IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA
CP (IB)/32/KOB/2021

(Under Section 9 of Insolvency and Bankruptcy Code, 2016)

Order delivered on: 7th March, 2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

M/s. BMSS Steel Industries Private Limited,
corporate office at 366, S.V.P. Road,
Prarthana Samaj, Mumbai,
Maharashtra- 400 004. ... Operational Creditor

Versus

M/s. BHEL Electrical Machines Limited,
283/1&2, Village Puttur, Post Bedradka,
Kasargod, Kerala- 671 124.
Email: -info@bheleml.com. ... Corporate Debtor

Parties/Counsel present (through video conference):-

For Operational Creditor ... Shri. V. Hallel Ben, A.K. Muhammed Hashim, Advocates.

For Corporate Debtor ... No appearance (Ex-parte vide order dated 20.12.2021).

O R D E R

Per: Ashok Kumar Borah, Member (Judicial)

This application has been filed by **M/s. BMSS Steel Industries Private Limited** (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I & B Code**') for initiating Insolvency Resolution Process against **M/s BHEL Electrical Machines Limited** (hereinafter referred to as '**Corporate Debtor**') stating that a total amount of Rs. 5,22,852.25/- is due from the Corporate Debtor as on 30.11.2019. It is stated that the default occurred on 14.07.2017 and 31.08.2017 in respect of Invoice No. 00419 and 0108 respectively.

2. The brief facts of the case are as under: -

The Operational Creditor is a Private Limited Company under the provisions of the Companies Act, 1956, having its Registered Office at 366, S.V.P. Road, Prarthana Samaj, Mumbai-400004, Maharashtra and is engaged in the business of supply of 'Alloy Steel Forged Bar'. It is stated that the Operational Creditor was supplying the goods to the Corporate Debtor for the last two years to their satisfaction and had built good business relationship with them. The Corporate Debtor expressed desire to purchase Alloy Steel Forged Bars from Operational Creditor with payment condition to make within 30 days. The orders were placed for EN 24 Steel Rounds and EN 8 Steel Rounds vide Purchase Order No. 6462 dated 19.04.2017 which also stipulates payment terms as 30 days credit and the said items were supplied by the Operational Creditor to the satisfaction of the Corporate Debtor vide Invoice No. 00419 dated 14.06.2017 and Invoice No. 0108 dated 01.08.2017. Invoice No. 00419 was for a sum of Rs. 1,63,028/- and Invoice No. 0108 was for a sum of Rs. 2,70,810/-. It is stated that the two bills became due on 14.07.2017 and 31.08.2017 respectively.

3. It is stated that there were a number of exchange of communication via email between the Corporate Debtor and the Operational Creditor regarding payment of the two invoices totalling Rs. 4,33,838/-. The above communications culminated in a meeting between the representatives of the Operational Creditor and the Corporate Debtor on 09.08.2018 in which it was stated that the Corporate Debtor was facing severe financial constraints and that it was in the process of a management change from Central PSU to state owned PSU. This process was to be completed within 2-3

months. In the said meeting the Operational Creditor was assured of the payment of dues within 3 months. But the above promise was not kept by the Corporate Debtor. Therefore, the present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

4. We have heard the arguments advanced by Shri V. Hallel Ben, the learned counsel for the Operational Creditor. Since there was no appearance for the Respondent/Corporate Debtor, they were set *ex parte* vide order dated 21.12.2021. We have also gone through the evidences on record. Firstly, we have to decide as to whether this application filed on 28.06.2021 claiming the default amount of Rs. 5,22,852.25/- (Rupees Five Lakh Twenty-Two Thousand Eight Hundred and Fifty-Two and Twenty-Five paise) as on 05.08.2020 is maintainable or not?

5. In the Part IV of the application, it is stated that the defaults were occurred as on 14.07.2017 and 31.08.2017. If we take these dates as the last invoice dates this application was filed on 28.06.2021 which is beyond three years from that dates is barred by limitation as the three-year period expired long back.

6. To get further clarity on this issue, we have gone through Article 137 of the Limitation Act,1963 which reads thus: -

> *Article 137 is a residual provision, and provides for a limitation period for any application for which no period of limitation is provided in any of the Articles in the Schedule to the Limitation Act. It provides for a* ***period of limitation of 3 years from the date*** *when the right to apply.*

7. Moreover,in view of the Notification No. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs specifying Rupees One Crore as the minimum amount of default and that this application has been filed on 18.06.2021 claiming the due amount of Rs. 5,22,852.25/-, on that count also this application is not maintainable.

8. To sum up, after analysing the issue framed, we are of the opinion that the amount had fallen in default as on 14.07.2017 and 31.08.2017 and the demand notice served only on 06.12.2019. There was a huge delay in sending the demand notice to the Corporate Debtor and the Operational Creditor did not mention any valid reason for that delay, and this application has been filed claiming the due amount of Rs. 5,22,852.25/- which is below Rs. 1 Crore fixed vide Notification No. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs. Hence, we cannot entertain this application for initiation of CIRP against the Corporate Debtor.

9. Accordingly, this application **CP(IB)/32/KOB/2021 is dismissed.**

Dated this the 7th day of March, 2022

Sd/-
(Anil Kumar. B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

RRN