

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

C.P. (IB) 693/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

V.N. Traders

Having Its Registered Office- House No. 13,
Agrawal House, Ambika Colony, Kidwai
Ward Seoni, MP 480337

Also at- B-19, MIDC Sevagram
Road, Wardha - 442006

..... Petitioner/ Operational Creditor

Versus

Gammon India Limited

Having Its Registered Office- Gammon
House, Veer Savarkar Marg,
Prabhadevi, Mumbai- 400025

..... Respondent/Corporate Debtor

Order Delivered on :- 09/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Subhash Gupta

For the Corporate Debtor : Adv. Sabnis a/w Pradeep Jain

ORDER

Per: -Mr. 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 **V.N. Traders** (hereinafter called as "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Gammon India Limited** (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of IBC for resolution of an unresolved Operational Debt of Rs. 20,33,417/- (Rs. Twenty Lakhs, Thirty-Three Thousand Four Hundred and Seventeen) (Being principal amount of Rs.7,76,002/- (Rs. Seven Lakhs Seventy-Six Thousand and Two Rupees Only) and Interest amounting to Rs. 12,57,415.96/- (Twelve Lakhs Fifty-Seven Thousand Four Hundred Fifteen and Ninety Six Paise only)

The submissions of the Operational Creditor are as follows:

2. It is submitted that as per the agreed terms between the parties and the purchase order placed by the Corporate Debtor, the Operational Creditor supplied on credit Wooden Planks, Wooden Sleepers and Plywood(goods) to Corporate Debtor and raised multiple invoices during the period of March to May 2011. The Corporate Debtor made payments to the Operational Creditor and the last payment was made on July 2, 2016 by way of a cheque bearing number 05 1993 for an amount of Rs. 2,00,000/- (Rupees Two lakhs). The Operational Creditor has not made any payments towards the said invoice thereafter. Except for payments as mentioned above, the invoices were dishonoured by the Corporate Debtor by not making payment due by them.

3. It is further submitted that a demand Notice dated 30.01.2018 was issued to the Debtor. However, the Corporate Debtor did not reply to the Demand Notice within the Statutory time period of 10 days. The Corporate Debtor has till date failed to reply to the Demand Notice and also to pay the amount due and payable. The Corporate Debtor had last made a part payment on July 2, 2016 and no payments were made after that. The debt fell due from July 3, 2016 being the next day from July 2, 2016 being the last date of the part payment made by the Corporate Debtor. Hence the present Petition.

Reply filed on behalf of the Corporate Debtor

4. At the outset, the Respondent denies all contentions / averments set out in the Petition filed by the Petitioner. Nothing should be deemed to be admitted for want of specific traverse.

5. It is submitted that the National Company Law Tribunal (NCLT) Mumbai Bench has vide order dated 22.03.2017 approved scheme of Arrangement (said Scheme) between Gammon India Limited (GIL) and Gammon Engineers & Contractors Pvt. Ltd. (GECPL) for transfer of civil EPC business of GIL with effect from appointed date 1st July, 2016. The said scheme has become effective 31st March, 2017 and as per the said scheme the work given to Gammon India Limited in respect of the project in respect of which invoices have been annexed in the petition from page numbers 8 to 17 stand transferred to and assumed by GECPL
6. It is pertinent to note that upon receipt of the Petitioners Demand Notice dated 30th January 2018 a reply dated 16th February, 2018 was issued by GECPL to the Petitioners. However, the envelope containing the notice has been returned to the Respondent.
7. It is further submitted that the the present petition has certain discrepancies because of which the present petition has become defective. The discrepancies are as follows:-
 - (a) The Petitioner has not mentioned the date of default in the notice dated 30.01.2018 at page 18 of the petition. The notice only states the alleged debt due as on 25.01.2018. However, the Petitioner has mentioned in Form-V on page 4 of the Petition the date of default as 3rd July, 2016.
 - (b) The Petitioner has annexed a Statement containing details of invoices at page 7 of the petition. It is pertinent to note that in this statement the Petitioner has mentioned the due dates of each invoice which is from the period from 10.04.2011 to 03.06.2011. This is in

absolute contrast to what has been stated in Form V as mentioned above.

(c) Further the Petitioner has in the form V mentioned that the Respondent made payment of Rs.2,00,000/- by cheque on 2nd July, 2016. This fact has not been mentioned by the Petitioner in the Demand Notice and is being mentioned for the first time in Form V.

8. It is contended that without prejudice to the aforesaid, the Respondent states that on perusal of Annexure A annexed at page 7 of the Petition, it is clear that the due date of the invoices, which were not paid according to the Petitioner, vary from April 2011 to June 2011. The last payment made by the Respondent was after a period of three years from June 2011 and the Demand Notice has been issued on 30.01.2018. From these facts, it is clear that the claim made in the petition as well as in the Demand notice is defective and is barred by limitation.
9. It is submitted that the Petitioner has admitted in the Petition that the invoices were issued in the year 2011 and payment of Rs.2 lacs were made in July 2016. This means the part payment in respect of debt was made much after period of limitation of three years from 2011 because of which the Limitation period does not get extended.
10. It is further states that the Petitioner has supplied the material based on different purchase orders. It is respectfully submitted that payment in respect of one purchase order does not extend the limitation for the amount balance in respect of material supplied under other purchase orders. The Respondent states that considering the aforesaid factual aspects, as mentioned in the Petition by the Petitioner, which is filed under Section 9 of the Insolvency

and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") the same is barred by the law of limitation. Though the Respondent made payment of Rs.2,00,000/- in the month of July 2016 but the said payment was made by the Respondent after the period of three years from the due date of invoices and thus the limitation to initiate legal proceedings does not get extended. Therefore, the present petition has been filed after expiry of the limitation period. In light of the same, the Respondent submits that the alleged debt is hopelessly time-barred.

11. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

Analysis and Findings:

12. We have heard the Counsel for the parties and gone through the record.
13. It is worth mentioning that in the written submissions made on behalf of the Corporate Debtor, the principal amount of Rs.7,76,002/- was paid to the Operational Creditor by way of NEFT and the Bank Advice Receipt has been placed on record as Annexure (a).
14. During clarification, it was confirmed by the Counsel for the Operational Creditor that the said principal amount of Rs. Rs.7,76,002/- has been received by the Operational Creditor. In the light of this fact, now the question arises whether after the payment of the principal amount of Rs. Rs.7,76,002, the Petition can be proceeded with any further or not. In this regard a reference can be made to the law laid down in case of '*S.S. Polymers Vs. Kanodia Technoplast Limited*' in '*Company Appeal (AT) (Ins) No. 1227 of 2019 decided on 13.11.2019*' whereby it has been held by the Hon'ble NCLAT

that if before the admission of an application under Section 9 of the Code, the Corporate Debtor paid the total debt, the application for realization of interest cannot be pursued any further as it would be against the principle of IB Code and is liable to be treated as an application pursued by the Applicant with malicious intent (to realize interest only) which is not the purpose of the Code. In this regard a further reference can also be made in case of '*Permal Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd.*' in *Company Appeal (AT) (Ins) No. 36 of 2023 decided on 17.01.2023* whereby it has been held that IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and is not filed for resolution of any insolvency of the of the Corporate Debtor and the same is liable to be rejected. In the light of the law laid down in the aforesaid cases, in our considered view, after the payment of the principal amount of Rs.7,76,002 as claimed in part (IV) of the Petition under Section 9 of the Code, the Operational Creditor is not entitled to proceed with the case any further for recovery of some outstanding interest.

15. As a result of the above discussion, we are of the considered view that the Petition is liable to be **dismissed** on account of the fact that the entire principal amount claimed in the Petition has already been admittedly paid. It is ordered accordingly. File be closed and consigned to records.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)