

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

**C.P. (IB) 1121/MB/2022**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Bonfiglioli Transmissions Private Limited**

Having its address at Plot No. Ac7-Ac11,  
SIDCO Industrial Estate, Thirumudivakkam,  
Cheenai-600044- Tamil Naidu

**..... Petitioner/ Operational Creditor**

**Versus**

**Universal Construction Machinery &  
Equipment Limited**

Having its address at Gate No. 327, 328 &  
329, at Shivare post, Bhor Taluk,  
Pune- District, Shivare-412205,  
Maharashtra, India

**..... Respondent/Corporate Debtor**

**Order Delivered on :- 13/03/2024**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances:*

For the Operational Creditor : Adv. Santosh Mishra

For the Corporate Debtor : None

**ORDER**

*Per: - Kuldip Kumar Kareer, Member (Judicial)*

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Bonfiglioli Transmissions Private Limited** (hereinafter called Operational Creditor) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Universal Construction Machinery & Equipment Limited** (hereinafter called Corporate Debtor) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called "the Code") for resolution of an unresolved Operational Debt of Rs. 33, 83, 669/- (Rupees Thirty-Three Lakhs, Eighty-Three Thousand, Six Hundred and Sixty-Nine only)

**The submissions of the Operational Creditor are as follows:**

2. The Company Petition was filed online on 07.02.2020, and the hard copy of the company petition was filed on 10.02.2020 before NCLT. The Company

Petition has been filed for a claim of INR 33, 83, 669 (Rupees Thirty-Three Lakhs, Eighty-Three Thousand, Six Hundred and Sixty-Nine only), comprising of the principal outstanding amount of INR 27,00,732 (Twenty-Seven Lakhs and Seven Hundred and Thirty-Two Rupees only) and an amount of INR 6, 82,937 (Rupees Six Lakhs, Eighty-Two Thousand, Nine Hundred and Thirty-Seven only) as an aggregate interest calculated from the due date of each invoice till 20.05.2019, along with interest @ 24 % Per Annum from the due of each invoice till realization of the entire outstanding amount along with the interest.

3. The Operational Creditor is a company duly incorporated under the provisions of the Companies Act, 1956 and inter alia engaged in the business of designing, manufacturing, developing, hiring, repairing, importing, exporting, buying, selling, and dealing in gears of all types eluding in particular, spiral bevel, straight bevel, spur and helical and worm gears, gearboxes, winches, speed drivers, reduction gearboxes, gear motors, speed variators, electric and hydraulic motors, motor controllers, electromechanical and electronic devices, accessories and transmission devices.
4. The Corporate Debtor is a company duly incorporated under the provisions of the Companies Act, 1956, and inter alia engaged in the business of supplying oil lubricants, pumps, and gearboxes to measure industrial giants.
5. The Operation Creditor received a purchase order for certain gearboxes and allied equipment used for industrial purposes on 23.04.2015 from the Corporate Debtor.

6. The Operational Creditor duly supplied the gearboxes and allied equipment to the Corporate Debtor as per the terms of the purchase order within the time specified in the purchase order. The Operational Creditor thereafter raised invoices for multiple supplies. As per the terms of the purchase order and the invoices the payments were required to be made within sixty days after the receipt of the invoices raised by the Operational Creditor.
7. The Operational Creditor thereafter made several requests to clear the outstanding payments, however, the Corporate Debtor failed to repay any amounts.
8. The Operational Creditor on 10.08.2018, wrote an email to the Corporate Debtor putting out a detailed statement of account for the outstanding amount. The Corporate Debtor vide email dated 11.08.2018, wrote to the Operational Creditor acknowledging the outstanding payment due to the Operational Creditor and stated that due to poor cash flow, the Corporate Debtor is unable to pay the old outstanding dues. However, they would issue a Letter of Credit for a fresh supply of two gearboxes and requested for a Proforma invoice. The Corporate Debtor also stated that INR 5,00,000 (Rupees Five Lakhs only) outstanding will be paid by August 2018.
9. The Operational Creditor wrote an email on 12.08.2018, to the Corporate Debtor and provided the Proforma invoice required to release the Letter of Credit for two gearboxes. The Operational Creditor also informed that the Letter of Credit has been accepted only on the assurance of release of INR 5,00,000 (Rupees Five Lakhs only) by the end of August 2018.

10. Since then, the Operational Creditor has been writing numerous reminder emails to the Corporate Debtor requesting for outstanding payment, however, the Corporate Debtor has neglected to make any outstanding payment to the Operational Creditor.
  
11. The Operational Creditor issued a Demand Notice in Form-3 under the Insolvency and Bankruptcy Code, 2016 dated 21.05.2019 to the Corporate Debtor demanding payment in respect of the outstanding amount, but no reply was received by the Corporate Debtor to the said Demand Notice. The said Demand Notice was received by the Corporate Debtor which is evident from the acknowledgment card but the payment has not been made. Hence the Petition.

**Reply filed on behalf of the Corporate Debtor**

12. In reply, the Corporate Debtor has denied all allegations and/ or contentions and/or submissions made by the Petitioner in the Petition which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of non-traverse.
  
13. It is submitted that the Petitioner herein has presented the said Company Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 in the office of Tribunal on 07.02.2020. After scrutiny, the memo of Petition defects were initiated to the Applicant. It is to be noted that in terms of Rule 28 (2) of the National Company Law Tribunal Rules, 2016, wherein it has been provided that on scrutiny, if an application is found to be defective, after

notice to the party, the same shall be returned for compliance and defects to be complied within 7 days. However, the Applicant re-filed the petition along with the memo of defect-clearance around June, 2022, there being re-filing delay of more than 1.5 years. It is interesting to note that no explanation was ever given for such a huge delay nor any application for condonation of such delay was ever filed. According to Rule 28 (4) of the National Company Law Tribunal Rules, 2016, where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reason to be recorded in writing, decline to register the pleading or documents. Therefore, considering the inordinate delay in removing the defects, the Petition should have been returned to the Petitioner.

14. It is further submitted that the objection which took the Petitioner 1.5 years to compile are nothing but the mandatory requirements of the Section 9 of the Insolvency and Bankruptcy Code, 2016 i.e.
  - (a) Non-filing of Affidavit in support.
  - (b) Non-filing of Affidavit under section 9 (3) (b) of the Insolvency and bankruptcy Code, 2016
  - (c) Non-filing of Vakalatnama.
15. It is further submitted that it clearly indicates the mala fide intention of applicant, filing intentionally incomplete petition to put them out from Notification No. S. O. 1205 (E) dated 24.03.2020 wherein Ministry of Corporate Affairs has increased the threshold limit to Rs. 1 crore and made applicable to the applications filed under section 7 or 9 of the Insolvency and Bankruptcy Code, 2016 on or after 24.03.2020.

16. It is submitted that nonetheless, it is settled principal of law that when the re-filing of the petition is made with inordinate delay without there being appropriate reasons for delay, such petition deserves nothing but dismissal. Further, as the Petition is re-filed in the month of June 2022, i.e. much later the date of increase of threshold by the notification as narrated above, the present petition deserves to be dismissed. Rather, the original filing, which was simply filed without appropriate affidavits is not the filing at all. The actual filing date should be considered when the defect free petition was filed. It is because the first-time filing was simply a mala fide filing to catch the limitation in an inappropriate manner. It is also to be noted that when the petitioner is unable to provide a justifiable cause for such inordinate delay in re-filing the petition, the petition deserves to be dismissed on the grounds of delay and laches. Therefore, on this sole ground itself the petition deserves to be dismissed.
  
17. It is further submitted that the alleged claim of the Petitioner arises out of two Purchase Orders which are separate and independent from each other. The said Purchase Orders are referred to by the Petitioner as Purchase Order No. U1100000164 dated 23.04.2015 and Purchase order No. U1100000836 dated 08.082016. It is a settled principle of law that claims arising out of two separate contracts/Purchase orders cannot be litigated by one petition and notice. There being separate claims, separate notices were required to be issued and separate petitions required to be filed. The petitioner has served the single Demand notice and filed a single petition in respect of their alleged claims arising out of both the Purchase Orders, and hence the petition deserves dismissal.

18. It is further submitted that the Petitioner themselves have admitted that the said invoices are matter of dispute. In para (g) at page 5 of the Petition, the petitioner themselves have admitted that invoices are matters of dispute. It is settled principal of law that when the dispute is pending in respect of the subject matter of the Insolvency Petition, the petition deserves to be dismissed. The Petitioner by making such statement is estopped from claiming that there is no dispute in respect of the invoices claimed by present Petition.
19. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

**Analysis and Findings:**

20. We have heard the Counsel for the Petitioner and also gone through the record.
21. We have heard the Counsel for the Operational Creditor. None has appeared for the Corporate Debtor despite the fact that a notice was also issued to the Corporate Debtor to cause appearance in this case.
22. During the course of arguments, Counsel for the Petitioner has argued that the Operational Creditor supplied goods to the Corporate Debtor on the basis of the purchase orders vide as many as 12 invoices issued between 08.04.2017 and 22.08.2018. As per the invoices, payment of each invoice was to be made within a period of sixty days. Counsel for the Petitioner has further pointed out that no payment was made by the Corporate Debtor despite the fact that a demand notice dated 21.05.2019 was also issued. Counsel for the Petitioner has further pointed out that the present Petition has been filed within a period

of less than three years from the due date of each invoice, and, therefore, the present Petition is well within the period of limitation.

23. Counsel for the Petitioner has further referred to the email Exhibit (g) whereby the Corporate Debtor unequivocally acknowledged its liability. Therefore, according to the Counsel for the Petitioner, the present Petition is a fit case for admission under Section 9 of the IB Code, 2016.
24. In the reply filed on behalf of the Corporate Debtor an objection has been taken that the Petition is not maintainable considering the fact that though it was filed on 07.02.2020 with the Registry of NCLT, Mumbai Bench and the Petition was found to be defective and notice was issued with the Operational Creditor to remove the defects within 7 days, however, the Petitioner re-filed after a period of more than 1.5 years and no explanation has been given for the delay in removing the defects nor any application for condonation of delay is filed and, therefore, as per the NCLT Rules, 2016 more particularly to the Rule 28 (4), the Petition is liable to be dismissed.
25. It has further been claimed that the Petition has been filed in respect of claims which arise out of two separate contracts/purchase orders which cannot be pursued jointly by filing a single Petition. According to the Respondent, the Petition was required to serve separate demand notices in respect of two separate contracts and the separate Petitions were also supposed to be filed and, on this ground also, the Petition is liable to be dismissed.
26. We have thoughtfully considered the matter. So far as the contentions that the defect was not removed by the Operational Creditor within the time, the same does not appear to be any consequence and it is not disputed that the

Petition was initially filed on 07.02.2020 and one cannot be unmindful of the fact that after February 2020, there was Covid Pandemic which continued for more than 1.5 years. Even the Hon'ble Supreme Court in its Suo motto Judgement has declared that the Covid period is not applicable for the purpose of commutation of the period of limitation. Therefore, no adverse inference can be drawn against the Operational Creditor, if it took some time in removing the defects after filing of the Petition on 07.02.2020 nor on this ground can the Operational Creditor be non-suited.

27. The second objections raised in the reply is that the present Petition has been filed jointly in respect of two separate purchase orders and is, therefore, not maintainable. Even this contentions raised on behalf of the Corporate Debtor does not appear to be tenable. The case of the Operational Creditor is based on invoices which were issued between 08.04.2017 and 28.08.2018. The supply of the goods based on a single purchase order annexure (d) placed by the Corporate Debtor. Therefore, the plea raised on behalf of the Corporate Debtor that the present Petition has been wrongly filed in respect of the separate purchase orders does not appear to be justified.
28. Another objection raised on behalf of the Corporate Debtor against the present Petition is that the same has not been filed by the duly authorized person. However, as per the resolution dated 06.02.2013 annexure (b), Mr. G.A. Balaji through whom the present Petition has been filed, was duly authorized by the board of the directors of the Operational Creditor through attorney as well otherwise to institute/defend legal proceedings, civil or criminal and file complaints for and on behalf of the Company before any judicial or quasi-judicial Authorities. From the resolution Annexure (b), it is

abundantly clear that Mr. G.A Balaji was duly authorized and competent to file the present Petition.

29. Apart from this, the factum of supply of goods has not at all been disputed by the Corporate Debtor. Rather in the email dated 11.08.2018 Annexure (G), the Corporate Debtor has acknowledged to pay the outstanding dues. Even otherwise, all the invoices fall within the limitation period and it can be safely held that the present Petition has been filed within the period of limitation.
30. As a result of above discussion, we hold the Operational Creditor has been able to prove the existence of operational debt and its default committed by the Corporate Debtor and further that the Petition is well within the period of limitation and there are no pre-existing disputes between the parties. Therefore, the Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

**ORDER**

- a. **The above Company Petition No. (IB) 1121/(MB)/2022 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Universal Construction Machinery & Equipment Limited.**
- b. **This Bench hereby appoints Mr. Anurag Kumar Sinha, Registration No: IBBI/IPA-001/IP/P-00427/2017-2018/10750 as the Interim Resolution Professional having his address at Flat No.3602,**

**Redwood (Tower No. 7), Runwal Greens, Mulund - Goregaon Link Road ,Bhandup(West) ,Mumbai City, Maharashtra -400078, Mobile No:- 9482561916, Email id:- [aksinhaip3@gmail.com](mailto:aksinhaip3@gmail.com) ;** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** 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 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

31. **Accordingly, this Petition is admitted.**

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

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

*Sushil*

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**