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

CP (IB) 1688/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Megamet Steels Pvt. Ltd.
[CIN:
U27310MH2007PTC167395]
...Operational Creditor/Applicant

Versus

Supreme Bituchem India Pvt Ltd.
[CIN:
U74999MH2007PTC170757]
...Corporate Debtor/Respondent

Order Pronounced on 24.01.2024

Coram:

Hon'ble Member (Judicial)	:	Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Sh. Prabhat Kumar

Appearances:

For the Operational Creditor	:	Suyesha Kakarla, Advocate.
For the Corporate Debtor	:	Yash Jain, Advocate.

ORDER

Per: Justice V. G. Bisht (Retd.)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Supreme Bituchem India**

Pvt Ltd ("the Operational Creditor hereinafter referred to as Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Supreme Bituchem India Pvt. Ltd ("the Corporate Debtor hereafter referred to as Respondent")**.

2. The Respondent was incorporated on 11.05.2005 under the Companies Act, 1956. Corporate Identity Number (CIN) is U74999MH2007PTC170757. Its registered office is at Block No.13-14, Seva Sadan, Central Avenue, Nagpur-440018. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

<u>Brief Facts by the Petitioner:</u>

3. The Operational Creditor is a company registered under the Companies Act 1956, has consistently provided bituchem supplies to the Corporate Debtor since 2017. In the course of this business relationship, the Operational Creditor would raise invoices upon the Corporate Debtor's retrieval of goods. Notably, a continuous and Running Account was maintained by the Corporate Debtor with the Operational Creditor.

4. However, as the Corporate Debtor defaulted on the payment for the last five invoices raised by the Operational Creditor, the latter found itself compelled to initiate the present company petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code). This legal recourse became necessary due to the Corporate Debtor's failure to settle the outstanding amount of Rs. 35,26,597/- (Rupees Thirty-Five Lakhs Twenty-Six Thousand Five Hundred and Ninety-Seven Only) which is inclusive of Interest at the rate 24 % P.a.

5. The Respondent agreed to make Payment within 10 days and if delayed also agreed to pay interest at the rate of 24% P.a.

6. The Respondent made part payment of Rs.97,438/- only and the Principal Sum of Rs. 25,28,896/- remained due and payable by the Respondent Company to Operational Creditor, and respondent is liable to pay overdue interest at the rate 24% P.a.

7. The Petitioner on 13.04.2018 served Demand notice in Form-3 for the aforesaid outstanding dues, which notice has been received by the Respondent Company, however Respondent Company willfully failed and neglected to make payment of the said dues.

8. According to the ledger account dated 05.10.2017, the Operational Creditor issued invoices spanning the period from 18.03.2017 to 21.08.2017.

9. The Following is the Tabular format of outstanding dues:

Invoice No.	Date	Amount
301	11.08.2017	5,00,556/-
302	11.08.2017	4,81,971/-
303	11.08.2017	5,07,494/-
304	11.08.2017	4,95,847/-
310	21.08.2017	6,40,466/-
Total	=	26,26,334/-
Less:	Part Payment received	97,438/-

Balance Due:		25,28,896/-

Principal amount remained due and payable by the Respondent to the Petitioner -	25,28,896/-
Add interest on Rs.25,28,896/- at the rate of 24% p.a. from 01.09.2017 to 24.04.2019	9,97,701/-
Total Amount due and payable by the Corporate Debtor	35,26,597

10. The Resolution passed at the meeting of the Board of Directors of Corporate Debtor which was held on 02.04.2019 and thereafter in the said meeting, Mr. Pankaj Agarwal, was appointed as an Authorised Signatory of the Company.

Brief Facts by Corporate Debtor:

11. Corporate Debtor is a registered company duly incorporated under the Companies Act,1956 and is engaged in the business of manufacturing the bituchem, construction chemicals& APP/SBS Bituchem Modified Membrances with different finished tar products, sealants and adhesives etc.

12. Corporate Debtor states that the Operational Creditor approached the Respondent for Business.

13. The Corporate Debtor asserts that their business engagement with the applicant commenced in the fiscal year 2016-2017. Subsequently, in accordance with their specific needs, the Corporate Debtor raised various purchase orders to the Operational Creditor during the period spanning from 2017-2018.

14. In accordance with the purchase orders initiated by the Corporate Debtor, a distinct method of conducting business transactions unfolded between the Operational Creditor and the Corporate Debtor. The Corporate Debtor received the goods, prompting the Operational Creditor to generate several invoices. Remarkably, the entire invoiced amount was settled expeditiously within a concise timeframe of 6.5 months, spanning from 18th March 2017 to 4th October 2017. As a result, there exists a surplus amount of Rs. 89,215/- with the Operational Creditor.

15. Corporate Debtor states that as per the procedure and the business method, all the invoices are supported with all the documentation in respect to the transport details such as delivery challans, weighing reports, goods receipts.

16. The Corporate Debtor in respect to the invoices raised by the Operational Creditor, states that there are no dues pending in respect to the invoices.

17. Interestingly, within this petition, the Corporate Debtor contends that the Operational Creditor has initiated proceedings based on five invoices, of which four were never generated or associated with the receipt of any goods or materials in alignment with the purchase orders issued by the Corporate Debtor. The details of 5 invoice are as follow:

Sr. No	Invoice date	Invoice No.
1.	11.08.2017	MFO/301/17-18

2.	11.08.2017	MFO/302/17-18
3.	11.08.2017	MFO/303/17-18
4.	11.08.2017	MFO/304/17-18
5.	21.08.2017	MFO/310/17-18

The Corporate Debtor asserts that among the aforementioned five invoices, Invoice No. MFA/310/17-18, dated 21st August 2017, has already been settled. This particular invoice was cleared through a bank transfer on 4th October 2017. Importantly, the said invoice comprehensively contained all pertinent details related to the goods' delivery, including transporter details, delivery receipts, transport vehicle information, and driver details.

18. The Corporate Debtor contends that the remaining invoices No. MFO/301/17-18; MFO/302/17-18; MFO/303/17-18; MFO/304/17-18 as the Corporate Debtor has not received any corresponding goods associated with these invoices. The Corporate Debtor alleges that these invoices are purportedly forged and fabricated, created with the intention of unjustly extracting funds from the Corporate Debtor.

19. The Corporate Debtor asserts that the invoices in question, as highlighted in the petition, lack essential details such as transport particulars, driver information, LR number, and LR date. Furthermore, the Operational Creditor has not presented any substantiating evidence in the aforementioned petition to demonstrate the actual supply of goods to the Corporate Debtor.

20. The Corporate Debtor contends that the presented situation is unequivocally indicative of fraud and forgery, given the fabrication of the mentioned invoices. The Corporate Debtor has taken decisive action by filing a police complaint before the appropriate authorities. Subsequent to an investigation by the police, the transporters were summoned, and during the inquiry, they acknowledged that the vehicles specified in the invoices were never engaged by the Operational Creditor for the designated delivery of goods. Notably, the police authority also documented statements from the owner of the transport vehicles, aligning with and supporting the transporter's statements.

21. The Corporate Debtor contends that the Police Authority, through their letter dated 4th December 2019, summoned Mr. Nitin Kagzi, the Director of the Operational Creditor, to furnish documents under Section 91 of the CrPC. Regrettably, Mr. Nitin Kagzi failed to appear at the police station, constituting a blatant disregard for the notice.

22. Corporate Debtor submits that after due diligence and proper investigation the Police Authority, recognizing merit in the complaint, has initiated legal proceedings by filing a FIR against Mr. Nitin Kagzi, the Director of the Operational Creditor. The FIR is registered under No. 233/2019 , dated 30th December 2019 and therefore the Corporate Debtor submits that there is a pre-existing dispute in respect to the subject invoices.

23. The Corporate Debtor contends that the Operational Creditor also initiated a company petition before Hon'ble National Company Law Tribunal, Mumbai bench Court-IV, denoted as **CP IB 1689/MB/C-IV/2019**, against Supreme Startech Private Limited.

The Corporate Debtor emphasizes that the circumstances and grounds presented in the petition are identical to the current case, involving non-delivery of goods and the presence of fraudulent and fabricated invoices. The mentioned Company Petition proceeded ex-parte against the Corporate Debtor and later through an order dated 25th October 2019, the Hon'ble National Company Law Tribunal Bench-IV, Mumbai, subsequently admitted the Company Petition against Supreme Startech Private Limited.

24. The Corporate Debtor asserts that Supreme Startech Private Limited, aggrieved with the NCLT Mumbai order dated 25th October 2019, filed a **Company Appeal (AT) (Insolvency) No.1208 of 2019** to challenge the said order. In a significant development, the Hon'ble National Company Law Appellate Tribunal, through its order dated 3rd September 2020, overturned the NCLT Mumbai order of 25th October 2019. The Appellate Tribunal further rendered a determination that a pre-existing dispute existed between the Operational Creditor and Supreme Startech Private Limited. Consequently, it was deemed that the Company Petition numbered CP IB 1689/MB/C-IV/2019 was not maintainable.

<u>Findings:</u>

25. We have heard the submissions of the learned Counsel of the Applicant and perused the records.

26. The Corporate Debtor has submitted that the Operational Creditor has initiated proceedings based on five invoices, of which four were never generated or associated with the receipt of any goods or materials in alignment with the purchase orders issued by the Corporate Debtor. However, we find that all these five invoices are

duly reflected in the GSTR-1 of the Operational Creditor hence the contention that 4 invoices were never generated is not substantiated.

27. It is imperative to emphasize that the GST returns for financial year 2017-2018 submitted by the operational creditor in the compilation of documents are in complete alignment with the ledger account filed by the Financial Creditor. Notably, all invoices impeccably correspond with the Financial Creditor's ledger account. The Corporate Debtor never disputed those invoices appearing in GSTR-2, which are available on the GST portal.

28. The Corporate Debtor sent an e-mail to Financial Creditor dated 9th September 2017, attaching ledger statement of the Operational Creditor in its books of accounts. The said ledger in the statement clearly shows these 5 Invoices duly accounted in the books of Corporate Debtor.

29. Financial Creditor issued demand notice form-3 on 13.04.2018, subsequently the Corporate Debtor filed a police complaint in which it has raised a dispute of invoices, the FIR is registered under No. 233/2019 and is dated 30th December 2019. Accordingly, the dispute raised by the way of police complaint cannot be said to be pre-existing dispute, more so no dispute is stated to have been raised when these invoices were appearing in GSTR-2 of Corporate debtor.

30. This Petition is complete in all respect. There exists debt of more than One Lakh Rupees and the same is in default. In the absence of any reply from the corporate debtor, the question of dispute doesn’t arise and survive on this ground also.

31. The Petition bearing **CP (IB) 1688/MB/2019** filed by **Megamet Steel Private Limited** [CIN: U27310MH2007PTC167395], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against Supreme Bituchem India Private Limited.** [CIN: U74999MH2007PTC170757], the Corporate Debtor, is Admitted.

32. There shall be a moratorium under section 14 of the IBC, in regard to the following:
    i. 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;
    ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
    iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
    iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

33. Notwithstanding the above, during the period of moratorium:
    i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

34. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case maybe.

35. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

36. Mr Ravindra Chaturvedi Registration No.IBBI/IPA-001/IPP-00792/2017-2018/11359, email Id: ravinchaturvedi@hotmail.com , is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

37. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

38. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

39. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

40. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

41. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V. G. Bisht (Retd.)
Member (Judicial)