



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 58/CB/2022

In the matter of:

In the matter of Section 9 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

Methodex Systems Private Limited, having its registered office at 607-8, Meghdoot, 94, Nehru Place, New Delhi- 110 019., through its authorised representative Mr. Soumendu Banerjee;

...Petitioner/Operational Creditor

-Versus-

Stalco Consultancy & Systems Pvt. Ltd. & Anr., having its registered office at MIG-I-11/28, BDA Colony, Chandrasekharpur, Bhubaneswar- 751 106;

...Respondent/Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

For Petitioner(s) : Mr. Prabhu Prasanna Behera, Adv.
Mr. Susovan Mishra, Adv.

For Respondent(s) : Mr. Jyotirmaya Prasad Behera, Adv.
Mr. Niraj Gupta, Adv.
Mr. Ritish Agarwal, Adv.

Order reserved on: 17.07.2023
Order pronounced on: 01.08.2023



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In re: Methodox Systems Pvt. Ltd. Vs Stalco Consultancy & Systems Pvt. Ltd. & Anr.

ORDER

Per: Satya Ranjan Prasad, Member (Technical):

1. This petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by the petitioner/Operational Creditor (OC) herein i.e., **Methodex Systems Pvt. Ltd.** with prayer for initiation of Corporate Insolvency Resolution Process in short (CIRP) against Respondent No.1/ Corporate Debtor No. 1 i.e., **Stalco Consultancy & Systems Private Ltd.** (for brevity **R1 or CD**) as they have failed to pay alleged admitted debts amounting to Rs. 61,69,195/- (Rupees Sixty-One Lakh Fifty-Nine Thousand One Hundred and Ninety-Five Only) along with the interest at the rate of 24% p.a. amounting to Rs. 94,16,254.37/- (Rupees Ninety-Four Lakh Sixteen Thousand Two Hundred Fifty-Four and Thirty-Seven Paise only) from 03.05.2016 till 25.09.2022 on pending payment and future interest (Page 15 of the Petition) . That the said debt is being accepted, admitted, and not disputed by the Corporate Debtors. Petitioner counsel states that the second Respondent herein i.e. Sylvesa Infotech Private Limited (**R2**) is only a proforma respondent.
2. OC submits that they provide physical security products, office furniture, modular and work stations, turnkey interiors, educational product, currency handling products and electronic surveillance products to banks, offices, institutions, commercial and government establishments.
3. The OC further states that the R 1 through its Director Mr. Jyotinarayan Mohapatra had placed a Purchase Order (Stalco/P/005/15-16) dated 30.12.2015 for delivery of office furniture for 38 locations of Modern Tahasil Record Room Project. All negotiations and executions were done by Mr. Jyotinarayan Mohapatra, Director of Respondent No. 1 as well as Respondent No. 2. The total value of the Purchase Order was Rs.



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1,55,43,060/- (Rupees One Crore Fifty Five Lakh Forty-three thousand and sixty only).

4. Pursuant to the work order, OC delivered goods to CD on various dates i.e., 03.05.2016, 06.05.2016, 12.05.2016, 15.05.2016, 16.05.2016, 18.05.2016 and 23.05.2016. Invoices worth Rs. 1,56,80,003.46/- (Rupees One Crore Fifty-Six lakhs Eighty Thousand and Forty Six paise only) were raised, out of which only payment of Rs. 95, 20,808.46 (Rupees Ninety-Five lakh twenty thousand eight hundred and forty six paise only) was made by the CD. A total principal amount of Rs. 61,59,169/- was due as per the above-mentioned invoices.
5. All the cheques issued by the CD for the payment against the above stated balance payment were dishonored, due to reasons such as 'Account frozen /Blocked' and 'Insufficient Funds'. This was immediately brought to the notice of the CD.
6. Only one Demand Draft bearing no. 030890 amounting to Rs. 3,20,000/- issued by the CD *in lieu of* only one dishonored cheque i.e., cheque no. 200598 dated 06.09.2017 was credited in the account of the OC. However, the pending amount was not paid by the CD despite repeated reminder.
7. OC submits that on 10.10.2017 the parties held a meeting and it was undertaken by the Director of the Respondent that owing to insufficiency of funds in R1's bank accounts, he is unable to square of the existing debts of the CD, and, therefore, R 2 shall square of the dues on behalf of the CD. Hence, the Respondents jointly and severally assumed the liability and approved the factum of existence of a legally enforceable debt in favor of the OC.
8. Cheque No. 110559 dated 31.01.2018 for Rs. 55,17,995/- issued by Respondent No. 2 on behalf of CD was presented by the OC before Axis



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Bank, Kalkaji Branch, New Delhi. The said cheque got dishonored for the reason of 'insufficient funds' of which the OC got the information on 01.02.2018 together with Cheque Return Memo dated 01.02.2018.

9. Thereafter, the OC issued a Legal Notice dated 10.02.2018 under Sections 138 and 142 of the Negotiable Instruments Act, 1881 to the CD demanding the balance amount of Rs. 55,17,995/- within 15 days of the receipt of the notice.
10. The above said legal notice was received by the Respondents on 15.02.2018, however, no reply was received from them.
11. Having received no reply to the Legal Notice dated 10.02.2018, OC filed a Complaint Case No. 2630 of 2018 under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 read with Section 420 of the Indian Penal Code, 1860 and Chapter XV of the Code of Criminal Procedure, 1973 (hereinafter "Complaint") against the Respondents in the Court of the Ld. MM, N.I. Act-02, Saket District Court, Delhi, which is still pending.
12. Subsequently, a Demand notice was issued under Section 8 of IBC, 2016, dated 25.05.2019 to which the CD neither made any payment nor replied.
13. Petitioner submits that the Director of the Respondents met the OC in the office of the latter on 23.12.2021 and undertook to make the payment of the outstanding amount without any further delay. However, even after the undertaking, no payments were made. Petitioner has not produced any such undertaking given by the Respondent. Another demand notice dated 27.12.2021 was sent by the OC, to which the CDs replied on 09.01.2022, only raising baseless contentions. It is submitted that part payment made by the CDs proves that they owe the claimed amount to the OC and, hence, it is deemed to be an admission on the part of the CD.



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14. Thus, the CD is indebted to pay Rs. 1,55,75,449.37/- (Rupees One Crore Fifty-Five Lacs Seventy five thousand Four Hundred and Forty Nine and Thirty Seven Paise only) the OC.

15. The Corporate Debtor has filed his reply dated 17.02.2023 and stated *inter alia* that the present petition filed by the alleged OC is an abuse of process in law thus is not maintainable and liable to be dismissed with costs as the alleged debt for which the present petition is filed has been deliberately enhanced with the sole motive of bringing the present petition maintainable before this Tribunal. The OC made following averments in its petition:

- i. The total unpaid amount was Rs. 61,59,169/- (para 3 of the petition);
- ii. The principal outstanding as on 26.07.2019 was 55,17,995/- (para 7 of the petition);
- iii. A legal Notice dated 10.02.2018 was issued under Section 138 of NI Act, demanding Rs. 55,17,995/- along with interest @ 12% p.a. (para 11 of the petition);
- iv. A demand notice under Section 8 of IBC was issued on 25.05.2019 and the amount demanded was Rs. 58,38,595/- as principal and interest @24% p.a. from total Rs. 95,80,719;
- v. Second notice under Section 8 of IBC was issued on 27.12.2021 demanding Rs. 61,59,194.94/- as principal and interest @ 24% from 12.05.2016 to 30.11.2021 a total of Rs. 1,43,64,534.76;
- vi. Clear admission of debt on the part of the CD of Rs. 55,17,995/-

16. In view of the above, CD claims that:

- a. The OC, itself, is not clear about the exact amount of the debt due and against whom;
- b. There is no pleading as far as the quantum or rate of interest is concerned. It is stated and submitted there was no agreement of payment of any interest even as per the averments in the petition;



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- c. The principal amount claimed is only in between Rs. 55,17,995/- to Rs. 61,59,169/-, which much less than Rs. 1 Crore;
- d. Thus, the present petition cannot be maintained before this Tribunal and liable to be dismissed.

17. It is submitted that even if it is presumed (though not admitted) that the contents of the petition are correct, it is clear that the alleged debt is barred by the law of limitation. It is further submitted that the OC itself claimed that the amount is due form 12.05.2016 and calculated interest from the said date, thus, clearly the alleged debt is barred by law of limitation and no petition can be filed relying on such a debt. The OC has initiated the present proceedings knowing fully well that no petition can be filed relying upon the alleged debt with the sole motive of harassing the answering respondent thus, the petition is liable to be dismissed with heavy cost.

19. The OC has filed rejoinder dated 04.05.2023 and stated *inter alia* that the CD has raised only vague grounds and incorrect facts in order to mislead this Tribunal. The CD miserably failed to prove that the CD is not liable to pay the amount of the invoices raised against the purchase order issued by them, and that no debt has accrued upon them. Neither has the CD been able to establish that there was a pre-existing dispute, nor has it established that it does not owe the debt amount to the OC. The CD has simply been evading its liability due to reasons best known to it, and for which it has raised baseless grounds and contentions in their Preliminary Objections.

20. OC states that the petition has been filed against a debt which has been clearly admitted by the CD on various occasions. The CD had issued various cheques and demand draft towards part payment of the debt amount on dates such as 06.09.2017, 09.09.207, 12.09.2017 and 15.09.2017 and 31.01.2018. The cheques issued towards payment of amount arising from the invoices confirms the existence and acknowledgment of a debt which



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the CD is liable to pay to the OC. Therefore, the CD is liable for initiation of insolvency proceedings against them.

21. It is submitted that from the time the invoices were raised upon the CD, interest @24% on delayed payment was accruing on the CD as per the Term & Conditions of the invoices. The interest amount has been calculated on the debt amount according to the terms and conditions of the invoices. The ledger reflecting the total principal amount due from the CD to the OC (Rs. 61,59,195/-) is annexed with the petition as Exhibit P/24. On the principal amount the interest at 24% is applied which amounts to Rs. 1,55,75,449/- thus, meeting the threshold limit required for filing the petition under Section 9 of the IBC, 2016.

22. OC states that there has been continuous cause of action since the year 2016 as well as continuous acknowledgment of debt by the CD. Since the month of September 2017 till January 2018, the CD had been issuing cheques as part payments towards the invoices raised against the purchase order. There is acknowledgment of debt in the email exchanged between the parties in the month of September 2017. On 01.08.2019, the CD had admitted the dishonored cheque No. 110559 before the Ld. MM Saket District Court. Subsequently, in the month of December 2021, in a meeting held between the parties, the CD had undertaken to pay the debt amount to the OC, which was an acknowledgment of debt. However, due to non-payment of the debt, the OC issued a Demand Notice dated 27.12.2021 to the CD. Even in their reply dated 09.01.2022 to the Demand Notice dated 27.12.2021, the CD has stated that it is not in dispute that the invoices were raised against material supplied to the CD. There has, therefore, always been acknowledgment of the debt owed by the CD to the OC. In Section 18 of the Limitation Act, 1963 is applicable to the present proceedings which states that a fresh period of limitation shall be computed when there is an acknowledgment of debt by the debtor. In view of the same, the cause of action has been continuing,



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there is acknowledgement of debt and thus the petition is not barred by the law of limitation.

23. Heard the Ld. Counsel appearing for both the parties. Available material on record perused. The respondent side has not disputed the debt. However, they have primarily argued that the amount in default is much below the specified threshold of Rs.1.00 crore and that the petition is barred by limitation. We have perused the available documents and averments made in the petition. It is observed that there is no specific mention of date of default anywhere. Petitioner claim that unpaid principal amount to the tune of Rs. 61,59,169/- has arisen out of several invoices issued between 03.05.2016 to 23.05.2016. At page 36 and 37 of the petition, the petitioner has mentioned several dates as mentioned below from which debt has been stated to be due; 03.05.2016, 06.05.2016, 16.05.2016, 18.05.016 23.05.2016, 12.09.2017, 15.09.2017, 19.09.2017, 25.09.2017, 10.10.2017, 31.01.208, 01.02.2018, 15.02.2018,01.08.2019, 25.05.2019,23.12.2021, 27.12.2021 and 09.01.2022. There is no clarity that when the invoices are for the period 03.05.2016 to 23.05.2016 only how debt fell due on different dates from 12.09.2017 till 09.01.2022.

24. Demand Notice issued by the petitioner in Form 3 dated May 25, 2019 claims the amount of debt as Rs.58,38, 595/- and with interest of 24 % calculated up to 25.05.2019 as Rs.95,80,719/-, which is much below the threshold limit of Rs.1.00 crore. However, the subsequent demand notice dated 27.12.2021 the principal amount in default is mentioned as Rs.61,59,195/- with 24% interest calculated from 12.05.2016 to 30.11.2021 the total amount in default as shown there is Rs.1,43,64,534.16. There is no clarity that how the principal amount in respect of the same invoices are different in two demand notices. In the petition itself the principal amount in default is mentioned differently at different places of the petition, Viz. synopsis at page 15 of the petition and also Part IV para 3 at page No. 36



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indicate principal amount in default is Rs.61,59,195/-, however, para 7 reflects that principal amount of Rs.55,17,995/- is outstanding and not paid. Also, as per para 11 of the petition, the legal notice issued under Section 138 of NI Act, a demand of Rs. 55,17,995/- along with interest @ 12% p.a. has been raised.

25. So as stated above, there is no clarity from the petition that what is the exact amount in default and which date has been taken as the date of default, which is very much essential to arrive at a decision in Section 9, IBC matters. If we go by submissions at Pg 15 and also the first demand notice then the principal and interest as claimed by the petitioner is blow the threshold of Rs.1.00 crore. In the stated scenario, the submission of the CD cannot be ruled out that alleged debt for which the present petition is filed has been deliberately enhanced with the sole motive of bringing the present petition maintainable before this Tribunal.
26. Petitioner claims that the CD had issued three cheques each of Rs.3,20,600/- or so. respectively on 06.09.2017, 09.09, 2017 and 15.09.2017. All the three cheques bounced, whereby one Mr. Jyotinarayan Mohapatra offered vide email dated September 2017 addressed to some Debabrata Bisnoi stating *"We are transforming money from Sylvesa infotech PVT. LTD. Against the three PDC given to you. Kindly send your no objection confirmation to receive the payment from Sylvesa infotech."*
27. First there is no clarity as to what the mail means and who is sending such proposal to whom. There is no mention of either the operational creditor or the Corporate Debtor in the mail. Even if the word "transforming" is taken as typographical error for "transferring" there is no clarity that the same is in respect of alleged dues of the Corporate Debtor towards the Financial Creditor. There is no clarity that the three bounced cheques each of Rs.3,20,600/- were issued towards the pending invoice amounts. Further,



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even this proposal was declined by Sr. Financial Controller of the petitioner vide e-mail dated September 12, 2017. So based on available facts on record that issuance of such cheques amounts to acceptance of debt of principal amount to the tune of Rs.61,59,195/- and interest thereupon, cannot be established.

28. Petitioner has further referred to a cheque dated 31.01.2018 for Rs.55,17,995/- issued by the Respondent No. 2 namely Sylvesa Infotech Private Limited, which too has bounced. This tribunal has noted that the proposal to get the money from R2, Sylvesa Infotech Private Limited was declined by Sr. Financial Controller of the petitioner *vide* e-mail dated September 12, 2017. There is no clarity that subsequently under what arrangement and for what purpose Respondent No. 2 has drawn this cheque in favor of petitioner. From the averments and the available facts on record it cannot be inferred that the said cheque has been issued by second respondent to settle the amounts in invoices referred to in petition in respect of Respondent No. 1. Therefore, we cannot arrive at the conclusion that issuance of such cheque by R2 on 31.01.2018 is acceptance of Debt of Rs.1,55,75,449/37 by R1, and it shall amount to extension of limitation period in respect of invoices dated 03.05.2016 to 23.05.2016.

29. As has been observed above, from the petition and the submissions made, there is no clarity on the amount of default. Different default amounts have been mentioned in the petition and in the two different demand notices issued on two different dates. There is no clarity on the date of default. Even if the date of last invoice dated 23.05.2016 taken as the date of default the petitioner has unable to establish, as has been evident from the discussions above, that this petition filed on 24.11.2022 is not barred by limitation. As such, we are not inclined to allow this petition.

30. In result this CP(IB) No. 58/CB/2022 shall stand **DISMISSED**.



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31. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
32. Let the certified copy of the order be issued upon compliance with requisite formalities.
33. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.08.01 15:50:25 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.08.01 16:10:06 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, the 1st day of August, 2023.

Nishi