



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-796/(ND)/2021**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/S. BHARAT STEEL ROLLING MILLS UNIT-1**

**Registered Office At:** 786/C, Govindpuri,  
Muzaffarnagar

...Applicant/Operational Creditor

**Versus**

**M/S. REVITAL REALITY PRIVATE LIMITED**

**Registered Office At:** 1114, Hemkunt Chambers 89,  
Nehru Place, New Delhi-110019

...Respondent/Corporate Debtor

**Coram:**

**Shri. P.S.N Prasad, Member (Judicial)**

**Shri.Rahul Bhatnagar, Member (Technical)**

**Counsel for Applicant** : Mr. Satish Rai  
**Counsel for Respondent** : Ms. Gunjan Mittal



## **ORDER**

**PER: P.S.N PRASAD, MEMBER (JUDICIAL)**

**Date: 16.03.2023**

1. This is an application filed by the Applicant M/s. Bharat Steel Rolling Mills Unit-1 seeking to initiate corporate insolvency resolution process (“CIRP”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) against the Respondent M/s. Revital Reality Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 2,09,30,316/- (Rupees Two Crore Nine Lakh Thirty Thousand Three Hundred and Sixteen) comprising principal amount of Rs. 1,95,89,098/- along with an interest of Rs. 13,41,2181/-. The details of the transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:
  - i. That the Operational Creditor is the authorized dealer of various T.M.T & Structural Steel and is engaged in the business of supplying T.M.T & Structural Steel to real estate companies and individuals.



- ii. That Corporate Debtor, in the year 2017, being a well known name in the real estate industry and keen and desirous of purchasing T.M.T Steel bars for its new housing project, contacted Operational Creditor for discussion on the supply of goods and after being satisfied with the price and quality of the goods, Corporate Debtor placed various orders for purchase verbally in favour of Operational Creditor for supply of T.M.T Steel Bars at their sites situated at Affordable Group Housing "The Valley" Sector 78, Gurgaon, Haryana. 4.
- iii. That believing the Corporate Debtor's assurances to pay the invoice amount within the stipulated time, the Operational Creditor has been regularly supplying the goods in terms of the orders received verbally from the Corporate Debtor during the period w.e.f. year 2017 till year 2021 and hence fulfilled their part of obligation of the contract.
- iv. That the Operational Creditor has recorded all transactions entered with Corporate Debtor as running account and for better accounting purposes



maintained a separate ledger accounts for goods supplied at sites situated at Gurgaon.

- v. That during the period 01.04.2017 to 31.02.2022, upon receipt of verbal orders for purchase, operational creditor supplied the goods total amounting to Rs. 10,54,06,643/- and against which corporate debtor made a part payment amounting to Rs. 8,58,17,545/-. After adjusting the above received amount against the running account, the closing balance amount of Rs. 1.95.89.098/- is still lying outstanding and remains unpaid till date.
- vi. That upon receipt of the goods supplied under the issued invoices, ever since receiving the goods and till date, the Corporate Debtor has not raised any dispute/objection with regard to the quantity and specifications as ordered and also with regard to the quality of the supplied goods and has used the same for their business purposes. The Corporate Debtor has also not raised any dispute at any point of time with respect to up-paid debt amounting to Rs. 1.95.89.098/- . Since the Corporate Debtor has failed



to clear the payment as agreed within 15 days upon presentation of the Invoice, the Operational Creditor is entitled receive an interest @12% per annum on principle amount as agreed in the terms of invoices.

vii. That the Operational Creditor sent the demand notice in Form-3 on 30.09.2021 in compliance of Section 8(1) of the Insolvency and Bankruptcy Code, 2016 seeking principle amount of Rs. 1,95,89,0981 along with an interest of Rs. 13,41,2181- total amount amounting to Rs. 2,09,30,316/- at the registered office of the Corporate Debtor which has been duly received by the Corporate Debtor at its respective address on 01.10.2021. Upon receipt of notice dated 30.09.2021 sent through speed post, no reply has been furnished by the corporate debtor and hence the instant Company Petition 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 is preferred by the Operational Creditor through its Proprietor against the Corporate Debtor.

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2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

- i. That the present Petition has been filed through Mr. Shahawar Khan claiming to be a partner of Bharat Steel Rolling Mills Unit-1, Operational Creditor herein without any support of partnership deed tantamount as unregistered partnership firm. Therefore, in terms of Section 69 (2) of the Indian Partnership Act, 1932, the present Petition is not maintainable being unregistered partnership firm.
- ii. That the invoices as annexed along with the present Petition from 30.10.2020 to 21.03.2021 fall under the suspension period u/s 10A of the Code and against the same no proceeding can be invoked under Section 9 of IB Code. The invoices except of suspension period would not able to meet the threshold limit viz 1 Crore.
- iii. That the claim under Section 9 of the IB Code of 2016 includes frivolous claim towards interest to the extent of Rs. 13,41,218/- (Rupees Thirteen Lacs Forty One Thousand Two Hundred Eighteen) which was never



agreed nor does it form a part of the oral purchase orders or invoices or otherwise.

3. In compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 25.11.2021 stating that no notice of any pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt.
4. In compliance of Section 9 (3)(c) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed certified bank statements.
5. The Operational Creditor and the Corporate Debtor have duly filed their written submissions.
6. We have heard the arguments of Ld. Counsel for the Operational Creditor as well as the Corporate Debtor and perused the averments made in the application as well as the documents relied upon by the Applicant and the Respondent.



7. The first contention of the Respondent is that the Applicant being an unregistered partnership firm is barred from filing the present application under Section 9, IBC, 2016. However, with respect to the same, reliance is placed on the judgement of Hon'ble NCLAT in the matter of *Rourkela Steel Syndicate vs. Metistech Fabricators Pvt. Ltd. Company Appeal (AT)(Insolvency) No. 924 of 2022* wherein it was held as follows:

*6. An application under Section 9 of IBC cannot be said to be a suit and analogy of Hon'ble Supreme Court judgment in Hargovindbhai Dave's case, supra, is fully applicable to the application filed under Section 9 IBC also. Further, also it is well settled by the judgment of the Hon'ble Supreme Court in **B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633** that provision of Section 5 Limitation Act are also fully applicable in Section 7 & 9 IBC applications. Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.*

*7. The Judgments of Hon'ble Supreme Court relied by the Adjudicating Authority regarding bar of Section 69(2) is not attracted in the present case since the application under Section 9 cannot be treated as suit.*



*8. We are thus of the view that the Adjudicating Authority has committed error in rejecting Section 9 Application on the ground that it is barred by 69(2) of the Partnership Act. We are thus in view that the order impugned cannot be sustained and deserves to be set aside.*

Therefore, it is clear that the bar under Section 69(2) of the Indian Partnership Act, 1932 would not apply to Applications filed under IBC, 2016.

8. The second contention of the Respondent is that certain invoices are barred by Section 10A, IBC, 2016 excluding which the present Application would not be able to meet the threshold limit of Rs. 1 Crore under Section 4, IBC, 2016. With respect to the same, the invoices relied upon by the Applicant are dated 30.10.2020 to 21.03.2021. The payment with respect to the said invoices were to be made within 15 days from the date of such invoices. Therefore, the date of default with respect to each invoice would be 15 days from the date of such invoices. Per Section 10A of the IBC, 2016 and the MCA Notifications dated 24.09.2020 and 22.12.2020, no application for CIRP may be filed for defaults occurring



between 25.03.2020 to 24.03.2021. The default with respect to the invoices dated 30.10.2020-07.03.2021 occurred on the lapse of 15 days from the date of such invoices thereby, falling within the period specifically barred by Section 10A, IBC, 2016. Further, excluding these invoices, the remaining invoices dated 21.03.2021-22.07.2021 amounting to Rs. 68,64,820 (Sixty Eight Lakh Sixty Four Thousand Eight Hundred and Twenty) including interest fail to meet the threshold limit of Rs. 1 Crore u/s 4, IBC, 2016. Therefore, the said Application is not maintainable.

9. Accordingly, we hereby **dismiss** the present application filed under Section 9 of the IB Code, 2016.

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**(Rahul Bhatnagar)**  
**Member (Technical)**

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**(P.S.N Prasad)**  
**Member (Judicial)**