

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

CP(IB) 1277 (IB)2021

Under section 9 of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

M/s Utkarsh Steel Corporation

40, Camac Siding Road, Iron Market,
Steelyard Building Gate, Mumbai,
Maharashtra - 400009.

... Operational Creditor

V/s.

M/s. Dalane Industries Pvt. Ltd.

Plot. No. 194, Sector -7, Pradhikaran,
Bhosari, Pune, Maharashtra - 411026.

... Corporate Debtor

Order delivered on :- 26.02.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Operational Creditor : Adv. Chirag Sarawagi a/w Riya
Thakkar

For the Corporate Debtor : None present

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by M/s Utkarsh Steel Corporation (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s. Dalane Industries Pvt. Ltd. (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by Operational Creditor invoking the provisions of Section 9 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 1,01,27,176/-.

Submissions by the Operational Creditor:-

2. The Operational Creditor i.e. M/s Utkarsh Steel Corporation is a trader of B.Q plate, C.R Coils, Steel Coils, MLS plates and similar products. Dalane Industries Pvt. Ltd. (Corporate Debtor) being a manufacturer of various kinds of Progressive Press tool, metal sheets, etc., have been a regular purchaser of goods traded by Operational Creditor, which are used by Corporate Debtor for manufacturing its goods/products.
3. In the course of usual business, from October 2019 the Corporate Debtor placed orders for delivery of several goods from the Operational Creditor.
4. Pursuant thereto, the delivery of the said goods was made to the Corporate Debtor from time to time and several invoices were raised upon the Corporate Debtor. 19 invoices were raised from 15.10.2019 to 21.11.2019, which are relevant for purposes of the present Application.

5. Despite having accepted delivery of the goods as per the said Invoices and despite being aware that payment was to be made in terms thereof and within the time period stipulated in the said Invoices, the Corporate Debtor failed to make full and complete payments to the Operational Creditor.
6. Even after repeated reminders and follow ups with Corporate Debtor for payment, the Corporate Debtor has failed to make any payment of the outstanding debt of an aggregate outstanding amount of Rs. 1,01,27,176/- being a total Operational Debt of Rs. 74,85,776/- along with an amount of Rs. 26,41,400/- being interest at the rate of 24% p.a from the due date on the said outstanding amounts till 28.02.2021 under the aforementioned invoices.
7. In view thereof, a Demand Notice dated 17th March 2021 was issued by the Operational Creditor to the Corporate Debtor vide email. The Corporate debtor, till date has not replied to the said Demand Notice dated 17th March 2021 and has not disputed the amount due thereunder.
8. In view thereof, the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is being filed for initiation of corporate insolvency process for the Corporate Debtor.

Submissions by the Corporate Debtor:-

9. In reply, the Respondent has denied every averment made in the Petition except those which are specifically admitted hereunder. The petition is neither maintainable nor tenable either under law or on facts.
10. It is submitted that section 4 of the Insolvency and Bankruptcy Code, 2016 gives powers to the Central Govt to specify the minimum

amount of default for the Code to apply to matters relating to Insolvency. Accordingly, the Central Govt in exercise of the conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (13 of 2016), has specified One Crore Rupees as the minimum amount of default for the purpose of the said section. It is submitted that the above petition was filed on 25/11/2021 before the Hon'ble Tribunal which is after 24/03/2020 and thus not maintainable in view of section 4 of Insolvency & Bankruptcy Code, 2016. On this very count alone, the above application is liable to be rejected. The rest of the averments made in the Petition have been disputed and denied and in the end, a prayer for dismissal of the Petition has also been made.

Analysis and Findings:-

11. We have heard the Counsel for the parties and have gone through the records.
12. It has been pointed out by the Counsel for the Petitioner that the Operational Creditor supplied goods to the Corporate Debtor from 15.10.2019 to 21.11.2019 on the basis of the invoices which are annexed with the Petition as Annexure No. 1 to 18 and total outstanding operational dues come to Rs. 74,85,776/-. Counsel for the Operational Creditor has further pointed out that Operational Creditor has claimed interest of Rs. 26,41,400/- as there is clear stipulation in the invoices that interest at the rate of 24% p.a. would be charged weekly if the amounts remained unpaid after delivery. Therefore, according to the Counsel for the Petitioner, total outstanding dues on account of supply of goods are Rs. 1,01,27,176/- which are beyond the threshold limit of Rs. 1 crore. The Counsel for the Petitioner has further argued that a demand notice dated

17.03.2021 was issued to the Corporate Debtor but even after the receipt of the demand notice, the outstanding dues have not been paid and, therefore, the Petition deserves to be admitted.

13. We have considered the aforesaid contentions raised by the Counsel for the Operational Creditor and have gone through the records.
14. Perusal of the records reveals that the Operational Creditor supplied goods to the Corporate Debtor between 15.10.2019 and 21.11.2019 vide different invoices. The period of payment as per the invoices is 45 days from the date of invoice. The Corporate Debtor has not made the payment despite having been served with the demand notice dated 17.03.2021.
15. In the reply filed by the Respondent, the only defence raised is that the principal amount of operational debt is less than 1 crore and, therefore, the Petition is barred u/s 4 of the IB Code, 2016. It has been made out on behalf of the Corporate Debtor that the amount of interest claimed in Part IV of the Petition cannot be added. However, this contention raised on behalf of the Corporate Debtor does not appear to be correct. In *Prashant Agarwal vs. Vikash Parasrampuriah and Santanu T Ray, Company Appeal (AT)(Ins) 690 of 2022 decided on 15.07.2022*, it has been held by the Hon'ble NCLAT that the total amount of maintainability of claim will include both principal debt as well as interest on delayed payment which was clearly stipulated in the invoice itself and, therefore, the total debt outstanding of Operational Creditor was above Rs. 1 crore as per requirement of Section 4 of the IB Code, 2016. In the light of the law laid down in this cited case and the fact that there is a clear stipulation in the invoice that interest at the rate of 24% p.a. would be payable, it cannot be successfully argued on behalf of the Corporate Debtor that

the amount of interest cannot be added or claimed in the total outstanding dues or that the Petition is liable to be dismissed u/s 4 of the IB Code, 2016.

16. No other points have been raised. Even otherwise the Petition is well within the period of limitation as invoices were issued in between 15.10.2019 to 21.11.2019 and the present Petition was filed on 21.11.2021 and, therefore, the Petition has been filed within the period of limitation. Apart from that, no pre-existing dispute has been raised on behalf of the Corporate Debtor in the reply filed. Therefore, in our considered view, it is a fit case for admission u/s 9 of the IB Code, 2016.
17. As a result of above discussion, the present Petition is admitted in the following terms:

ORDER

- a. **The above Company Petition No. (IB) - 1277(MB)/2021 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Dalane Industries Pvt. Ltd.**
- b. This Bench hereby appoints Mr. Vasudev Ganesh Nayak Udipi, Registration No: IBBI/IPA-001/IP-P-00019/2016-17/10043 as the Interim Resolution Professional having registered office at 303/305, Rajmata CHS ltd, Near RTO, Four Bungalows, Andheri-west, Mumbai, Maharashtra, 400053, email :- uvnayak2004@yahoo.co.in, and Mob. No.

9869637407 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

ANKIT