



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
NEW DELHI COURT III**

**Item No. 02**  
IB-688(ND)/2020

**IN THE MATTER OF:**

M/s. Scan Steels Limited

.....**OPERATIONAL CREDITOR**

**Vs.**

M/s. Ashoka Machine Tools International Private Limited

.....**CORPORATE DEBTOR**

**SECTION**

**U/s 9 of IBC, 2016**

**Order Pronounced on 01.08.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-688(ND)/2020  
is **admitted.**

-SD-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT-III  
IB – 688/ND/2020**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**M/s. SCAN STEELS LIMITED.**

*Having Its Registered Office at:*

Office No. 104/105, E-Square Subash Road,  
Opp. Havmore Ice Cream, Vile Parle,  
Mumbai-400057.

*Through Its Authorised Representative/Director*

**Mr. Ankur Madaan**

**..... Applicant/Operational Creditor**

**VERSUS**

**M/s. ASHOKA MACHINE TOOLS INTERNATIONAL PRIVATE LIMITED**

*Having Its Registered Office at:*

B-68/3, Wazirpur Industrial Area,  
New Delhi-110052.

*Through Its Authorised Representative/Director*

**Mr. Ashwani Khanna**

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

**Order Pronounced On: 01.08.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS,**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI,**

**HON'BLE MEMBER (TECHNICAL)**

**M/s. Scan Steels Ltd. vs. M/s. Ashoka Machine Tools International Pvt. Ltd.**

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**Date of Order: 01.08.2023**



## **APPEARANCES**

- For the Applicant : Mr. Shashwat Anand, Mr. Shashwat Parihar, Mr. Dhruva Vig, Ms. Adya Singh, Advs.
- For the Respondent : Mr. Pallav Saxena, Mr. Nipun Sharma, Mohd. Nausheen Samar, Mr. Dewaker Goel, Mr. Abdul Wasih, Advs.

## **ORDER**

### **PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by M/s. Scan Steels Limited, the Applicant/Operational Creditor on 07.03.2020, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Ashoka Machine Tools International Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 5,17,782/- [(Rupees Five Lakh Seventeen Thousand Seven Hundred and Eighty Two Only), Rs. 3,86,136/- as debt amount plus Rs. 1,31,646/- as interest amount @ 12% per annum, the Operational Creditor reserves its right to claim future interest also] as on 15.01.2020.
2. **Submissions of the Applicant:**
  - i. The Operational Creditor had issued several Purchase Orders to the Corporate Debtor for the supply of different types and grades of support roller, cooler support roller and pinion, for its use in the plant of the Operational Creditor. To obtain such material, the Operational Creditor used to pay an advance amount at



regular intervals as per the Purchase Order. Till August, 2017, the Operational Creditor has paid a total sum of Rs. 7,97,516.00/- towards procurement of the material but has only received Rs. 4,11,380.00/- worth of material. The balance amount of Rs. 3,86,163.00/- is lying with the Corporate Debtor as a debt due to the Operational Creditor.

- ii. Thereafter, the Operational Creditor requested for refund, of the outstanding amount or for the supply of the remaining material against the outstanding amount, but the Corporate Debtor neither supplied the material nor refunded the amount.
- iii. The Operational Creditor has therefore served a Demand Notice upon the Corporate Debtor under the Code. As the Corporate Debtor failed to make payment of the debt within 10 days. Thereof, the Operational Creditor hence seeks to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

3. **Submissions of the Respondent:**

- i. It is pertinent to mention herein that the captioned application is not maintainable being violative of the mandate of Section 4(1) of the Code. It is pertinent to mention herein that the alleged amount involved in the captioned application is Rs.5,17,782/- which is inclusive of interest at the rate of 12%. The said amount is lesser than the threshold limit of Rs. 1 Crore for invoking the provisions of the Code as per the inviolable mandate of Section 4(1) thereof. Therefore, the captioned application is liable to be dismissed.
- ii. It is pertinent to mention herein that, the supplies as per the purchase orders were made to the Applicant at concessional rates which were much lower than the prevailing market rates with a clear understanding that the subsequent supplies shall be at such rates as would make good the loss incurred by the Respondent and in the event of Applicant not raising purchase

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order in future, the advance lying with the Respondent shall be adjusted towards recovery of the concessions given by the Respondent to Applicant. Therefore, in terms of the above understanding, the Respondent adjusted the amount of Rs.3,86,136/- representing the recovery concessions of the amounts given in the previous transaction.

- iii.** In light of the aforesaid understanding between the parties, the Respondent proceeded to adjust the advance amount of Rs.3,86,136/- towards the reimbursement of the concession so granted in the past. Thus, there exists no debt between the Applicant and Respondent as the claimed amount is not payable and has instead been adjusted in terms of the agreement between the parties.
- iv.** In the light of the aforesaid, no liability in the form of debt or otherwise is payable by the Respondent to the Applicant whatsoever. Hence the existence of debt, it becoming due and payable and continuing to remain unpaid as are necessary to form the basis of action under the IBC are denied in specific. Therefore, the captioned application is liable to be dismissed on this ground alone being devoid of any cause.
- v.** Without prejudice to the aforesaid, it is submitted that the alleged demand notice dated 25.11.2019 purportedly issued under Rule 5 was never upon the Respondent. The service of Demand Notice under Rule 5 is a mandatory pre-requisite for filing the captioned application under Section 9 of the Code. Thus, the present application is liable to be dismissed on this ground alone.
- vi.** It is most respectfully submitted that the Applicant is not entitled to seek any claim in the captioned application, as the amount purportedly claimed as debt is absolutely and ex-facie incorrect and exorbitant claims are being sought without any basis, and the Petition is liable to be dismissed on this ground alone. Without prejudice to the contentions raised and without



admitting any allegation or averment made in the captioned application, it is submitted that the Applicants are claiming an amount of Rs.5,17,782/- which is inclusive of the interest at the rate of 12% p.a. The said claim is exorbitant and not maintainable on any count. Therefore, the Applicant is not entitled to maintain the captioned application in view of the facts and circumstances noted above.

4. In Rejoinder, the Operational Creditor submitted that the Operational Creditor served a Demand Notice dated 25.11.2019 upon the Corporate Debtor under Section 8 of the Code, which was sent through Speed post to the registered office and plant site of the Corporate Debtor as well as to the two Directors of the Corporate Debtor. Pertinently, the service of the Demand Notice was successful on each address. The proof of Service of Demand Notice is filed along with the Application. It is noteworthy that the Corporate Debtor failed to make payment within 10 days of service of the Demand Notice and also failed to respond to the Demand Notice. In such circumstances, any purported dispute or objections raised by the Corporate Debtor in the Reply to the Section 9 Application is only an afterthought to escape the liability towards the Operational Creditor. All grounds raised by the Corporate Debtor in the Reply to the Section 9 Application deserve to be rejected at the threshold on this ground alone. It is stated that the Corporate Debtor has categorically admitted that a principal amount of Rs. 3,86,136/- was lying with the Corporate Debtor towards extra payments made by the Operational Creditor. It is stated that the Corporate Debtor has admitted the genuineness of the transaction entered into between the Corporate Debtor and the Operational Creditor. It is further stated that the Corporate Debtor, to avoid payment of its liability, has backed up a false story of adjustment of outstanding amounts towards the recovery of purported concessions given by it. It is stated that there is no document or material on records to evidence that any such understanding existed

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between the parties. The Operational Creditor placed purchase orders of desired quantities and the Corporate Debtor supplied goods at prices acceptable to both parties. However, due to the Corporate Debtor's short supply, an amount of Rs. 3,86,136/- on account of running account bills was left with the Corporate Debtor for which the Corporate Debtor failed to make payment. It is stated that there is no question of reimbursement of concessions as there existed no such terms between the parties. All invoices raised by the Corporate Debtor to evade its liabilities towards the Operational Creditor.

#### 5. **Analysis and Findings**

- i.** We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
- ii.** It is pertinent to note that at the time when the instant Petition was filed by the Operational Creditor, i.e., 03.03.2020 (07.03.2020), the threshold limit under Section 4 of the IBC was Rs. 1 lakh. It was only on 24.03.2020 that the limit of Rs. 1 lakh was revised to Rs. 1 crore by way of Notification of the Ministry of Corporate Affairs, Government of India (the said notification is only 'Prospective in nature' and not a 'retrospective' one). The applicability of the threshold limit of Rs. 1 crore shall only apply in cases filed on or after 24.03.2020. As the instant application was not only filed and numbered but also listed and notice issued by this Hon'ble Tribunal prior to 24.03.2020, the said notification is not applicable to the instant proceedings and the Application under Section 9 filed by the Operational Creditor is maintainable under Section 4 of the Code.
- iii.** We find it relevant to mention that there is no evidence to substantiate the contention raised by the Respondent and without even placing a single document on record by the Respondent that the material was supplied at concessional rates and that the amount of advance payable by the Corporate Debtor was adjusted towards the difference in the rates. In the present matter, the



Respondent has merely tried to create a moonshine defence to evade the liabilities owed by it to the Applicant. There is nothing on record to evidence that there is a dispute, pre-existing before the service of the Demand Notice upon the Respondent. It is stated that there is no documentary evidence to show that there was any dispute between the parties.

- iv.** It is stated that the Corporate Debtor has categorically admitted that a principal amount of Rs. 3,86,136/- was lying with the Corporate Debtor towards extra payments made by the Operational Creditor. It is stated that the Corporate Debtor has admitted the genuineness of the transaction entered into between the Corporate Debtor and the Operational Creditor.

Guidance in this regard is also available in the judgment of Hon'ble Apex Court in **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions (P) Ltd.**, (2022) 7 SCC 164, wherein, the Hon'ble Supreme Court categorically held that:

***“50. It is then that we come to the core of the dispute— while the appellant has argued that the debt is in the nature of an operational debt which makes them an operational creditor, the respondent has opposed this submission. The respondent's submission, which was accepted by NCLAT, seeks to narrowly define “operational debt” and “operational creditors” under the IBC to only include those who supply goods or services to a corporate debtor and exclude those who receive goods or services from the corporate debtor. For reasons which shall follow, we reject this argument:***

***50.1. First, Section 5(21) defines “operational debt” as a “claim in respect of the provision of goods or services”. The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. Such an interpretation is also supported by the***



*observations in the BLRC Report, which specifies that operational debt is in relation to operational requirements of an entity.*

*50.2. Second, Section 8(1) IBC read with Rule 5(1) and Form 3 of the 2016 Application Rules makes it abundantly clear that an operational creditor can issue a notice in relation to an operational debt either through a demand notice or an invoice. As such, the presence of an invoice (for having supplied goods or services) is not a sine qua non, since a demand notice can also be issued on the basis of other documents which prove the existence of the debt. This is made even more clear by Regulations 7(2)(b)(i) and (ii) of the 2016 CIRP Regulations which provide an operational creditor, seeking to claim an operational debt in a CIRP, an option between relying on a contract for the supply of goods and services with the corporate debtor or an invoice demanding payment for the goods and services supplied to the corporate debtor. While the latter indicates that the operational creditor should have supplied goods or services to the corporate debtor, the former is broad enough to include all forms of contracts for the supply of goods and services between the operational creditor and corporate debtor, including ones where the operational creditor may have been the receiver of goods or services from the corporate debtor.*

*50.3. Finally, the judgment of this Court in Pioneer Urban [Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1], in comparing allottees in real estate projects to operational creditors, has noted that the latter do not receive any time value for their money as consideration but only provide it in exchange for goods or services.*



***Indeed, the decision notes that “examples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees”. Hence, this leaves no doubt that a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt.***

.....

***52. Similarly, in the present case, the phrase “in respect of” in Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt. In the present case, the appellant clearly sought an operational service from the proprietary concern when it contracted with them for the supply of light fittings. Further, when the contract was terminated but the proprietary concern nonetheless encashed the cheque for advance payment, it gave rise to an operational debt in favour of the appellant, which now remains unpaid. Hence, the appellant is an operational creditor under Section 5(20) IBC.”***

- v.** The scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment/re-payment, hence the application is filed.

Having regard to the facts of the case, we are of the considered view that the debt arises out of the extra payments/ advances made by the Operational Creditor, the said amount is a debt disbursed against the consideration owned by the Operational Creditor, hence



it is covered under the definition of "Operational Debt" and the Applicant will be treated as "Operational Creditor".

- vi.** Thus, the present application is legally tenable even after the argument of the Respondent is taken into consideration.

## **6. Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- a)** The Application bearing **IB-688/ND/2020** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- b)** We also declare a moratorium in terms of Section 14 of the Code. 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:
- i. "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;*
- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. 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;*



- iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]*”

- c) 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.
- d) Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Rajiv Malik, as the Insolvency Resolution Professional of the Corporate Debtor from the



available list of panel of Resolution Professionals as maintained by IBBI. The registration number of the IRP is IBBI/IPA-002/IP-N00391/2018-2019/12115, the address of the IRP is B-7/18, Mianwali Nagar, Delhi Rohtak Road, Near Peera Gari Metro Station, New Delhi, Delhi-110087 and the e-mail id of the IRP is iprmalik2009@gmail.com.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, Mr. Rajiv Malik is appointed as IRP.

- e) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- h)** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
- j)** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- k)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

**-SD-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**