

**THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IB-726/ND/2023**

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016.

**IN THE MATTER OF:**

**Mr. SANJAY KUMAR MEHTA**

***(Proprietor, Superior Steel Industries)***

**Registered Office: -**

**Mardia Bhavan, 1<sup>st</sup> Floor,**

**6<sup>th</sup> Khetwadi Lane, Mumbai - 400004**

*.....Operational Creditor*

***Versus***

**M/s. NUBERG ENGINEERING LIMITED**

**Registered Office: -**

**204, Second Floor,**

**Vardhaman Sunrise Plaza,**

**New Delhi – 110096**

*..... Corporate Debtor*

*Delivered on: - 22.03.2024*

**Coram:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Shri Atul Chaturvedi**

Hon'ble Member (Technical)

IB – 726 (ND) 2023

D.O.O – 22.03.2024

**Appearances:**

For Applicant : Mr. Prabhat Kumar Churasia, Advocate

For Respondent : Mr. Anang Shandilya, Advocate

**ORDER****Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Superior Steel Industries Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s. Numberg Engineering Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

**Pleadings of Operational Creditor**

2. The Operational Creditor/Petitioner has averred as follows: -

a) The Operational Creditor is the Sole Proprietor of Superior Steel Industries and is registered as MSME and is engaged in sale and supply of S.S Plate Square Bar, Rectangular Bar etc. The Corporate Debtor is engaged in the business of providing services across chemicals & fertilizers, hydrocarbon, nuclear & defense and steel industries.

b) The Corporate Debtor approached the Operational Creditor for sale and supply of SS Plate Square Bar, Rectangular Bar etc. and the Corporate Debtor placed orders for supply of the goods from time to time and the Operational Creditor supplied the goods to the entire satisfaction of the Corporate Debtor.

c) It is submitted that, the Operational Creditor had raised its invoices against sale and supply of the goods upon the Corporate Debtor between the period from August to December, 2021 and the agreed terms between the parties were specifically mentioned of each of the invoices. Further, the Operational Creditor sold and supplied the goods for aggregate value of Rs. 4,89,84,811/- and raised 15 invoices. The Corporate Debtor made part payments from time to time however, never cleared the entire due payment.

d) It is further averred that, the cheques issued against the payment by the Corporate Debtor were dishonoured and due to non-payment from the Corporate Debtor, the Operational Creditor filed Mediation Application Form under the Commercial Courts Act, 2015 before the Hon'ble Bombay High Court and one Mr. Sameer Tendulkar, Advocate was appointed as Mediator in the matter.

e) It is submitted that, the parties arrived at the settlement and a Settlement Mediation Report dated 21.12.2022 was prepared with the consent of the parties. As per the report, the Corporate Debtor agreed to pay the outstanding dues against principal and agreed to settle the interest amicably. The Corporate Debtor failed and neglected to comply and abide by the terms and conditions of the Mediation Report. The Operational Creditor having no recourse issued a Demand Notice dated 25.07.2023 under Section – 8 of IBC 2016, for the demand of Rs. 1,46,59,246/-. That the Corporate Debtor replied to the Demand Notice vide letter dated 04.08.2023 and admitted that an amount of Rs. 54,47,538/- is due.

### **Pleadings of Corporate Debtor**

3. In response to the contentions raised by the Operational Creditor/ Applicant. Corporate Debtor has raised various counter contentions which are as follows: -

a) It is submitted that, the Corporate Debtor from September 2022 to March 2023 has made the total payment of Rs. 4.55 Crores to the Operational Creditor. Admittedly, the only outstanding amount to be paid by Corporate Debtor to Operational Creditor is Rs. 35,07,434/- only so, the Petition is barred by Section 4 of IBC, 2016, as the amount of default is less than Rs. 1 crore, which is the threshold limit for filing any petition under Section 9 of IBC, 2016. The Corporate Debtor has discharged the payments of principal amount. The Operational Creditor has miscalculated interest to the tune of Rs. 91.51 Lakh to sum up the total outstanding amount to Rs 1.26 Crore. Further, submitted that out of 15 invoices attached with the petition, the Corporate Debtor has made full payment of the 14 invoices and one is partly paid.

b) There is a Pre-existing Dispute between the Parties arising out of the Settlement Mediation Report Under Rule 7(A)(vi) of The Commercial Court (Pre Institution Mediation and Settlement) Rules, 2018 and to prove the existence of a pre-existing dispute placed on record true copy of Settlement Mediation Report dated 20.12.2022.

### **Findings**

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that, the Corporate Debtor approached the Applicant for sale and supply of S.S Plate Square Bar, Rectangular Bar. As per the demands and requirements of the Corporate Debtor the goods were supplied by the Applicant to the Corporate Debtor and tax invoices were raised by the Operational Creditor, which were duly served on the Corporate Debtor and thus, the contract came into existence. It is stated by the Applicant that, since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 25.07.2023 under section – 8 of IBC, 2016 for demand of Rs. 1,46,59,246/- and served at the registered office of the Corporate Debtor. On the contrary, the Corporate Debtor has denied its liability to pay the disputed amount as the Applicant has miscalculated the interest amount and the Corporate Debtor is only liable to pay Rs. 35,07,434/- and there is pre-existing dispute between the parties.

6. In essence, the Corporate Debtor has placed on record summary of invoices showing the payment made to the Applicant for the tune Rs. 4,34,13,288/- out of Rs. 4,89,84,811/-. After that, the Corporate Debtor has replied to the Demand Notice sent by the Applicant wherein the Corporate Debtor has categorically mentioned that any amount above Rs. 54,47,538/- is not due against the Corporate Debtor. While perusing the record we find that after the reply of the Demand Notice the Corporate Debtor has paid Rs. 20,00,000/- to the Applicant and the total due amount which is due and payable is Rs. 34,47,538/- which is less than Rs. 1 Crore and we have no hesitation to hold that this petition is liable to be dismissed as the Applicant has failed to meet the minimum requirement of threshold limit of 1 crore as prescribed under section – 4 of IBC, 2016.

7. The Corporate Debtor has placed on record Settlement Mediation Report dated 20.12.2022 filed before the Hon'ble Bombay High Court wherein one Mr. Sameer Tendulkar, Advocate was appointed as Mediator in the matter.

The parties have preferred a Pre-Litigation Mediation process to settle the dispute. This instant petition filed by the Applicant is just an afterthought to recover the dues as the parties entered into a mediation settlement prior to the filing of this instant application so, we are of the considered opinion, that the dispute existed between the Operational Creditor and the Corporate Debtor prior to issue of the demand notice u/s 8 (1). Hence, we hold that there is a pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor.

8. In the light of the above findings IB – 726 (ND) 2023 stands ***dismissed***.

**SD/-**

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

**SD/-**

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