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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/629/2020

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016*

In the matter of **M/s. Rai Ispat Private Limited**

M/s. TULSYAN NEC LIMITED,

Reg. Office at 1st Floor, Apex Plaza, 3,
Nungambakkam High Road,
Chennai – 600 034

... Operational Creditor

-Vs-

M/s. RAI ISPAT PRIVATE LIMITED,

Reg. Office at Old No. 13, new No.6,
Park Avenue, Kesavaperumalpuram,
Off Greenways Road,
Chennai – 600 028

... Corporate Debtor

Order pronounced on 2nd August 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor

: P Reghunathan Advocate

For Corporate Debtor

: Rohan Rajasekaran, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

1. Under consideration is an Application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code, 2016") by one **M/s. Tulsyan NEC Limited** (hereinafter



referred to as "**Operational Creditor**") against **M/s. Rai Ispat Private Limited** (hereinafter referred to as "**Corporate Debtor**").

2. From Part-I of the Application, it is evident that the Operational Creditor is a Limited Company. From Part-II of the Application, it is evident that the Corporate Debtor is a Private Limited Company which was incorporated on 04.05.1987 with the nominal Share Capital of Rs.1,00,00,000/- and Paid-up Share Capital of Rs.69,83,200/-.

3. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the same. Part-IV of the Application discloses the total amount of debt from which it is evident that the Operational Creditor has claimed a sum of Rs.12,62,43,401/- as against the Corporate Debtor.

4. It is submitted by the Learned Counsel for the Operational Creditor that the Operational Creditor during the course of its business placed Purchase Order on the Corporate Debtor, bearing No. PO/12-13/1330 dated 16.03.2013 for purchase of 1800 MT (in nos.) of MS Billets for Rs.5,70,31,200/-. In pursuance of the said purchase, the Operational Creditor has paid an advance amount of

78

Rs.5,70,00,000/- to the Corporate Debtor through 5 cheques. Thereafter, the Corporate Debtor has failed to execute the order and further failed to repay the advance amount, hence the Operational Creditor has set off the amount payable to the Corporate Debtor to the tune of Rs.2,60,21,804/- from the advance amount of Rs.5,70,00,000/-, which resulted in a balance amount of Rs.3,09,78,195.60/-. As against the said balance amount, an interest to the tune of Rs.9,52,65,205.50/- is claimed by the Corporate Debtor and thereby aggregating to a sum of Rs.12,62,43,401.10/-. It is seen that the Operational Creditor has issued a Demand Notice to the Corporate Debtor on 24.02.2020 and has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016. Under such circumstances, the Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has defaulted in repayment of the advance amount and hence prayed for the initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

5. The Learned Counsel appearing on behalf of the Corporate Debtor, during the course of hearing on 13.07.2021 has expressed its inability to service its debt. In other words they have accepted their debt and default.



6. On perusal of the present Application which is filed under Section 9 of IBC, 2016, it is seen that it is the Operational Creditor who has placed Purchase Order upon the Corporate Debtor and it is not the case wherein the Operational Creditor has rendered any service. While this being the fact, it is pertinent to decide under the provisions of IBC, 2016, on the issue, as to whether the Petitioner qualifies to be an Operational Creditor in relation to the Corporate Debtor. In order to better address the issues, the following definitions under IBC, 2016 is required to be taking into consideration;

Sec. 3(6) "claim" means –

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

Sec. 3 (11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Sec. 3 (12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1[paid] by the debtor or the corporate debtor, as the case may be;



Sec. 5 (20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

Sec. 5 (21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

11. From the averments made in the Application, it is not in dispute that, it is the Corporate Debtor who has rendered service to the Operational Creditor and not *vice versa*. Under these circumstances, it is to be noted that for a 'debt' to qualify as an 'Operational Debt', it has to undergo the following percolation process;

- (a) The amount in default should fall within the definition of 'claim' as defined under Section 3(6) of IBC, 2016.
- (b) Such a 'claim' should be capable of being treated as a 'debt' as defined under Section 3(11) of IBC, 2016.
- (c) And such 'debt' should fall within the confines of "Operational Debt" as defined under Section 5(21) of IBC, 2016.
- (d) And the said "Operational Debt" must be owed by the Corporate Debtor to the Creditor, who can then be considered as an Operational Creditor under Section 5(20) of IBC, 2016.



12. Thus, for a person to qualify as an Operational Creditor he must have supplied the goods or rendered service to the Corporate Debtor, which is not the proposition in the present case and on the other, as per the Purchase Order, it is the Corporate Debtor who is required to render the service or supply the goods to the Applicant Company, claiming to be Operational Creditor. Further, the default in the present case has arisen since the Corporate Debtor had failed to repay the advance amount which is given by the Applicant. Thus, the failure to repay the advance amount would not fall within the meaning of "operational debt" as stipulated under Section 5(21) of IBC, 2016 and as a consequent thereto, the Petitioner does not qualify to be an Operational Creditor as defined under Section 5(20) of IBC, 2016 in respect of the Corporate Debtor.

13. Eventhough, the Respondent / Corporate Debtor has expressed its inability to service its dues to the creditors, this Adjudicating Authority, while admitting a Petition under Section 7 or 9 or 10 of IBC, 2016, is duty bound to look into the aspect of the maintainability of the present Application and in the present case, whether the Petitioner qualifies to be an Operational Creditor in respect of the Corporate Debtor.

14. In view of the said reasons and discussions made *supra*, the present Application is liable to be dismissed and accordingly stands

dismissed. However this order of dismissal as passed above will not shut out the right of the petitioner from seeking recourse before other forums, subject to applicable laws.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond