

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

CP (IB) No.1097/MB-V/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Naresh Steel Industries Private Limited

[CIN: U27100MH2000PTC126003]

...Operational Creditor/Applicant

V/s

Orbit Ayas Private Limited

[CIN: U27310MH2012PTC227435]

...Corporate Debtor/Respondent

Order Dated: 22.06.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

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

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Dhrumil C. Shah i/b/ Lex
Services, Advocate.

For the Respondent(s) : Mr. Manoj Mishra, Advocate.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. This is an application bearing C.P. (IB) No. 1097/MB-V/2021 filed by Naresh Steel Industries Private Limited, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate

Insolvency Resolution Process (hereinafter “**CIRP**”) against Orbit Ayas Private Limited, (hereinafter referred as “**Corporate Debtor**”) for an unpaid Operational Debt of Rs.1,36,36,007/- (Rupees one crore thirty-six lakh thirty-six thousand seven only).

FACTS OF THE CASE:

2. The Application is filed by Mr. Chain Singh, Authorised Representative of the Operational Creditor, vide its Board Resolution dated 01.06.2021 claiming total outstanding amount of Rs.1,36,36,007/- (Rupees one crore thirty-six lakh thirty-six thousand seven only) which was defaulted by the Corporate Debtor.
3. The Date of Default is not mentioned in the Petition. However, the first invoice raised by the Operational Creditor is dated 11.08.2018 and the last invoice raised by the Operational Creditor is dated 17.10.2018. As per the terms of the Invoices, the due date for payment was 60 days and hence, the last date for making payment of first invoice and last invoice is 10.10.2018 and 16.12.2018 respectively. The Petition is filed on 06.10.2021 which is well within the period of limitation.
4. **The Submissions of the Operational Creditor:**
 - 4.1 The Corporate Debtor in its regular course of business, from August 2018, had time and again purchased various goods from the Operational Creditor. The Operational Creditor, towards the said purchase, had issued various tax Invoices, aggregating to Rs.1,06,02,427/-, upon the Corporate Debtor. The goods were

duly delivered to the Corporate Debtor and the Invoices are duly acknowledged by the Corporate Debtor.

4.2 The details of the Invoices are as follows:

Sr. No.	Invoice Date	Invoice No.	Invoice Amount (in Rs.)	Due Date of Payment
1.	11.08.2018	6534-2018	15,35,273	10.10.2018
2.	12.08.2018	6655-2018	15,28,115	11.10.2018
3.	12.08.2018	6657-2018	13,74,992	11.10.2018
4.	12.08.2018	6658-2018	15,32,783	11.10.2018
5.	14.10.2018	9989-2018	15,01,137	13.12.2018
6.	14.10.2018	9990-2018	17,65,280	13.12.2018
7.	17.10.2018	10154-2018	13,64,847	16.12.2018
	Total		1,06,02,427	

4.3 As per the terms of the said Invoices, the Corporate Debtor was to raise dispute, if any, within 7 days of receipt of the material. The Corporate Debtor had never raised any dispute regarding the same.

4.4 Upon request made by the Corporate Debtor, the Operational Creditor agreed to provide a credit period of 90 days to the Corporate Debtor, for making payment towards the said Invoices. It was clearly mentioned in the said Invoices, under the Term 3, that on failure of the Corporate Debtor to make payment within the credit period, from the date of issue of

Invoice, interest @ 18% P.A. shall be levied from the date of expiry of the credit period till the Date of Actual Payment.

- 4.5 In compliance of Goods and Services Tax Act, 2018, the Operational Creditor, from time to time, paid the GST, as levied and stated on the said Invoices, to the respective department and the payment of the same is reflected in the returns filed by the Operational Creditor with the GST department in from GSTR-1.
- 4.6 Since August 2018, the Operational Creditor supplied goods amounting to Rs.1,06,02,427/- to the Corporate Debtor. From 11.08.2018, till date, the Corporate Debtor made a payment of Rs.10,82,359/- to the Operational Creditor, towards the Invoice dated 11.08.2018 bearing Invoice No.6534-2018.
- 4.7 The Operational Creditor, addressed a communication to the Corporate Debtor for confirmation of Accounts for the Accounting Year 2018 to 2019, showing Debit Balance of Rs.1,00,20,068/-. The Corporate Debtor confirmed the Statement of Accounts, for the Accounting Year 2018 to 2019 by signing and stamping the same. Thus, there was a clear admission of outstanding amount of Rs.1,00,20,068/- as on 31.03.2019.
- 4.8 The Corporate Debtor addressed an undated letter (at **Exhibit 'C'**, annexed to the Petition), requesting cum intimating the Operational Creditor about delay in making payment and settlement of accounts and requested to clear the outstanding dues. In the said letter, the Corporate Debtor confirmed that the Corporate Debtor would reimburse the payment directly to the Operational Creditor's Account. Even after accepting that there

was outstanding amount, the Corporate Debtor never made payment towards the said Invoices, (along with interest thereon) and as on 31.01.2021 an outstanding amount of Rs.1,36,36,007/- became due and payable by the Corporate Debtor to the Operational Creditor.

- 4.9 The Operational Creditor issued a Demand Notice dated 09.04.2021, under Section 8 of the Code, upon the Corporate Debtor, demanding an outstanding of Rs.1,36,36,007/-. The said notice was returned undelivered on 20.04.2021, with comments “since closed lockdown RTS”. Thereafter, a scanned copy of the said Notice was sent to the Director of the Corporate Debtor, Mr. Dharmesh Rajendra Chokshi via WhatsApp on 07.05.2021.
- 4.10 The Corporate Debtor replied to the Operational Creditor’s Notice dated 09.04.2021, vide its Advocate’s Letter dated 10.05.2021, and refused to pay the sum demanded by the Operational Creditor, alleging that the material delivered by the Operational Creditor were defective. It is for the first time, in the said letter, dated 10.05.2021, that the Corporate Debtor alleged that the materials received by the Corporate Debtor were allegedly defective. Since 2018, when the goods were delivered to the Corporate Debtor till 10.05.2021, no notice was raised. Instead there was admission of outstanding dues to the tune of Rs.1,00,20,068/-, by the Corporate Debtor in Confirmation of Accounts for the Accounting Year 2018-2019.
5. The Operational Creditor vide its Additional Affidavit dated 21.03.2023, filed the Ledger Accounts of the Corporate Debtor for period from 01.04.2018 to 31.03.2020. The Operational Creditor vide

its Additional Affidavit dated 21.03.2023, has also filed Balance Confirmation of the outstanding for a period from 01.04.2018 to 31.03.2019 showing debit balance of Rs.1,00,20,068/- to the Corporate Debtor.

6. **ORAL ARGUMENTS OF THE COUNSEL FOR THE CORPORATE DEBTOR:**

6.1 The Corporate Debtor has not filed its Written Reply in the matter. However, Learned Counsel for the Corporate Debtor Mr. Manoj Mishra argued orally in support of the contentions and the same are summarised as under:

- Principal amount claimed under Part-IV of the Petition falls below the pecuniary threshold of Rs.1,00,00,000/-;
- There is pre-existing dispute between the parties regarding goods delivered by the Operational Creditor;
- The Corporate Debtor never issued purchase order for the goods supplied, and the Operational Creditor forcefully supplied the goods to the Corporate Debtor, though the Corporate Debtor did not need any such material; and
- The Interest is not included in the Invoices raised by the Corporate Debtor.

FINDINGS:

7. We have heard the arguments of the Learned Counsel for Operational Creditor and Corporate Debtor in detail and perused the records.

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- 7.1 The Corporate Debtor in its regular and due course of business purchased various goods from the Operational Creditor. The Operational Creditor, towards such purchase, had issued various tax Invoices in favour of the Corporate Debtor to the tune of Rs.1,06,02,427/-. The goods were duly delivered to the Corporate Debtor and the receipt of the goods was also acknowledged by the Corporate Debtor.
- 7.2 The following terms and conditions were agreed between the parties on the Invoices:
- 7.2.1 *All sales are subject to GST Law;*
- 7.2.2 *Weighting and Counting material before acceptance on Delivery Challan/Receipt. No shortage complaint in absence of endorsement will be entertained;*
- 7.2.3 *Interest @ 18% per annum will be charged on such payments received beyond due date;*
- 7.2.4 *Seller will accept no responsibility against any claim of Shortage or Damage after the goods leave their premises or remain in transit when despatched under LR/RR or by;*
- 7.2.5 *Material rejection should be brought to Financial Creditor's notice within seven days of receipt of material; and*
- 7.2.6 *Invoice should be entered in Corporate Debtor's system as it is, errors and omissions should be through Debit/Credit notes as the case may be.*
- 7.3 It is observed by the Bench that, the Operational Creditor issued a Demand Notice dated 09.04.2021 upon the Corporate Debtor

claiming total outstanding of Rs.1,36,36,007/-. The Corporate Debtor has replied to the said Demand Notice by way of a letter dated 10.05.2021, denying the liability of debt. The relevant extract of the said Reply is reproduced as follows:

“My client says that in the due course, it realized that the product was defective. It became difficult for my client to sale the product in the market. Finally, after slitting the coil when my client sold the product in the market, it was to its shock and surprise, my client realized that the product was not saleable at all. Due to the defect in the product supplied by you, my client’s customer had withheld the substantial payment of my client. All these losses of my client were attributable to your defective product.

My client says that after the supply of product, you pressurized my client to accept the material and pay him only when the product was sold by my client in the market. My client worked in full faith with you apparently for your benefit.

My client says that in the due course, it realized that the product was defective. It became difficult for my client to sale the product in the market. Finally, after slitting the coil when my client sold the product in the market, it was to its shock and surprise, my client realized that the product was not saleable at all. Due to the defect in the product supplied by you, my client’s customer had withheld the substantial payment of my client. All these losses of my client were attributable to your defective product.

On behalf of my client, I would like to bring the fact to your knowledge that the product which you supplied to my client was rusty, heavy impression, waviness and full of rust mark. My client says that this is well into your knowledge.”

- 7.4 After perusal of the material on records and after perusing the reply of the Corporate Debtor to the Demand Notice dated 09.04.2021, it is observed by the Bench that, the Corporate

Debtor failed to bring on record any document evidencing there was defect in the material supplied by the Operational Creditor. Further, the Corporate Debtor has already acknowledged all the invoices raised by the Operational Creditor. Moreover, as per terms and conditions mentioned in the invoices, any defect in goods was to be pointed out within a period of 7 days. Dispute about the quality of goods raised after receipt of Demand Notice is nothing but an afterthought.

- 7.5 Further, when the matter was listed for final hearing on 19.04.2023, Mr. Manoj Mishra, Ld. Counsel for the Corporate Debtor appeared before the Bench. However, the Learned counsel for the Corporate Debtor has failed to demonstrate that there was a pre-existing dispute relating to the quality or quantity of goods in supply.
- 7.6 It is also observed by the Bench that the Corporate Debtor did not file its reply in the matter. The matter was listed on several occasions and after giving several opportunities in the matter, the Corporate Debtor failed to file its written reply in the matter. Hence, vide order dated 01.03.2023, the right to file reply of the Corporate Debtor was forfeited. The oral arguments of Learned Counsel for the Corporate Debtor were heard at length.
- 7.7 After carefully perusing the records, we hold that there has been an operational “**debt**” and “**default**” on the part of the Corporate Debtor and under the circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code.

8. The Applicant has not proposed the name Insolvency Resolution Professional to carry out the functions as mentioned under I&B Code.
9. It is ordered accordingly in following terms:

ORDER

- a. The Application bearing C.P. (IB) No. 1097MB-V/2021 filed by Naresh Steel Industries Private Limited, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against **Orbit Ayas Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against **Orbit Ayas Private Limited**.
- b. This Bench hereby appoints **Mr. Sanjay Kathane**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N01139/2021-2022/13818; Contact: 9004652481, E-mail: sanjaykathane@yahoo.com; 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. 3 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.
- 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.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)