. Accordingly, the Transfer has agreed to transfer and the Transferee has agreed to acquire the whole Business as a going concern, on a slump sale basis for the consideration (as defined hereinafter) and subject to the terms and conditions set forth herein.*

#### *1.1 Definitions*

*“Liabilities” means the liabilities of the Transferor pertaining to the whole Business, more particularly described on the Schedule II hereunder.*

*2.1 Subject to the provisions of this Agreement the Transferor agrees to transfer the whole Business as a going concern on a slump sale basis for the consideration and the Transferee agrees to purchase the whole Business on such basis from the Transferor with effect from the effective date without prejudice to the generality of the foregoing the whole Business shall specifically include the following:*

*(a) .....*

*(b) All Business contracts including all benefits and obligations thereunder*

*(c) All indebtedness and outstanding lines of credit of the whole Business which have arisen in the ordinary course of the whole Business and as set forth in Schedule II*

*(d).....*

*(e) .....*

*(f) Assets & Liabilities of the whole Business as set forth in Schedule I & Schedule II respectively”*

15. As far as above noted agreement is concerned the Corporate Debtor has not come with a specific or clear denial. The tone and tenor of the said agreement leave no manner of doubt that the Corporate Debtor acquired SBT as going concern and has taken over its business along with liabilities.

16. In the above light the transaction between the parties will have to be considered by us. The first objection of the Corporate Debtor is that the alleged outstanding dues does not come within the purview of operational debt. Once again, we may note here that it is an undisputed and admitted position that the Partners of the SBT who are now the Directors of the Corporate Debtor acknowledge that the

SBT's obligations towards the Operational Creditor are now the obligation of the Corporate Debtor in view of the fact requisition thereof.

17. In the case of **Consolidated Construction Consortium Ltd. V. Hitro Energy Solutions Pvt. Ltd., (2022) 7 SCC 164** relied on by the Operational Creditor it has been clearly held by the Hon'ble Apex Court that a debt which arises out of advance payment made to the Corporate Debtor for supply of goods or services would be considered as an operational debt. Therefore, on the plane reading of the pleadings, we satisfactorily gather that not only the Corporate Debtor acquired liabilities of the SBT but also was duty bound to supply the requisite amount of material in the light of advanced amount given to SBT by the Operational Creditor. The dictum of Hon'ble Apex Court in the case of **Consolidated Construction Consortium Ltd. (supra)** is squarely applicable to the present case.
18. The next objection put forth by the Corporate Debtor is that the alleged default is for a period for which application could not have been filed for the initiation of Corporate Insolvency in view of Section 10A of the I & B Code. We reiterate the fact that the Operational Creditor had paid the Corporate Debtor the advanced amount of Rs. 9,60,47,253/- from the period starting on 16.05.2020 upto 17.08.2020 and the fact that Corporate Debtor's supplied material to the Operational Creditor until 05.03.2021 and thereafter stopped the supply. Rather, on 18.05.2021 Corporate Debtor transferred Rs. 5,00,000/- to the Operational Creditor and Rs. 2,00,000/- on 18.08.2021. The ledger

account to that affect is well placed on record by the Operational Creditor and which supports its contentions. Thus, the last amount was received by the Operational Creditor on 18.05.2021 and 18.08.2021. This is further supported by the certificate of information utility NESL, in as much as it also records date of default as 18.08.2021. By no stretch of imagination, it can be said that the said default is hit by Section 10A of the I & B Code. Rather, it must be held that the date of default in the present case clearly falls outside the purview of Section 10A.

19. We also note from the record that vide letter dated 20.04.2022 addressed to the Corporate Debtor the Operational Creditor requested the Corporate Debtor either to provide the materials else return the moneys along with the simple interest @ 18 % p.a. For all purposes this may be treated as the first demand notice/request made to the Corporate Debtor either to supply the material against the amount outstanding lying with the Corporate Debtor in the sum of Rs. 4,24,60,585.02/- or if not then return the said amount within 8 days from the receipt of the letter along with interest @ 18 % p.a. Thus, seen from this perspective also, we do not find the applicability of Section 10A of the I & B code. We, therefore, reject this objection.
20. The last objection is that Form-3 demand notice does not provide exact date of default. There is no merit in this submission also. In as much as part IV of the demand notice clearly put forth the default having been occurred in the financial year 2021-2022 and if the same is read in conjunction with the letter dated 20.04.2022 written by the

Operational Creditor to the Corporate Debtor, which we have already referred hereinabove, we hold that there is no merit in the contention of the learned Counsel for the Corporate Debtor. Therefore, this objection is also rejected.

21. One more objection remains and that is pre-existence of dispute between the parties. Pursuant to the receipt of the demand notice the Corporate Debtor dully replied by advancing general denials on its part and embargo created by Section 10 A of the I & B Code. The reply delightfully is full of vague and general denial and does not give an insight of pre-existing dispute between the parties. The nature and kind of dispute is nowhere elaborated so as to enable us to understand and come to conclusion that indeed there existed dispute between the parties prior to the issuance of demand notice. This reply of the Corporate Debtor, needless to say does not satisfactorily establishes the pre-existence dispute between the parties and therefore cannot be seen for the said purpose. In our studied view we are therefore the Corporate Debtor has not been able to substantiate the pre-existence of dispute and therefore cannot take advantage of the same.
22. We are, therefore, of the considered opinion that present petition under section 9 of the code filed by the Operational Creditor to initiate CIRP in the matter of the Corporate Debtor deserves consideration and accordingly stands **Admitted** under section 9(5)(I) of the I & B Code.
23. We, therefore, pass the following order

**ORDER**

This Application being C.P.(IB) No. 1062/2023 filed under Section 9 of the I & B Code, 2016, filed by **VINAYAK TRADING CORPORATION**, Operational Creditor/applicant against **NANDANA METALS AND MINING LIMITED** (*formerly WINDBUILD METALS PRIVATE LIMITED*) Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I & B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- (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 Securitization and Reconstruction of Operational 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I & B Code shall not apply to
- a. Such transactions as may be notified by the Central Government in consultation with any operational sector regulator;
  - b. A surety in a contract of guarantee to a corporate debtor.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I & B Code or passes an order for the liquidation of the corporate debtor under section 33 of I & B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of I & B Code.

- VI. That this Bench hereby appoints **Mr. Rajesh Jhunjunwala**, a registered insolvency resolution professional having **Registration number- IBBI/IPA-001/IP-P00647/2017-2018/11102** and Email ID- **jhunjunwala.rajesh@gmail.com** as Interim Resolution Professional to carry out the functions as mentioned under I & B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Operational creditor shall deposit a Sum of Rs. 5,00,000/- (Rupees Five Lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC). The Remuneration of Interim Resolution Professional shall be Rs. 1,00,000/- p.m. till the constitution of CoC and decision of CoC in relation to remuneration of IRP/RP, in case it is not fixed by the operational creditor so far.
- VIII. A copy of this order be sent to the Registrar of Companies, Maharashtra, Mumbai, for

updating the Master Data of the corporate debtor.

- IX. The Registry is directed to immediately communicate this order to the operational creditor, the corporate debtor and the interim resolution professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**

*Sapna*