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IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
TP/08(AHM)2022

Orders under Section 433 & 434
r.w 439 Co. Act,1956

IN THE MATTER OF:

Steel Associates

V/s

Richfield Engineering India Private Limited

.....Applicant

.....Respondent

Order delivered on: 04/02/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in the open Court, vide separate sheet.

SDI-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SDI-

CHITRA HANKARE
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AT AHMEDABAD
(COURT - II)**

T.P. No. 08 of 2022

In the matter of Companies Act, 1956

And

In the matter of Section 433 & 434
r.w. Section 439 of the Companies
Act, 1956

And

In the matter of Richfiled Engineering
India Pvt. Ltd., having registered office
at: 14, Sujata Park, Behind Utkarsh
Vidhyalaya, Vadodara-390015, Gujarat

Order pronounced on 04/02/2025

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Steel Associates
10, Safety Warehouse,
Nr. Sinhal Tex Mill.
Ranipur Village Road, Narol,
Ahmedabad-382405

... Petitioner



Versus

Richfield Engineering India Pvt. Ltd.
Registered office at:
14, Sujata Park,
B/h. Utkarsh Vidhyalaya,
Vadodara-390015

.... Respondent

Appearance:

Petitioner: Mr. Raju Kothari, Advocate
Respondent: Mr. R. G. Dwivedi, Advocate

J U D G E M E N T

1. This petition has been filed under Section 433 and 434 r.w. Section 439 of the Companies Act, 1956. The petition is transferred vide order dated 25.01.2022 passed by Hon'ble High Court of Gujarat in R/Company Petition 287 of 2014 filed under the provision of Section 433 and 434 r.w. Section 439 of the Companies Act, 1956. The prayer is to seek dissolution of the Respondent and to appoint a Liquidator for the reason that the debt due for an amounting to Rs. 33,68,190/-which is indebted by the Respondent.
2. The petitioner is an operational creditor and therefore this application has to be dealt with under Section 9 of the IBC, 2016.



3. The petitioner herein i.e. Steel Associates is a proprietorship firm and is the wholesaler and retailer of Iron and Steel products. The Respondent herein i.e. Richfield Engineering India Pvt. Ltd., is a private limited Company, which was incorporated under the Companies Act, 1956 on 27.08.2004. The Respondent is involved in the business of Design, Engineering, Manufacturing, Fabrication, Field Construction, Energy Solutions, Consultancy & Project Management Services etc. The Authorized share capital of the Respondent Company is Rs. 10,00,000/- divided in to 1,00,000 Equity Shares of Rs. 10/- each. The paid up Share Capital of the Respondent Company is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs. 10/- each.

4. The Petitioner Company supplied steel materials during the period of January 2014 to March 2014 to the Respondent Company and raises various invoices. As per the terms and conditions mentioned in the invoices the Respondent Company had to make payment within 45/60 days. The details are as under:

Bill No.	Bill date	Payment terms(days)	Amount in Rs.
68	10/1/2014	60	50,454/-
69	11/1/2014	60	6,78,447-
89	07/3/2014	45	2,60,758/-



90	07/3/2014	45	19,98,688/-
92	11/3/2014	45	36,071/-
		Total	30,24,418/-

The Respondent Company failed to make payment of debt, hence, the Petitioner raised various debts notes for an agreed interest at the rate of 24%. The details are as under:

Note	Debit	Date	Principal amount Rs.	Period Interest	Amount
3		26-5-2014	728901/-	12-3-2014 to 31-5-2014	37384/-
4		26-5-2014	2295517/-	20-4-2014 to 31-5-2014	61790/-
5		1-7-2014	72890/-	1-6-2014 to 30-6-2014	14377/-
6		1-7-2014	2295517/-	1-6-2014 to 30-6-2014	45280/-
7		1-8-2014	728901/-	1-7-2014 to 31-7-2014	14857/-
8		1-8-2014	2295517/-	1-7-2014 to 31-7-2014	46790/-
9		1-9-2014	728901/-	1-8-2014 to 31-8-2014	14857/-
10		1-9-2014	2295517/-	1-8-2014 to 31-8-2014	46790/-
11		1-10-2014	728901/-	1-9-2014 to 30-9-2014	14857/-
12		1-10-2014	2295517/-	1-9-2014 to 30-9-2014	46790/-
				Total	343772/-

Respondent Company received material in good condition without raising any dispute regarding quality and quantity of goods, though failed to make payment of Rs. 33,68,190/-. The Petitioner had issued statutory notice under Section 433/434 of Companies Act, 1956 to the Respondent Company on 18.10.2014. The Respondent Company had not replied to the said notice. Hence, this petition for winding up the Respondent Company.

The Respondent filed its written submission on 1st October,



2024 before this tribunal and submitted that the present petition was filed on 17.12.2014 before the Hon'ble High Court of Gujarat, wherein Respondent company has filed its reply dated 21.04.2015 specifically contended that there is a serious dispute about the quality and quantity of goods supplied. The Hon'ble High Court of Gujarat vide order dated 08.01.2018 admitted the petition and it has been observed in para no. 6 that:

" At this stage, it is required to note that during earlier hearing, serious dispute was sought to be raised in connection with the invoice no. 69 which is for Rs. 6,78,447/-. During the submission made by Ld. Advocate Mr. Dwivedi, it was sought to contended that when there is serious dispute as regards the quality of the goods supplied by the petitioner, the court may not entertain the present petition. The court, therefore, finds that as regards invoice no. 69, it would be appropriate to observed that if the company wants to deposit the amount towards outstanding amount claimed by the petitioner, it may presently, exclude above referred amount claimed by the petitioner, it may presently exclude above referred amount of Rs. 6,78,447/- and deposit rest of the outstanding amount before 30.01.2018 "

Being aggrieved the said order has been challenged before the Division Bench of Hon'ble High Court of Gujarat being OJ Appeal No. 07 of 2018 which was rejected vide order 17.10.2018. The said order was also challenged before the Hon'ble Supreme Court of India by the respondent being SLP (Civil) D. no. 23447/2019, was heard on 8 June 2020, and since the Director of the Company could not be heard due to internet issue the the said petition has also been rejected. Vide



order dated 25.1.2022, this matter has now been transferred to this Tribunal.

6. The Respondent stated that the material supplied by the petitioner was to be used in the construction work of rail wagon loading gantry in the refinery premises of IOCL (Indian Oil Corporation Limited) Vadodara, but due to sub-standard material IOCL has not allowed to use such material and have black listed the Respondent Company and cancelled work order and have also en-cashed the bank guarantee hence respondent suffered the aggregate loss of Rs. 4,08,46,050/- . It has also been submitted that the material test reports/ certificates of the material supplied by the petitioner has been tested and issued by authorized laboratories, it is proved that material is of sub-standard quality. The Petitioner has breached the condition number 6 and 7 of the purchase order. Hence this petition is deserves to be dismissed.
7. The petitioner has filed its Affidavit -in - Rejoinder denying all the allegations levied by the Respondent.
8. Heard Ld. Counsel for the parties and perused the material available on record, we observed as follows:
 - a) This petition is a transfer petition originally filed before the Honble High Court of Gujarat (Company Petition 287 of 2014) seeking winding up of the Respondent company for nonpayment of invoices due and payable within 45-60 days



of invoice which remained unpaid, under the relevant provisions under Section 433 and 434 read with Section 439 of Companies Act, 1956. There are 5 invoices raised by the petitioner amounting to Rs.30,24,418/- for the period between January 2014 to March 2014 as mentioned in application. A separate debit note for interest due was raised for an amount of Rs.3,43,772/- thereby an amount of Rs. 33,68,190/- is stated to be due and payable. It is also submitted that the applicant had raised various demands including letters dated 5/8/2014 and 9/9/2014 but Respondent had neither paid nor raised any objections. Demand Notice under the statutory provisions under section 433 & 434 of Companies Act, 1956 was served on 18th October, 2014. The applicant has thereby proved his application to have been filed within the period of limitation in the appeal filed before the Hon'ble High Court, which after various orders/appeals and the matter being still not settled, with relevant provisions now under the IBC 2016 (Respondent being a Company incorporated under Companies Act) stands transferred before this bench. All the relevant Invoices and Debit notes are enclosed.

b) It is stated in the orders of the Hon'ble High Court dated 8th January, 2018 that "the court therefore finds that as regards Invoice No.69, it would be appropriate to observe



that if the company wants to deposit the amount towards outstanding amount claimed by the petitioner, it may presently exclude above referred amount of Rs. 6, 78, 447/- and deposit rest of the outstanding amount before 30/01/2018. The respondent has disputed only one invoice No.69 of which has not been agreed out of the total invoices amounting to Rs 33,68,190 lakhs was due (Rs.30,24,418 plus interest of Rs.3,43,772) which were raised between January 2014 and March 2014 and payable. The respondent is observed to have not paid outstanding dues and preferred various appeals even before the Hon'ble Supreme Court, wherein Respondent did not get any relief in the matter.

c) Irrespective of dispute if any the amount due and payable breach of any terms and conditions of purchase order is not established as only one of the invoices has not been paid. The applicant has enclosed the purchase order REIPL:306:2013-14 Dated 30th December, 2013. The Applicant has found from the invoices that various requirements including the tax, delivery vehicle No., test reports have been specified and delivery was to be made in terms of purchase order within 60 days from date of delivery/order. The Purchase of the goods comprising of steel from the applicant who is stated to be a whole sale supplier was compiled to the site ordered of the respondent.



d) It becomes apparent that the respondent had not disputed at any time and there were communications between them, however in the reply dated 26th November, 2014 the respondent has disputed stating that while using the material in their contract with their client Indian Oil Corporation, the same was rejected first rejected on 10th January 2014. Even if there was any dispute raised in the contract executed between the respondent and his supplier on 10th January 2014, all the invoices enclosed in this application as not paid are subsequent to include the first invoice dated 10th January, 2014 which was supplied at the Respondent's address with due payment 60 days from the date of delivery. If there was a dispute, the same should have been raised within the 60 days as per contract and any rejection of material supplied by the respondent to its client namely IOC or any other party does not have any bearing on this underlying due as nothing is specified either in invoice (if the applicant had delivered to the respondent's client) or in the purchase order. Neither the respondent raised any dispute before any court of law if the matter was under dispute before the issuance of demand notice, and all defence as reply to the demand notice issued need not be taken as cognizance in the matter which involves a separate contract for purchase of goods at the respondents factory



and any dispute with its clients is a different matter not built in to the contract. The applicant being a sole proprietor is thereby denied of the payment on certain frivolous contention which has not been allowed by the Civil Courts on appeal including the Hon'ble High Court of Gujarat and Hon'ble Supreme Court.

e) The petition filed is under the relevant provisions under Companies Act 1956. As per the fifth proviso to sec 434(1) (c) inserted on August 17, 2018 has permitted a transfer of winding up proceedings to the NCLT "pending immediately before any court immediately before the IBC (Amendment) Ordinance 2018". This application thus enables the applicant to transfer such proceedings to NCLT and treat the same as an application for initiation of corporate insolvency process under the IBC. As per Hon'ble Supreme Court order the applicant was a party to the winding up proceedings and the intention of the transfer of the proceedings is to ensure that there are no parallel proceedings against the Respondent.

A similar matter was also heard by the Principal Bench of NCLT, New Delhi in the matter of *Murthal Auto P Ltd vs Hydex Trade Links p ltd in TP 10(PB)2023 (Old CP 802 of 2016) wherein the order was passed under Sec 433 (e) of CA 1956* stating that the application filed by the applicant



being an operational creditor and therefore was to be dealt under Section 9 of the IBC 2016.

9. By invoking the provisions of Section 9(5) of the Code the Application for initiation of "Corporate Insolvency Resolution Process" (CIRP) we pass following order:

ORDER

- i. Having admitted the application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under section 31 of the Code.
- ii. That as prescribed under Section 13 of the Code on declaration of Moratorium the public announcement of the invitation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately as specified.
- iii. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and



inform the progress of the Resolution Plan and the compliance of the directions of this order within 30 days to this bench.

- iv. We hereby appoint Mr. Rajendra Jain having Registration No. IBBI/IPA-002/IP-N00732 /2018-19/12353, e-mail id -iprajendragjain@gmail.com to act as an IRP under section 13(1) (c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.
- v. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this



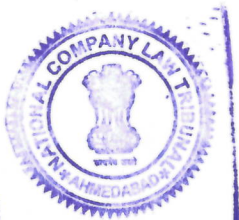
Adjudicating Authority with a prayer for passing an appropriate order.

- vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Respondent/Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.
- ix. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of



the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

- x. The Operational Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.
- xi. The Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.
- xii. The petition is admitted. The commencement of the Corporate Insolvency Resolution Process if pronounced and effective from the date of this order.



xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)



Prepared by Rohit

Signature Rohit

Date 22/3/25

Certified to be True Copy of the Original

[Handwritten Signature]
22/03/25
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad