

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No.166/NCLT/AHM/2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 20.04.2021**

Name of the Company: Shree Banshi Metal & Alloys Pvt Ltd
V/s
S S Alloys Product Pvt Ltd

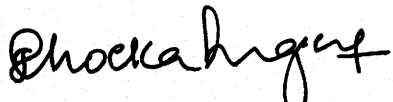
Section 9 of the Insolvency and Bankruptcy Code.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER
(through video conferencing)

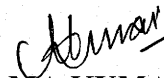
None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 20th day of April, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD
Court -2**

I.A. No. 68 of 2021
and
C.P. (I.B.) No. 166/9/NCLT/AHM/2020

In the matter of:

**M/s. Shree Bansi Metal & Alloys
Pvt. Ltd.
CIN: U27106GJ1997PTC032163**
Having its address at:
18/4/A, GIDC Estate,
Phase-3, Vatva,
Ahmedabad, Gujarat

**...Applicant
(Operational Creditor)**

Versus

**M/s. S.S. Alloys Products Pvt.
Limited
CIN: U27100GJ1988PTC011587**
Having its Registered Office at:
Plot No. 83/5, "F" Road, Phase-I,
G.I.D.C. Estate, Vatva,
Ahmedabad, Gujarat.

**...Respondent
(Corporate Debtor)**

Order delivered on 20.04.2021

Coram:

**Hon'ble Ms Manorama Kumari, Member (J)
Hon'ble Mr Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Mr Shakil Shaikh, Advocate appeared for the Petitioner.

Mr Rutvik Bhatt, Advocate appeared for the Respondent.

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COMMON ORDER

[Per se: Mr Chockalingam Thirunavukkarasu, Member (Technical)]

1. Mr. Surendra Shankarlal Kabra is a Director of **M/s. Shree Bansi Metal and Alloys Pvt. Ltd.** filed this Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter to as "the Rules"), as Operational Creditor/Applicant.
2. The Respondent/Corporate debtor is a private limited company registered under the provision of the Companies Act,1956 on 02.12.1988, having CIN U27100GJ1988PTC011587 and having registered office at Ahmedabad, Gujarat. The nominal share capital of the respondent company is Rs.1.50 crores/-and paid-up share capital is Rs. 1.40 crores/-.
3. The Petitioner/Operational Creditor is having an office at Ahmedabad engaged in the business of supplying base metals like iron and stainless steel and other iron scrap and the respondent company approached the operational creditor to purchase base metal iron and placed oral purchase order requesting Operational creditor to supply goods. The operational creditor has regularly supplied goods to the respondent company under various invoices and delivery challans during a period from 2012 to 2018.




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4. The Petitioner has submitted that the respondent/corporate debtor is indebted a total sum of Rs. 24,71,337 plus interest rate @ 18% as of 31.03.2019 to the applicant towards the goods supplied. The respondent company made some payments of the outstanding amount. The copies of the said amount and ledger are annexed herewith. Further, submitted by the Petitioner that, the GST bills, invoices in possession of Operational creditor and the details for total sale amount received against total purchase order goods and accounts receivable described in a serial wise and datewise in the separate sheet which is annexed herewith which clearly shows accounts receivable is total Rs. 24,71,337/-.
5. In support of its claim, the Petitioner has annexed to the application copy of documents like; Copy of Form -3 And Form-4 dated 20.12.2019, Copy of Master Data of Corporate Debtor, Copies of ledger accounts of corporate debtor made by Operational Creditor, Copy of the confirmation of Accounts, details of GST Bills with date wise and serial wise, Bank Account Statement of the Operational Creditor from 3rd April 2012 to 3rd May 2013, an affidavit under section 9(3)(b) of IBC,2016 etc.
6. The Applicant/Operational Creditor further submitted that the Corporate Debtor has confirmed the amount due by way of a

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confirmation letter dated 7th September 2019 on page no. 25 of the application.

7. Thereafter, the applicant/operational creditor issued a demand notice dated 20/12/2019 under section 8 of the Code in form 3 along with its annexures and Form No. 4 to the Corporate Debtor. The notice is received by the corporate debtor on 23/12/2019. The proof of delivery of notice is annexed herewith. However, the Respondent/Corporate debtor neither made the payment nor replied to the demand notice issued in Form No.3/4.

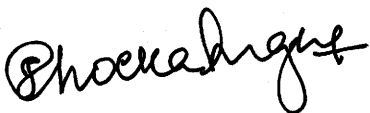
8. Further, the respondent/corporate debtor filed a reply/objections and made the following objections. The respondent corporate debtor denies each claim and stated in his reply this petition is malicious and fruitless. Further, stated by the respondent that the petitioner/operational creditor cannot be termed as an operational creditor as the claims filed herein are time-barred. No amount is due and payable as demanded by the operational creditor. Further, the objection made by the respondent corporate debtor on confirmation of accounts which is not signed by authorised persons nor has issued any such accounts statement as shown by the petitioner on page 25 of the petition as well as confirmation statements as produced by the petitioner on page 29 also is without the signature of any authorised persons or directors of the






company. Moreover, there is no exchange of debit notes during this time nor any interest accrued is posted in the ledger account to create an interest burden nor there is any debit note issued by the petitioner (the operational creditor) in the books of the petitioner.

9. Thereafter, on 18 September 2020, the Operational Creditor filed further documents on record by way of an affidavit i.e. copy of invoices during the period from 17/03/2012 to 06/06/2012. Further, this Adjudicating Authority had directed to operational creditor vide order dated 16.09.2020 to issue the fresh notice to the corporate debtor, thereafter, this tribunal has further directed vide order dated 16.09.2020 to the operational creditor to make paper publication to ensure the service of notice. In compliance with the said order, the operational creditor has made a Paper Publication in "**Sandesh**" Gujarati Newspaper on 29.09.2020 and proof of publication has been filed by the Operational Creditor on 15.10.2020.
10. The Applicant has filed an I.A. No. 68 of 2021 on 28.01.2021 for submitting fresh Authority Letter. The document is taken on record and disposed of.





11. The Applicant/Operational Creditor did not propose the name of any Resolution Professional for the appointment of IRP and let the matter discretion of this Adjudicating Authority.
12. Heard both learned Counsels of both sides and perused the documents filed.
13. On perusal of the records, it is found that the instant petition was filed on 17.02.2020. A copy of the ledger account has been attached where the last payment has been received through Bank for a sum of Rs. 5,03,366/- on 17.04.2013. The balance confirmation is a letter dated 7th September 2019.
14. Section 18(1) of the Limitation Act read as under;

“Where, before the expiration of the prescribed period for a suite of application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.”

In the present case, the last date of the transaction is 17.04.2013 and Balance confirmation is given on 07.09.2019 i.e., beyond the

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period of 3 years from 17.04.2013. Hence, the claim is barred by the Law of Limitation.

15. In view of the above the CP(IB) No. 166 of 2020 is not eligible for admission and hence rejected.

16. Accordingly CP(IB) No.166 of 2020 is dismissed and I.A. No. 68 of 2021 is disposed of.

No order as to cost.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

R.S.