

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - V**

C.P. (I.B) No. 1264/MB/2022

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Stecol International Private Limited

Having its registered address at Essar House, 11 K. K. Marg, Mahalaxmi Mumbai – 400034, Maharashtra, India

... Operational Creditor

Vs

India Steel Works Limited

India Steel Works Complex, Zenith Compound, Khopoli – 410203, Maharashtra, India

... Corporate Debtor

Order Dated: 08.05.2024

Coram:

Madhu Sinha
Member (Technical)

Reeta Kohli
Member (Judicial)

Appearances: Physical/ VC

For the Petitioner: Adv. Amir Arsiwala (PH)

For the Respondent: Adv. Ragini Singh (PH)

ORDER

1. This Company Petition is filed by Stecol International Private Limited (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against India Steel Works Limited (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of Rs.2,06,54,089/- inclusive of outstanding claim of Rs. 1,64,47,874/- and interest of Rs. 42,06,215/-.

Brief Facts :-

2. It is submitted that the Operational Creditor i.e. Stecol International Private Limited (**SIPL**) is engaged in the business of contract manufacturing of various steel products and was desirous of procuring certain stainless steel products. Thereafter, the Respondent i.e. India Steel Works Limited (**ISWL**), who is engaged in the business of Steel manufacturing, expressed its interest in manufacturing the steel products sought by the Operational Creditor/SIPL.
3. Pursuant to above, a Memorandum of Understanding dated 10.12.2020 was signed and a Sales Purchase Agreement dated 16.01.2021 was executed between the Operational Creditor and the Corporate Debtor. Subsequently, 53 purchase orders were issued by the Operational Creditor/SIPL upon Corporate Debtor/ISWL for manufacturing of Stainless Steel Products. Thereafter, Corporate Debtor raised invoices on Operational Creditor and pursuant to

above the Operational Creditor paid various sums including the advance amount as contemplated in the Sales Purchase Agreement dated 16.01.2021. However, the Corporate Debtor even after the receipt of the advance amount did not complete the supply of products leading to the outstanding dues payable to Operational Creditor.

4. It is further submitted that in addition to above amount, the Operational Creditor on behalf of Corporate Debtor paid numerous charges in the nature of freight charges, insurance charges , toll charges and other charges which Corporate Debtor was obligated to reimburse to the Operational Creditor. The Corporate Debtor has also issued credit notes in favour of Operational Creditor confirming its obligation to reimburse the aforesaid expenses.
5. Pursuant to above, the Operational Creditor vide letter dated 18.05.2021, 01.07.2021 and 16.08.2021 demanded the payment of outstanding dues. However, the Corporate Debtor neither paid the outstanding dues nor disputed such dues. Instead the Corporate Debtor vide balance confirmations dated 31.03.2022 and 15.07.2022 confirmed its outstanding dues as on 31.03.2022 of Rs. 2,03,33,775/-.
6. Thereafter, the Corporate Debtor through its directors and Corporate Guarantor, also proposed a repayment schedule vide email dated 03.06.2022 but failed to adhere the same after paying a paltry sum of Rs. 20,00,000/-. Thereafter, the Operational Creditor was constrained to deposit the security deposit cheque of Rs. 1.25 crores bearing Cheque No. 416887 which was dishonoured on 05.09.2022. The dishonoured cheque memo is annexed as “Annexure J” to the Company Petition. Therefore, a total outstanding dues of Rs. 2,06,54,089/- as on 01.11.2022 with an interest upto 31.10.2022 is due and payable by ISWL to SIPL.

7. Consequently, the Operational Creditor issued demand notice dated 09.09.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor. However, the Corporate Debtor in its reply dated 19.09.2022 raised false and frivolous grounds of pre-existing dispute. Hence this Petition.

Reply of Respondent

8. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") dated 30.11.2023 and has denied each and every statement, contention and allegation made by the Petitioner.
9. It is submitted that prior to the receipt of the Applicant's demand notice, the Respondent has consistently disputed the alleged liability, as there were no outstanding obligations whatsoever on the part of the respondent regarding the purported debt as claimed by the Applicant.
10. It is further submitted that the Insolvency Proceedings cannot be initiated under section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IB Code**") when there is a pre-existing dispute. As per the MOU, the Applicant was required to provide raw materials to the Respondent at its own cost. The Respondent vide email dated September 22, 2021 requested the Applicant to supply the pending required billets and bars for further manufacturing process. However, as the Applicant failed to supply the required quantity of raw materials to the Respondent which were booked for export orders by the Respondent, thereby causing grave losses, both monetary and reputational, owing to the cancellation of export orders. Thus, as there is a pre-existing dispute between the parties and the Petition under section 9 of the IB Code filed by the Applicant deserves to be dismissed.

11. It is submitted that the Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 prescribes form 3 for serving notice under section 8 of the Code which requires the Operational Creditor to state the amount of debt, date of default and documents to be attached to the application to prove existence of 'Operation Debt' and the 'date of default', However, the Applicant neither mentioned the date of default in the demand notice nor in its Petition. The Demand Notice dated September 09, 2022 issued by the Applicant is, thus, bad in law as it does not explicitly state the date of default.

12. It is further submitted that the Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 prescribes form 3 for serving notice under section 8 of the Code which requires the Operational Creditor to state the amount of debt, date of default and documents to be attached to the application to prove existence of 'Operation Debt' and the 'date of default'. Further Part IV Serial No.2, specifically requires the date of default to be mentioned to seek initiation of CIRP. However, in the present case, the Petitioner has failed to mention the date of default, instead the date of the Sale Purchase Agreement (annexed at Annexure D of the Petition) is mentioned. Therefore, the failure of the Petitioner to state the date of default in the demand notice as well as the Petition renders the Petition u/s 9 legally untenable and therefore deserves to be dismissed.

13. It is submitted that the Petition was filed by the Petitioner on November 05, 2022 and after one year of filing the petition, the Petitioner has sought leave to change the date of default in the petition. Therefore, the question of allowing the change of date of default does not arise at such belated stage.

14. It is further submitted that the terms and conditions stipulated in the Purchase order relied upon by the Petitioner does not provide for the conditions of date of default or when the date of default accrues. Therefore, the submission of the Petitioner that the date of default accrues upon failure to fulfil the supply obligations of the Corporate Debtor within 30 days from the date of issuance of the concerned Purchase Orders is false and frivolous. Further it is submitted that even after filing the additional Affidavit, the Petitioner has failed to provide the actual date of default
15. Therefore, the Petition deserves to be admitted.

Findings

16. We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
17. The petition reveals that a Memorandum of Understanding (MOU) dated 10th December, 2020 was executed between the Operational Creditor and Corporate Debtor wherein the Corporate Debtor was responsible for manufacturing the goods required by the Operational Creditor. In furtherance of the same, a Sale Purchase Agreement (SPA) dated 16 January 2021, governing the manufacturing and sale of steel products by Corporate Debtor/ ISW to the Operational Creditor/ SIPL was entered by the parties. The relevant Terms and conditions of the said Sale Purchase Agreement are as follows:
- The purpose of the Agreement was to govern the manufacture, supply and delivery of stainless-steel products by ISW to SIPL during the term of the Agreement (Cl. 2)

- ISW was obligated to manufacture and supply the stainless-steel products at its own cost and sell the same to SIPL at a pre-agreed margin on the total sales value. (Cl. 6)
- SIPL agreed to pay to ISW in two tranches viz., (a) 50% payable by SIPL to ISW in advance and; (b) 50% payable upon the receipt of funds by SIPL from the end customer (for orders sourced by ISW) or upon 3 working days from the date of delivery (for orders sourced by SIPL). (Cl. 8)
- ISW also issued post-dated cheques being Cheques Nos. 416886 & 416887 drawn on Indian Bank for a sum of Rs. 1.25 CR each as well as an irrevocable Corporate Guarantee of Rs. 5 CR dated 6th January, 2021 towards security against the advances from SIPL. (Cl. 8)
- Failure to supply the ordered products and / or repay the advance amount would result in an *event of default* by ISW. (Cl. 15)

18. The Ld. counsel for the Respondent raised the contention that as per the MOU, the Applicant was required to provide raw materials to the Respondent at its own cost. With regard to the above contention this bench considers it appropriate to observe the Sale Purchase Agreement (SPA) dated 16 January 2021, which governs the manufacturing and sale of steel products wherein clause 6 states that the Corporate Debtor/ISW was obligated to manufacture and supply the stainless-steel products at its own cost and sell the same to the Applicant/SIPL at a pre-agreed margin on the total sales value. Therefore, with regard to condition/ clause in the Sale Purchase Agreement (SPA) dated 16 January 2021, the contention of the Corporate Debtor does not survive. The relevant extract of the clause 6 of the said agreement is as under: -

6. PROCUREMENT PRICE OF THE PRODUCT

The supplier shall manufacture the products/FG as listed Annexure 1 at its own cost and sell to SIPL at a pre-agreed margin on the total sales value of the Products/FG as mentioned in the Memorandum of Understanding ("MOU") dated 10th December 2020 entered between the parties. The said pre-agreed margin will include the trade margin and financing cost if any.

19. Another contention raised by the Respondent, is based on its email dated September 22, 2021 wherein the Respondent has requested the Applicant to supply the pending required billets and bars for further manufacturing process and alleged that the Operational Creditor has breached on its part thereby establishing pre-existing dispute between the parties. Therefore, this bench considered it appropriate to peruse the above said Email dated 22nd September, 2021 wherein the opening paragraph of the email is reproduced hereunder:

"Dear Prateekji,

As explained, Please find below the revised plan of 370MT and the material requirements. The quantity will remain unchanged to 366MT but have changed the Name of End Customers.

Mt urgent request to you..." (Emphasis Supplied)

From the perusal of the aforesaid Email, relied upon by the Corporate Debtor to establish pre-existing dispute shows that the Respondent has merely requested a revised plan of material requirements to the Operational Creditor without raising any dispute among the parties. Therefore, this bench is of the considered view that the same cannot by any way be deemed to be a pre-existing dispute between the parties. In addition it is also pertinent to consider that the Operational Creditor issued a Balance Confirmation Letter dated 31st March, 2022 to the Corporate Debtor upon which the Corporate Debtor has confirmed a balance of Rs. 1,89,60,425.30 due to the

Operational Creditor as on 31st March, 2022 which was subject to Reconciliation. Pursuant to the aforesaid Balance Confirmation dated 31st March, 2022, the Corporate Debtor addressed an Email dated 15th July, 2022, confirming, a sum of Rs. 2,03,33,775/- including interest is due and payable to the Operational Creditor from the Corporate Debtor. Thereby acknowledging the debt to the Operational Creditor. The relevant extract of the documents is as under:-



Date : 31st Mar 2022

To,
India Steel Works Limited
Zenith Compound, Khopoli - 410 203
Dist- Raigad, Maharashtra, INDIA
Tel. No. 02192 - 266010
GST No.- 27AAAC11362A1Z7

Stecol International Private Ltd
Essar House,
14th Floor, 11, K.K. Marg,
Maharashtra,
Mumbai - 400 034
India
Corporate Identity Number:
U27500MH2003PTC130442
T: +91 22 6080 1100
F: +91 2256694935
www.stecol.co.in

Dear Sir/Madam,

Sub: Confirmation of Account Balance as on 31st March 2022

In connection with Audit of our accounts, you are requested to confirm that the balance mentioned below as on 31.03.2022 according to our books is correct.

Please confirm balance here below and return one copy of the letter directly at the address given below.

Account Balance	INR	2,08,46,325.30	Receivable
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If the amount is not in agreement with your book, please give the details of balance/statement of accounts as per your books to enable us to reconcile the same. In the absence of any communication from you within Three days it will be presumed that the balance shown in this letter is confirmed.

STECOL International Private Ltd
Essar House, 11, K.K. Marg,
Maharashtra, Mumbai- 400034
T: 022 6560 1100

Thanking You,
Yours faithfully,

For STECOL International Private Ltd

Authorised Signatory



-----Vendor Part-----

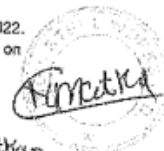
18960425.30

- We Confirm the balance of Rs. ~~2,08,46,325.30~~ due to you as shown above is correct as on 31.03.2022.
- The balance in our books in agreement with the balance stated above. Balance as per our books as on 31.03.2022 was Rs. ~~2,08,46,325.30~~ due to you.

18960425.30

Date:- 31/Mar/2022
Place:- Mumbai

Signature with Rubber Stamp:-
Name of Authorised Person:- Mitesh Mather
Designation:- Manager
Phone/Mobile No.:- 9987876929



Note! Subject to Reconciliation

Difference! Rs. 1885901/-



From: Avdesh Sharma <asharma@iswl.in>
Sent: 15 July 2022 15:59
To: Pathak, Prateek - SIPL - Sales & Marketing (MUM)
Cc: Krishnan, Anantha - SIPL - Finance (MUM); Shah, Nidhi - SIPL - Company Secretary (MUM); 'Varun Gupta'; 'Cc: Sudhir Gupta'; Raval, Hardik - SIPL - MUM; "nmatkar"
Subject: RE: STECOL- FW: ISW/ISL outstanding / Overdue- Exposure Statement
Attachments: Exposure -Stecol-31st March 2022.xlsx; RE: MARGINE CALCULATIONS -- RE: STECOL EXPOSURE - 10TH MARCH 2022; STECOL - GST DIFFERENTIAL AMOUNT WORKING-

Dear Mr. Prateek

1) Please note : the final Stecol Exposure as on 31st March 2022 is **Rs. 2,03,33,775** (inclusive of interest) this was matched with Stecol Exposure as below. Request you to kindly rectify your records. The balance shown in your ledgers is incorrect & not matching & there is a difference of Rs. 20,34,537/-

2) Exposure matched with Stecol Exposure:

Rs 2,12,51,967 Exposures as per Stecol mail dated 6th April 2022 (mail enclosed)
 Less: Rs. 9,18,194 Excess GST Credit With Stecol as per Stecol mail dated 22nd April 2022.(mail enclosed)

 Rs. 2,03,33,77

31st March 2022	Dr	Cr
Payments By Stecol to ISWL		3,44,42,178
Payment By Stecol to Vendor		2,50,45,677
Payment By Stecol to Shipping Line-DN		13,32,659
Stecol Margin-		16,08,421
Receipts By Stecol	4,29,51,745	
Duty Draw back	1,11,124	
GST - Gape	9,18,192	
Total	4,39,81,061	6,24,28,935
Exposure		1,84,47,874
Add: Stecol Interest		18,85,901
Net Exposure- With Interest		2,03,33,775

NOTARY

	As Per ISWL-Books	As Per Stecol-Books
Iswl Book Bal	1,89,60,425	2,08,46,326
Isinox Book Bal	15,21,986	15,21,986
Total	2,04,82,411	2,23,68,312
Interest not in iswl Books	18,85,901	-
	2,23,68,312	2,23,68,312
Exposure Amount	2,03,33,775	
Diff. in Exposure & Book Figures	20,34,537	

20. It is further observed by this bench that the Petitioner/SIPL pursuant to the above confirmation issued a demand notice dated 9th September 2022 Under Section 8 of IBC seeking payment of debt due to SIPL from ISW. **It is for the first time in response to the said Notice that the Respondent/ISW vide its Reply dated 19th September 2022 has raised a moonshine defense of pre-existing dispute** relying upon an email of 22nd September, 2021.
21. Hence from the above, it is clear that the Respondent has made acknowledgement of debt, further the Respondent/ISW also proposed a repayment schedule vide its email dated 3rd June 2022 which is much after the email dated 22nd September, 2021, relied by the Respondent for raising the so called pre-existing dispute between the parties.
22. Further with respect to the third contention of the Respondent that there is an absence of date of default in the Petition as well as in the demand notice. This bench observes Clause 15(b) of the SPA and the terms of the Purchase Order, which states that failure on repayment of advance amount will be the event of default by Corporate Debtor/Supplier. The relevant extract of the Clause 15(b) of the SPA is as under: -
- 15. EVENT OF DEFAULT BY SUPPLIER**
The following shall be construed as the Events of Default by Supplier:
(a) Failure to supply the Products or delay in supplying the Products within the Delivery Period as given by SIPL to the supplier.
(b) Failure on repayment of advance amount as mentioned in clause 8.
23. As per the above clause the debt has fallen due on the dates on which the Operational Creditor paid advance amounts and failed to receive goods in return. In view of the above, the Corporate Debtor

has paid a sum of Rs. 20,00,000/- on 1st July, 2022 to the Operational Creditor which is the last date of receipt of payment as also Reconciliation dated 15th July, 2022 issued by the Corporate Debtor clearly establishes acknowledgement of debt. Therefore, the date of default has been clearly described.

24. This bench further observes that this Hon'ble Tribunal vide its Order dated 9th November, 2023 has permitted the Operational Creditor to file a short affidavit only with respect to the date of default. Accordingly, the Operational Creditor has filed its Additional Affidavit dated 18th November, 2023 clearly setting out dates of defaults against each Purchase Order. The relevant extract of the daily order dated 09.11.2023 is reproduced below:-

The Ld. Counsel for the Petitioner fairly submits that, in the petition the date of default has not been clearly mentioned. Therefore, he prays for the permission to file the short affidavit only with respect to the date of default. Allowed on oral request. The Ld. Counsel for the Petitioner is directed to give the advance copy of the affidavit to the Counsel opposite.

Adjourned to **01.12.2023**.

Sd/-
MADHU SINHA
Member (Technical)
Shubham

Sd/-
REETA KOHLI
Member (Judicial)

25. Therefore, in view of the above facts and circumstances of the present case, the Respondent/ISW has admitted and acknowledged the debt vide its Balance Confirmation dated 31st March 2022 as well as Reconciliation Statement dated 15th July 2022. The Respondent/ISW has confirmed outstanding dues to the tune of Rs.2,03,33,775/- *including interest* as on 31st March 2022. Therefore, in terms of the unequivocal and irrevocable admission and acknowledgement of debt and default by the Respondent/ISW.

We are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” which was due & payable and there is a “**default**” committed by the Corporate Debtor.

26. The Corporate Debtor has acknowledged the debt payable to the Operational Creditor and not raised any dispute with respect of the same thereafter. It is only at the time when the Corporate Debtor received the Demand Notice that it decided to raise the issue of pre-existence of dispute and therefore, the existence of so called dispute is mere a moon shine defence. Even otherwise the Corporate Debtor has admission and acknowledgment of debt vide balance confirmation dated 31st March, 2022 and reconciliation dated 15th July, 2022.
27. Therefore, after considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” which was due & payable and there is a “**default**” committed by the Corporate Debtor. The Respondent vide email dated 15.07.2022 has admitted its liability without disputing the debt and the Petition is filed on 05.11.2022 therefore, the Petition is well with in the period of Limitation.
28. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
29. The Operational Creditor has proposed the Resolution Professional in Part III of the Company Petition.
30. Accordingly, the above Company Petition is ‘**admitted**’ with the following:

ORDER

- a. The above Company Petition No. 1264/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **India Steel Works Limited.**
- b. **Mr. Vallabh N Sawana**, having registration No IBBI/IPA-001/IP-P- 02652/2022- 2023/14114, having email Id-vallabhsawana@gmail.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, CP 1264 of 2022 is **admitted**.

SD/-

Madhu Sinha
Member (Technical)
/Abhay/

SD/-

Reeta Kohli
Member (Judicial)