IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II

C.P. (IB)- 4307(MB)/ 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

Mr. Sanjay Hasmukhbhai Shah,
Sole Proprietor of Hitesh Steel Syndicate,
Having his Registered Office at: 8 K.M Mehta, 32/38, Ahmedabad Street, Iron Market, Carnac Bunder, Mumbai- 400 009
……Operational Creditor

Vs

M/s. Satra Property Development Pvt. Ltd.,
(CIN No.: U85190MH2007PTC173326)
Having its Registered Office at: F 89, Prime Mall, Irla Society Road, Vile Parle (West), Mumbai – 400 056
…….Corporate Debtor

Order delivered on: 12.08.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. U.B. Tawari, Advocate

For the Corporate Debtor : Mr. B. K. Gala, Advocate

ORDER

Per :- Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by *Mr. Sanjay Hasmukhbhai Shah* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s. Satra Property Development Pvt. Ltd.* (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 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 on the ground that the Corporate Debtor failed to make payment of **Rs. 27,78,059/-** (Rupees Twenty-Seven Lakhs Seventy-Eight Thousand and Fifty- Nine) together with interest @ **24% per annum** from 25th December 2010 until the date of final realization.

3. The Operational Creditor is engaged in the business of supplying, dealing and/or acting as an agent in respect of Iron and Steel material required in building and construction work. The Operational Creditor sold, supplied and dispatched "T.M.T. Bars" of 16, 20 and 25 mm to the Corporate Debtor on **25th December 2010** in the course of his business. The Operational Creditor raised an Invoice for a sum of **Rs. 9,45,780/-** for the aforesaid product sold through **Invoice No.**

538/10-11. The due date of the Invoice was 60 days from the date of the Invoice, that is **28th February 2011**. A copy of the Sales Invoice has been annexed to this Petition along with copies of the Purchase order and Delivery Challan issued by the Operational Creditor.

4. The Corporate Debtor has defaulted the payment of a total sum of Rs. 9,75,780/- since 28th February 2011 which was the due date of payment of the last invoice. Particulars of the claim is reproduced hereinbelow in tabular form:

Sr. No.	Particulars	Amount (in Rs.)
1.	Amount due and payable by Corporate Debtor to the Operational Creditor (as per Invoice No. 538/10-11 dated 25th December 2010)	9,75,780/-
2.	Interest @ 24% per annum from due date till filing of Petition	18,02,279/-
	TOTAL	**27,78,059/-**
	Further interest @ 24% p.a. on outstanding Invoice amount from date of filing Petition till final order and thereafter at the same rate till payment and realization.	

5. Consequently, the Operational Creditor sent a **Demand Notice dated 8th October 2018** under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor demanding repayment of the outstanding dues. In support of his claim, the Operational Creditor has annexed Statements of confirmation of Accounts for the Financial Years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 to both, the Demand Notice and the Petition.

6. The Corporate Debtor replied to the Notice vide Letter dated **20th October 2018** wherein the Corporate Debtor denied any liability to pay the total outstanding amount including interest and raised several grounds of challenge. **Firstly,** the Corporate Debtor submits that no confirmation of accounts had ever been issued in the years 2011, 2012, 2013 and 2014. It was, in fact, in the month of December 2015 that the Financial Creditor approached the Corporate Debtor's accounts team and requested for confirmation on the statements, which was consequently given by the Corporate Debtor by affixing rubber stamp and signing on all the statements in good faith. Further, doubts over the authenticity of the rubber stamp affixed and the signatures appearing on the statements were raised and it is alleged that these are fabricated documents manufactured by the Operational Creditor.

7. **Secondly,** it is submitted that a separate Civil suit, namely **Summary Suit No. 1355 of 2018** had been filed before the City

Civil Court at Mumbai by the Operational Creditor for recovery of an amount of Rs. 27,64,585/- in respect of the same invoice amount that is the subject matter of the present Petition. **Thirdly,** it is submitted that the said claim is time barred as the last date of repayment of the outstanding amount was 28th February 2011 and the limitation period for filing the claim expired in 2014. The above submissions were reiterated by the Corporate Debtor in their reply to this Petition dated **26th August 2019.** The Operational Creditor submits that no payment has been received from the Corporate Debtor in respect of the impugned Invoice till date. Hence, this Petition.

FINDINGS

8. We have heard the submissions of the Counsel appearing for the Operational Creditor and the Corporate Debtor. We note that an operational debt to the tune of Rs. 9,75,780/- exists since **28th February 2011** which was the last date for payment of the Invoice dated 25th December 2010, duly raised by the Operational Creditor in the course of their business.

9. The statutory limitation period of 3 years for recovering the operational debt is to be calculated from the date of the Invoice or the date on which the period of credit expires, the said period being 60 days in the present case. Although a default exists, it is beyond the period of limitation which expired on 28th February 2014. The statement of confirmation of accounts presented as evidence for existence of debt for the Financial Years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 is disputed by the

Corporate Debtor on the grounds of fabrication and several other discrepancies related to the rubber stamps and signatures affixed on the documents. These issues pertaining to the recovery of the Invoice amount are already *sub judice* as Summary Suit No. 1355 of 2018 filed by the Operational Creditor against the Corporate Debtor is still pending in the City Civil Court, Mumbai. Therefore, in our view, this is an early stage to decide whether this petition is barred by limitation or not. Other contentions related to transactions between the parties in respect of the same Invoice are also under challenge before the aforesaid Court.

10. In view of the above, we are of the opinion that the instant Company Petition is liable to be dismissed.

Accordingly, this Petition is dismissed.

The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P. N. DESHMUKH**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

AN
12.08.2022