



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No. 4
IB/238/ND/2022

IN THE MATTER OF:

Bhushan Power & Steel Ltd.	...	Applicant
v/s		
Karan Automotives Pvt. Ltd.	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 31.07.2023

Coram:

DR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

C.P. (IB)/238/ND/2022 stands admitted.

Sd/-
DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

C.P. (IB) 238 OF 2022

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Bhushan Power & Steel Ltd.

...Applicant/Operational Creditor

Versus

Karan Automotives Pvt Ltd.

...Respondent/Corporate Debtor

CORAM:

SH. P.S.N. PRASAD, HON'BLE JUDICIAL MEMBER

DR. BINOD KUMAR SINHA, HON'BLE TECHNICAL MEMBER

PRESENT:

For The Applicant : Mr. Chandra Shekhar Yadav, Adv.

For The Respondent : Ms. Rekha Saroha, Adv.

Order Delivered on: 31.07.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

1. This instant application was filed by M/s Bhushan Power & Steel Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor'), having office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutub Institutional Area, New Delhi-110067 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s Karan Automotives Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 2,01,87,487.5/- only.



2. The Respondent Company M/s Karan Automotives Private Limited having CIN: U34300DL2003PTC118971 was incorporated on 14.02.2003 under the provisions of the Companies Act, 1956 having its registered office situated at H. NO. 7, Ground Floor, Vill Tekhand Mavi Mohalla, 1E Campa Cola Factory, New Delhi-110020. Since the registered office of the Respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code,
3. The present Petition was filed on 16.12.2021 before this Adjudicating Authority by Ms. Garima Vashist, the Authorized Representative of the Operational Creditor's Company, authorized vide Power of Attorney dated 05.08.2021 executed by Mr. Anil Kumar Singh, Executive Vice President and Whole Time Director of Operational Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code"). The total amount claimed to be due and payable as on 30.09.2021 is Rs. 2,01,87,487.5 which includes principal amount of Rs. 1,29,35,812/- as well as interest of Rs. 72,51,675.47/- @ 24% per annum. The date of default is stated to be on 30.09.2021.
4. Briefly stated the facts of the present case as averred by the applicant are that the applicant supplied Steel Products inter alia Precision Tubes and raised Tax Invoices from time to time as per the supplies. The Operational Creditor supplied the said products from its separate units



which maintain the separate accounts for the supplies made. As per the Ledger account maintained by the Operational Creditor, Rs. 1,29,35,812/- is outstanding towards the principal amount, the details of which are as under: -

- The outstanding amount from the unit with SAP Code 1002397 is Rs. 1,02,77,851/-. The last payment was made by the Corporate Debtor on 30.04.2019 and therefore, the interest is calculated w.e.f. 01.05.2019.
- The outstanding amount from the unit with SAP Code 1010588 is Rs. 26,57,961/-. The last payment was made by the Corporate Debtor on 30.09.2019 and therefore, the interest is calculated w.e.f. 01.10.2019.

5. It is submitted that the representatives of the Operational Creditor met the representatives of Corporate Debtor and demanded the unpaid debt.

6. The applicant had sent a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor demanding outstanding principal amount of Rs. 2,01,87,487.5/- along with interest calculated at the rate of 24% per annum amounting to Rs. 72,51,675.47/- which was duly served upon the Corporate Debtor at its registered office. However, no reply to the notice has been received from the Corporate Debtor disputing the operational debt. Therefore, the present application is filed in Form 5.



Reply of the Corporate Debtor

7. The Corporate Debtor has filed its reply and has raised specific objections against the petition stating above averments, which are enlisted hereunder:

- a) It is submitted that the applicant had committed violation of Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 because the alleged statutory notice was sent to the wrong person CA Jagdish Dhawan who does not occupy any key managerial post in the company because he had already been removed due to the fact that the said CA in utter disregard and violation of professional ethics had committed various discrepancies in filing the balance sheet of the respondent company.
- b) It is submitted that from the documents filed by the applicant along with the application it is manifestly clear that any dispute arising between the parties shall be dealt with in accordance with the provisions contained in the Arbitration and Conciliation Act, 1996. Therefore, no action under the Code can be instituted by the applicant and the applicant cannot approach this Hon'ble Tribunal for the adjudication of disputes (if any) between the parties.
- c) It is further submitted that from the documents filed by the applicant along with the present application it is manifestly clear that any dispute arising between the parties will be subject to the jurisdiction of the court at Panchkula (Haryana). Therefore, on this



ground alone the application filed by the applicant is liable to be rejected.

- d) It is submitted that the present application is violating of section 4 of the Insolvency and Bankruptcy Code, 2016 which clearly specifies the minimum threshold limit of Rs. 1 crore for any default.
- e) It is submitted that there is no cause of action had arose in favour of the applicant and against the respondent and the alleged claim made by the applicant in the present application is sham, frivolous, vexatious and without any justification. It is further submitted that there was no material on record for the purpose of substantiating the liability of the respondent.
- f) It is submitted that there was no existence of operational debt as defined under the provisions of the IBC.
- g) It is submitted that the applicant had been prosecuted by various governmental agencies like Enforcement Directorate and Central Bureau of Investigation for committing financial fraud of several thousands of Crores of Rupees against various National Banks in India and also against other Financial Institutions, due to these criminal acts, the respondent had suffered losses in the business for which the respondent reserves its right to initiate appropriate legal proceedings against the applicant.
- h) It is submitted that there is a pre-existence of disputes between the parties regarding the poor and inferior quality of material supplied by the applicant to the respondent and also regarding irregular



supply of material, due to which the respondent had suffered huge losses in the business.

- i) It is submitted that the Applicant has placed on record a reply dated 10.09.2018 purported to be issued by the Corporate Debtor of letter dated 22.08.2018 for pending payment but, in fact, the respondent has never given any reply as alleged by the applicant. Therefore, in these circumstances, the said reply has been forged and fabricated by the applicant for staking claim against the respondent herein.

Analysis and Findings

8. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been examined. Since the registered office of the Respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
9. It is observed that the Operational Creditor has sent a demand notice dated 07.10.2021 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs. 2,01,87,487.5/-. We observe that this notice was served through email id of the Corporate Debtor as reflected in the MCA website even today. Further, the Section 8 notice was also



served by speed post as well as email. Therefore, we hold that the statutory notice under section 8 of Code was duly served. The instant application under section 9 of the Code was filed on 16.12.2021. Therefore, the pecuniary threshold under section 4 of the Code is complied with.

10. In order to determine the admissibility of petition for initiating CIRP under section 9 of the Code, the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353***, is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (Rs.1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
- b) Whether the documentary evidence furnished with the application Shows that the aforesaid debt is due and payable and has not yet been paid?
- c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice if the unpaid operational debt in relation to such dispute?

11. In the first instance, to determine whether the said amount claimed by the Operational Creditor would fall under the ambit of Operational Debt, it is pertinent to refer the definition of Operational Debt as mentioned under Section 5(21) of the Insolvency and Bankruptcy



Code, 2016. Under the said Section, the ‘Operational Debt’ is defined as:

“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

While analyzing the present facts in the light of said Section 5(21), it is observed that the petitioner supplied precision tubes to the Corporate Debtor and the same has not been refuted by the Corporate Debtor. The Petitioner further attached proof in support of their statement by enclosing true copies of the invoices, Goods receipts and ledger account maintained by the Operational Creditor in the name of the Corporate Debtor (SAP Code 1002397) & (SAP Code 1010588). Hence, this Adjudicating Authority is inclined towards believing that the debt claimed by the petitioner comes under the purview of ‘Operational Debt’ within the meaning of Section 5(21) of the Code.

12. As per the framework of the Code under Section 9, first of all under sub-section (1) of section 8 notice is to be issued and sub-section (2) of section 8 provides an opportunity to the Corporate Debtor to make a reply to that notice by bringing to the notice of the Operational Creditor one of the two facts namely that the payment has already been made and nothing is remaining to be paid or that there is a pre-existing dispute between the parties. Though there has been no reply to the statutory notice under Section 8 of the Code by the Corporate Debtor, the Corporate Debtor has attempted to show that there is a



pre-existing dispute between the parties which has arisen before the receipt of demand notice sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor has raised the dispute by placing reliance on the several documents like debit note, amended purchase book, statement of rejection and scrap material inferior quality material. Therefore, it is pertinent to adjudicated upon by this Adjudicating Authority as to whether there exists any 'Pre-Existing Dispute' as claimed by the Corporate Debtor.

13. The Corporate Debtor has placed reliance on the debit notes, amended purchase book, statement of rejection and scrap material inferior quality material issued by the Corporate Debtor to the Operational Creditor in order to substantiate his claim of the existence of the pre-existing dispute between the parties. On a perusal of these documents like debit notes this Adjudicating Authority finds that the debit note has been raised by the Corporate Debtor to the Operational Creditor and also acknowledged by the authorized person of Operational Creditor in the normal day to day course of business. However, it is being observed that in general business parlance, debit notes can be raised for several reasons, therefore, mere issuance of the debit note cannot be straight away considered to be a pre-existing dispute. The Corporate Debtor have not brought on record any correspondence between the parties or any letter or any other evidence to substantiate its claim of the existence of the pre-existing dispute regarding the quality of the goods or the existence of the amount of debt between the



parties before the issuance of the Demand Notice. Therefore, the defense of the Corporate Debtor appears to be moonshine.

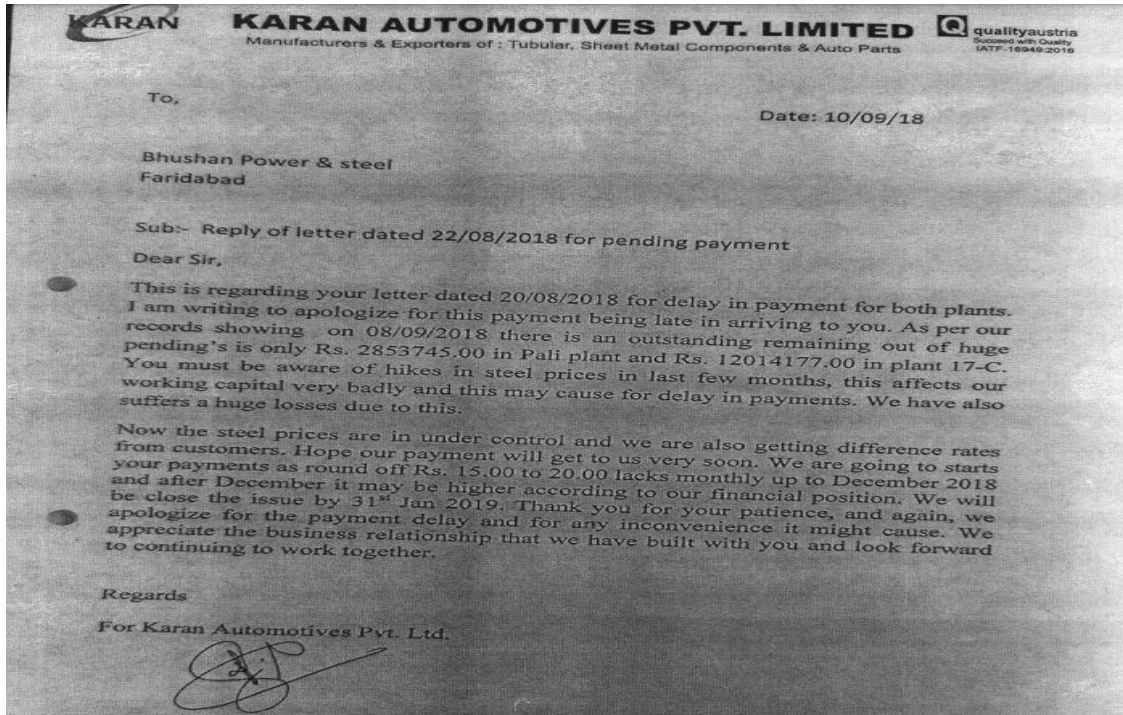
14. In the NCLT Ahmedabad Bench (Court 1) Judgment ***Raghuvir Buildcon Private Limited Vs. Ketan Construction Limited (2020)***, held that a threshold or stage is to be crossed to convert a difference/disagreement into dispute. In other words, normally commercial/legal differences per se are not dispute unless such differences are ascertained into a claim on which both the parties have opposite/different views and want to settle the same through some legal process or otherwise. Thus, in our view, routine correspondence in commercial relationship cannot automatically or necessarily be considered and admitted as dispute unless such stage is reached.
15. In the NCLAT Judgment ***M/s Next Education India Pvt. Ltd. Versus K12 Techno Services Pvt. Ltd. Company appeal (AT) (Insolvency) No. 98 of 2019***, the Hon'ble NCLAT has re-affirmed that "existence of dispute must be pre-existing i.e. it must exist before the receipt of demand notice." Admittedly, there is no suit or arbitration proceedings pending inter-se parties in respect to the said unpaid debt and the invoice placed on record. No letter or email has been placed on record disputing any of the outstanding amount or the invoices.
16. In the Judgment ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353***, wherein, the Hon'ble Supreme Court has held that "an application under Section 9 of the Code is not maintainable and ought to be rejected on there being a "pre-existing dispute". The Supreme Court had held that "so long as a dispute



truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application”.

In the present case, mere contention by the Corporate Debtor as to existence of any dispute does not create a plausible belief as to existence of any ‘Pre-existing dispute’. Therefore, it would be safe to conclude that there does not exist any ‘Pre-existing dispute’ in the present case.

17. On-going through the submissions made by the Learned Counsel for both the parties and on perusing the documents placed on record, this Adjudicating Authority is of the considered opinion that the Corporate Debtor has not been able to establish pre-existence of dispute and both “debt and default” have been established by the Operational Creditor. Besides other documents as relied on by the Operational Creditor, the Operational Creditor has also placed reliance of a letter dated 10.09.2018 acknowledging and assuring to repay the overdue amount. This letter dated 10.09.2018 that has been placed on record which is reproduced here under:



Though the Corporate Debtor has simply denied having issued this letter and claimed it to be forged, they have not been able to dislodge the other evidences relating to supply of goods as placed on record by the Operational Creditor, or to establish that due payment have been made by the Corporate Debtor. Therefore, we come to conclusion that the nature of debt is a “Operational Debt” as defined under section 5(21) of the Code and the amount of outstanding Operational Debt is above the pecuniary threshold limit of Rs. 1 Crore as envisaged under Section 4 of the Code, 2016. It has also been established that there is a “Default” as defined under section 3(12) of the Code on the part of the Corporate Debtor. Therefore, the two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 9 of the Code, 2016 have been met in this case. We have



already given a finding that Corporate Debtor has not been able to show pre-existence of dispute in this matter.

18. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Insolvency and Bankruptcy, Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing **CP (IB) No. 238/ND/2022** filed by, Bhushan Power & Steel the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Karan Automotives Pvt. Ltd., the Corporate Debtor, is **admitted**.
- b) The Petitioner in Part III of the petition has proposed the name of Mr. Shailesh Dayal as proposed IRP, having Registration Number IBBI/IPA-002/IPN00834/2019-20/12630 and email-id dayalmaur@gmail.com is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed Interim Resolution Professional in Form-2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.
- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Shailesh Dayal to meet



out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

- d) We also declare moratorium in terms of section 14 of Insolvency and Bankruptcy Code, 2016. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 Financial 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 the possession of the corporate debtor.”

(e) The IB Code 2016 also prohibits suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”



- e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- f) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor as under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- g) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing



appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Sd/-
DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD
MEMBER (JUDICIAL)