

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

CP(IB)/33(CHE)2023

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule
6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

In the matter of M/s. Dindigul Steel Rolling Mills Private Limited

M/s. Sri Amman Metal Works,
A Partnership firm Rep by its Partner
Shri. P.Karuppasamy,
3/1225 A, Sriram Nagar
Parnipatti, Sattur Road
Sivakasi 628189

... Applicant / Operational Creditor

-Vs-

**M/s. Dindigul Steel Rolling Mills
Private Limited,**
CIN: U02710TZ1995PTC006174
S.F.No.414/1, Karur Road,
Kulathur Village,
Vedasandur Taluk
Dindigul 624005

... Respondent / Corporate Debtor

Order Pronounced on 9th February, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor: Mr.SarathBabu, Advocate
For Corporate Debtor : Mr.R.Omprakash, Advocate
Mr. G. VairavaSubramaniam, Advocate
Mr. B. Raghupathy, Advocate
Mr.A.Kandhan, Advocate

ORDER

(Heard through VC)

This application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s.Sri Amman Metal Works** (hereinafter referred to as “**Operational Creditor**”) against **M/s.Dindigul Steel Rolling Mills Private Limited** (hereinafter referred to as “**Corporate Debtor**”) for initiating Corporate Insolvency Resolution Process (“**CIRP**”).

2. Part-I of the application sets out of the details of the Operational Creditor. It is stated that the Operational Creditor M/s. Sri Amman Metal Works, is a partnership firm with its office situated at Sivakasi, Tamil Nadu. Part-II of the application sets out the details of the Corporate Debtor as M/s.Dindigul Steel Rolling Mills P Ltd, a Private Limited company incorporated under the Companies Act, 1956 with CIN No. U02710TZ1995PTC006174 with the Registered Office at S.F.No 414/1 Karur Road, Kulathur Village, Vedasandur Taluk,

Dindigul, Tamil Nadu. In Part-III of the application, the Operational Creditor has proposed the name of Mr.S.Kangayan, Regd No IBBI/IPA-002/IP-N00866/2019 2020/12770 as an Interim Resolution Professional .

3. Part-IV of the application details the total amount of debt as Rs.4,92,81,785/- (RupeesFour Crores Ninety Two Lakhs Eighty One Thousand Seven Hundred and Eighty Five only) along with interest @12% p.a. from the due date of invoices till the date of payment. It is stated that interest as on 14.12.2022 works out to Rs. 88,60,777/- Amount claimed to be in default is Rs.4,92,81.785/-. The Date of Default is shown as 14.12.2022.

4. Part-V of the application describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- a) Copy of Invoices with e-way bills dated from 31.10.2018 to 09.02.2022.
- b) Demand Notice under Form 3 of IBC (Application to Adjudicating Authorities) Rules 2016.
- c) Copy of certified Form 5 A from the banks / financial institutions which maintain the accounts of Operational Creditor.
- d) Copy of the ledger of the Corporate Debtor in the books of the Operational Creditor.

- e) Copy of computation showing the details of the outstanding amount and date of default along with the calculation of interest.
- f) Copy of the letter for outstanding reminders dated 28th Oct 2022 by Operational Creditor, mails as balance confirmation and short synopsis of realization outstanding from the Corporate Debtor dated 14th Dec 2022.

ARGUMENTS ON BEHALF OF APPLICANT:

5. It is stated that the Operational Creditor is a service provider of metal works and other technical activities, whereas the Corporate Debtor is a company focussed on steel rolling mills, operating purely in melting iron ore delivered from various sources including the supply from Operational Creditor.

6. It is stated that the applicant supplied large amount of raw materials to the Corporate Debtor from time to time from 2018 to 2022 to the full satisfaction of the Corporate Debtor and there was no dispute at any time regarding the supply of materials.

7. It is stated that the Corporate Debtor failed to make the payment for the outstanding dues against the invoices from 31.10.2018 to 09.02.2022 for an amount of Rs. 4,92,81,785/- being the principal outstanding. It is stated that the Corporate Debtor is liable to pay interest of Rs. 88,60,777/- being interest @ 12% p.a.

8. It is stated that several reminders were mailed to the Corporate Debtor to clear the outstanding. A copy of the letter dated 28th October 2022 'Reminder for release of pending outstanding against outstanding' and mails with subject matter 'Confirmation of Balances from CD' are enclosed with the type set.

9. Copy of Form 5A issued by the Bank, where credits were received by the Operational Creditor in respect of Corporate Debtor during previous 3 years is also enclosed with the typeset. It is stated that the Demand Notice dated 15th Dec 2022 was served through the speed post.

REPLY BY THE CORPORATE DEBTOR:

10. It is stated that the Corporate Debtor, established in 1995, commenced the production in the year 2001. The first year turnover was Rs. 22.0cr and by expansion and modernisation, the turnover for Financial Year 2022-23 upto Feb 23 increased to Rs. 394.23 cr.

11. It is stated that Corporate Debtor manufactures TMT Bars of different sizes from 8mm to 25mm in the brand name **DSRM**.

12. It is stated that the Operational Creditor was asked to supply the scrap steel materials classified as *Super Item Scrap (Grade A)*. However, the applicant supplied MS Scrap materials which contained more 'Commercial Scrap (Low Quality Grade-D)' and 'Bundle Scrap-(Grade-E)' which were far inferior to the ones which were ordered. It is stated that the Corporate Debtor was not able to get the required output from the materials supplied by the applicant.

13. It is stated that the Corporate Debtor had many meetings and discussions with the operational creditor but every time, inferior supplies were made. It is stated that due to demand for the company's product, continued dealings with the Operational Creditor were made. It is stated that besides quality issues, there were weight shortage issues, wastages such as mud, mill scale etc.

14. It is stated that Corporate Debtor had visited the Operational Creditor to discuss these issues. During discussions, the Operational Creditor had accepted the issues and based on the discussions, the Operational Creditor had asked the respondent to adjust the books and confirmed that it would issue the credit notes. It is stated that as the discussions happened in the middle of 2021-22 and the Operational

Creditor had promised issuance of credit notes and requested for payments, bulk of the payments were released during the second half of 2021-22 as under:

(In rupees)

YEAR	PURCHASES FROM OC	PAYMENTS MADE BY CD
2018-19	3,19,83,859	68,09,500
2019-20	3,24,00,345	77,00,000
2020-21	33,97,854	5,00,000
2021-22	6,49,000	1,30,00,000

15. It is stated that since the Corporate Debtor did not receive the credit notes, the Corporate Debtor issued a letter dated 22.06.2022 asking it to acknowledge, so that the respondent could adjust the books accordingly, which was duly acknowledged by the Operational Creditor.

16. It is stated that Operational creditor completely ignored the acknowledgement and sent a letter dated 28.10.2022 asking for an amount of Rs. 4,04,21,558/- without adjusting the amounts of credits

which were agreed to which Corporate debtor sent a letter dated 31.10.2022 explaining clearly, the earlier agreements of credits and acknowledgements.

17. It is stated that the demand notice dated 15.12.2022 could not be replied in time due to the fact that the director was not in the office and it took time to reconcile the invoices since they were not properly organised and the working sheet of interest, account statements were not enclosed.

18. It is stated that the discussions with regard to quality issues did happen as and when the products arrived. As a consolidation, the Corporate Debtor issued a letter dated 05.01.2022, nearly 12 months prior to the issuance of demand notice. It is stated that the same was mentioned in the letter dated 22.06.2022, which was acknowledged by the Operational Creditor, at least six months prior to issuance of the demand notice. It is stated that as a reply to the letter dated 28.10.2022 of Operational Creditor, Corporate Debtor vide letter dated 31.10.2022 confirmed the credits and book adjustments as well. It is stated that Corporate Debtor adjusted the books with agreed credits in the year 2021-22, after sending three notices before adjustment. The Balance

sheet and other financials are the standing evidence of the same. It is stated that the disputes were raised much before the demand notice dated 15.12.2022.

19. It is stated that though the Operational Creditor has stated that several reminders were mailed to the Corporate Debtor but except the letter sent on 28.10.2022, no communication was received.

20. The Corporate Debtor relied on the decisions in the case of i) *Mobilox Innovation Vs Kirusa Software Pvt Ltd, Civil Appeal No 9405 of 2017* and ii) *Invent Assets Securitisation & Reconstruction Pvt Ltd Vs Girnar Fibres Ltd in Civil Appeal No 3033 of 2020* to support its position.

21. It is stated that if the disputes are put together, after adjusting the payments made so far, the total amount would fall below the threshold limit which is requisite for filing an application under Section 9 of IBC summed as under:

Year	Supplies given by the OC	Credit due to Quality issues	Credit due to Weight issue	Outstanding amount after adjusting credits	Payments made during the period to OC	Balance Outstanding
2018-19	3,19,83,859	1,48,57,093	11,84,151	1,59,42,615	68,09,500	91,33,115
2019-20	3,24,00,345	1,52,10,972	10,98,664	1,60,90,709	77,00,000	83,90,709
2020-21	33,97,854	14,28,325	1,69,114	18,00,415	5,00,000	13,00,415
2021-22	6,49,000	1,79,835	30,507	4,38,658	1,30,00,000	(1,25,61,342)
	6,84,31,058	3,16,76,225	24,82,436	3,42,72,397	2,80,09,500	62,62,897

ADDITIONAL AFFIDAVIT OF CORPORATE DEBTOR

22. The Corporate Debtor filed an additional affidavit vide SR NO 2015 dated 12.09.2023 giving complete details of GST filing including Net Input Tax credit availed. The adjustments of GST with respect to credits on account of weight and quality issues also are tabulated in the affidavit filed.

23. It is stated that the respondent did not avail any GST Input Tax Credit for the credits given for the quality issues and shortages.

24. It is stated that the Corporate Creditor had received notice from GST Department stating that Operational Creditor owes Rs.1,44,10,131/- to GST and asked the Corporate Debtor to pay the amount.

25. It is stated that as per directions of the Tribunal on 31.07.2023, Corporate Debtor paid the balance amount of Rs.62,62,897/- vide DD No 456495 dated 01.08.2023 including GST amount of Rs. 9,55,357/- due to the Operational Creditor.

26. It is stated that the Corporate Debtor vide Memo No 5028 dated 08.12.23, as per directions of the Tribunal to settle the matter amicably, sent a letter dated 27.11.2023 to the Operational Creditor stating that it is ready to return the rejected / defective materials. It is stated that the Operational Creditor vide letter dated 30.11.2023 stated that it is not willing to accept the returns.

REJOINDER BY THE APPLICANT

27. It is stated that the additional affidavit as well as counter are not supported by the verifying affidavit and hence need be rejected in toto.

28. It is stated that in terms of GST, if goods are not returned with invoice or debit note is not raised, then the goods would be deemed to be accepted by the purchaser. In the current case, no such intimation was made.

29. It is stated that the debit note appended in the counter is forged and the signed debit note does not bear the signature of any of the partners of the Operational Creditor.

30. It is stated that for the financial years 2018-19 to 2021-22, adjustments cannot be made in a single financial year 2021-22 without prior permission / approval from the seller/Operational Creditor.

31. It is stated that the letter dated 05.01.2022 is fake and signature of the operational creditor is forged. The seal of the applicant is also forged.

32. It is stated that the the Corporate Debtor has demonstrated as to fraud played on the Tribunal by making false statement.

ANALYSIS AND CONCLUSION

33. We have heard learned Counsels for the parties and perused the record.

34. It is not in dispute that the Operational Creditor had supplied the Iron Scrap to the Corporate Debtor from the year 2018-19 to 2021-22.

35. It is stated by the Operational Creditor that no dispute was raised by the Corporate Debtor till filing of the reply; mail was sent on

28.10.2022 to Corporate Debtor to settle the outstanding dues; the Corporate Debtor did not reply to the demand Notice dated 15.12.2022; and the letters dated 05.01.2022 and 22.06.2022, produced by the Corporate Debtor regarding pre-existing dispute are forged and fabricated.

36. On the contrary, it is stated by the Corporate Debtor that the quality of scrap supplied was inferior and there were shortages; in addition to meetings, letters were sent on 05.01.2022 and 22.06.2022 to the Operational Creditor regarding the low quality goods, requesting the operational creditor to issue credit notes; the letter dated 28.10.22 of Operational Creditor was replied on 31.10.22 by Corporate Debtor, which is much before the Demand Notice dated 15.12.2022; the agreed credits were adjusted in the financial year 2021-22 and the Balance sheet and other financials stand evidence for the same; the balance amount of Rs.62,62,897/- due to Operational Creditor as per the books of Corporate Debtor has been paid as per directions of Tribunal by means of Demand draft dated 01.08.2023; and by means of a letter dated 27.11.2023, offer to return the inferior quality materials to the

Operational Creditor was made but it was turned down by the Operational Creditor vide letter dated 30.11.2023.

37. Admittedly, in the present case, the Corporate Debtor had not replied to the demand notice under Rule 5(1) of IBBI (Application to Adjudicating Authority) Rules, 2016 issued by Operational Creditor but the Corporate Debtor has enclosed two letters issued to the Operational Creditor, prior to the date of the demand notice, raising the quality and shortage issues. The credit note for adjustment regarding quality issue was effected in the books in the financial year 2021-22 by the Corporate Debtor. Further, Corporate Debtor has produced a letter dated 31.10.2022 being a reply contesting the facts stated in Operational Creditor letter dated 28.10.2022. In the present case, the balance sheet of Corporate Debtor for financial year 2021-22 was signed by the Statutory Auditor on 28.09.2022 (Page 34 of the Counter) whereas the demand notice was issued on 15.12.2022. The Corporate Debtor in the additional affidavit filed vide SR.No.2015 dated 12.09.2023 has given the details of the scrap received and credit availed for the materials having weight and quality issues along with GST for the F/Y 2021-22 adjusted in the books of accounts explaining

the details of invoice amount set off against the unavailed GST in relation to 8A amounts. The Respondent had made three consecutive communications before adjusting the amounts in the books of accounts. The Corporate Debtor has also placed the copy of a notice received from the GST Department showing that the applicant owes an amount of Rs.1,44,10,131/- to the GST Department which the Corporate Debtor was directed to pay. The said notice also assumes importance as to the dispute in the transactions between the parties. The above facts establish that there was a pre-existing dispute between the parties.

38. In *Mobilox Innovation Vs Kirusa Software Pvt Ltd, Supra* the Hon'ble Supreme Court held as under:

40. It is clear, therefore, that once the Operational Creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the Operational Creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore all that the adjudicating authority is to see at this stage is whether there is plausible contention which requires further investigation and that 'the dispute' is not a potently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from chaff and to reject the spurious defence which is mere buster.

However, in doing so, the Court does not need to be satisfied that defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.'

39. In Invent Asset Securitisation And Reconstruction Pvt Ltd *Supra*

Hon'ble Supreme Court held as under:

' Time and again, it has been expressed and explained by this court that the provisions of the Code are essentially intended to bring the Corporate Debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the Corporate Debtor. We find no fault in the Tribunal and the Appellate Tribunal have declined the prayer of the appellant.'

40. In Amrop India Pvt Ltd Vs The Hitech Gears Ltd NCLAT (2023)

ibclaw.in 663 NCLAT, it was held as under:

'For a pre-existing dispute, to be a ground to nullify the application filed under Section 9 of IBC, dispute must be truly existing at the time of filing a reply to the demand notice as contemplated under Section 8(2) of IBC or at the time of filing the Section 9 application.'

41. Taking into consideration the facts and circumstances of the case, as well as the position of Law, since there existed pre-existing dispute, we are of the view that the application, as filed by the Operational Creditor, is required to be **rejected** under Section 9(5)(ii) of the IBC, 2016.

42. We accordingly dismiss the application / petition **CP/33/CHE/2023**
with no orders as to costs.

43. File be consigned to record room.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)