

Company Petition No. (IB) No. 181/Chd/Hry/2021

...Applicant

Versus

....Respondent

Order delivered on: 09.02.2024

SECTION: Section 9 of IBC 2016

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L.N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Advocate Shivam Grover

For the Respondent : Advocate Ujjal Bannerjee

ORDER

Per: Sh. L. N. GUPTA, M (T) & Sh. HARNAM SINGH THAKUR, M (J)

M/s. Sunflag Iron & Steel Company Limited (for brevity, the **“Applicant”**) has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **‘IBC, 2016’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. Omax Autos Limited (for brevity, the **"Respondent"**).

2. The Respondent namely, M/s. Omax Autos Limited is a Company incorporated on 28.04.1983 under the provisions of the Companies Act, 1956 with CIN L30103HR1983PLC026142 having its registered office at Plot No. B-26, Institutional Area, Sector-32 Gurgaon HR 122001 which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 30,00,00,000/- and the Paid-up Share Capital of the Company is Rs. 21,38,82,128/- as per the Master Data annexed with the application.

3. In its application, it is averred by the Applicant that the Respondent issued a Purchase Order No. 5510004921 for supply of peeled round bars and rods on the Applicant. It is further submitted that all the material was delivered to the Respondent by the Applicant without any record of protest at the relevant time.

4. The detailed particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default as mentioned by the applicant in Part IV of its application read thus:

Part -IV

PARTICULARS OF OPERATIONAL DEBT		
1	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE AND THE DATE FROM WHICH SUCH DEBT FELL DUE	Total Amount of Debt: Rs.1,18,47,744/- (Rupees One Crore Eighteen Lakhs Forty-Seven Thousand Seven Hundred and Forty-Four inclusive of interest at 18 per cent per annum from Due date till 10.06.2021 and till further realization.

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2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	Default amount: There is an outstanding legal debt of Rs. 1,20,23,007/- including interest of Rs. 22,08,627/- calculated @ 18% per annum from the due dates as per the Invoices till 10th June 2021. Details of working for computation of amount default and dates of default is attached as Exhibit E at Pg. 40-44.
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5. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 1,20,23,007/- (including interest) and relied on 10.06.2021 as the "date of default". It is further submitted that on 10.06.2021, the Applicant issued the Demand Notice, calling upon the CD to pay the defaulted amount.

6. In support of its contention, the Applicant has relied on the following documents:

- i. Demand notice as in Form 4 served on the corporate debtor.
- ii. Copy of Invoices No. 192722791, 1927227950, 1927227951, 1927227952, 1927227953, 192726580, 192723898, 192723899, 192723946, 192723947, 192723948, 192723949, 192724194, 192724195, 192724196.
- iii. Books of account and bank statement from the Indian Bank maintaining account of the operational creditor.
- iv. Emails exchanged for asking of payment.
- v. Certified true copy of the resolution for authorization to file application.
- vi. The tracking report of the Demand Notice on the corporate debtor.
- vii. Reply to the demand notice received from the corporate debtor.

8. During hearing on 29.01.2024, the Ld. Counsel for the Respondent argued that the petition is barred by section 10A as all the invoices based

on which the debt and default has been claimed relates to the period between 04.04.2020 to 19.04.2020. Accordingly, the Petitioner was asked to file a short note to indicate how the present petition is maintainable. On the next date of hearing, i.e., on 07.02.2024, the Petitioner argued that the aforesaid dates were for the purpose of calculating interest only.

9. We heard the parties and gone through the pleadings on record. Before examining the petition on merits, we would like to examine maintainability of the present petition. In the backdrop of the objection raised by the Respondent, we refer to the statement filed by the Applicant on Page No. 44 of the Application, which reads thus:

44

SUNFLAG IRON & STEEL CO.LTD. 33, MOUNT ROAD, SADAR, NAGPUR - 440001 STATEMENT OF INTEREST CALCULATION OMAX AUTOS LIMITED BANGALORE 2131									
Invoice No.	DocumentNo	Type	Doc/ Date	Outstanding Amount (Rs.)	Due Date (45 days credit period)	As on Date	No. of days delay	Interest @ 18%	REMARKS
192722791	90869537	RV	2/19/2020	453,320	4/4/2020	7/9/2021	461	114,755	Part payment received
192722950	90869716	RV	2/21/2020	838,466	4/6/2020	7/9/2021	459	211,223	
192722951	90869717	RV	2/21/2020	314,124	4/6/2020	7/9/2021	459	79,133	
192722952	90869718	RV	2/21/2020	651,571	4/6/2020	7/9/2021	459	164,141	
192722953	90869719	RV	2/21/2020	233,953	4/6/2020	7/9/2021	459	58,937	
192723580	90870437	RV	2/27/2020	1,505,534	4/12/2020	7/9/2021	453	373,741	
192723898	90870790	RV	3/2/2020	86,009	4/16/2020	7/9/2021	449	21,141	
192723899	90870791	RV	3/2/2020	1,339,262	4/16/2020	7/9/2021	449	329,195	
192723946	90870869	RV	3/3/2020	1,059,714	4/17/2020	7/9/2021	448	259,835	
192723947	90870866	RV	3/3/2020	570,305	4/17/2020	7/9/2021	448	139,835	
192723948	90870867	RV	3/3/2020	409,601	4/17/2020	7/9/2021	448	100,431	
192723949	90870868	RV	3/3/2020	268,349	4/17/2020	7/9/2021	448	65,797	
192724194	90871152	RV	3/5/2020	1,145,247	4/19/2020	7/9/2021	446	279,412	
192724195	90871153	RV	3/5/2020	389,922	4/19/2020	7/9/2021	446	95,131	
192724196	90871154	RV	3/5/2020	373,739	4/19/2020	7/9/2021	446	91,183	
		RV		9,639,117				2,383,890	

Further, when we refer to Page No. 7 of the Application, we find the following averment made by the Applicant:

Date on which the debt fell due:

The due dates for each of the Invoices is 30 days & 45 days from the date of the Invoice, as per the terms of Invoices.

Thus, it is evident that due date of payments for each of the invoices was between 30 to 45 days from the date of invoices. Accordingly, the Applicant itself has provided the due date of payment in column No. 6 of the table (ibid) as given on Page 44 of the Application, as per which due date of payment (after the credit period) falls in the period between 04.04.2020 to 19.04.2020 which is covered in the Section 10A period, for which no Application can ever be preferred.

11. In the light of the aforesaid discussion, the need of going into the merits of the case is obviated and the present Application is dismissed being barred under Section 10A, and not maintainable.

Sd/-
(L.N. Gupta)
Member (T)

Sd/-
(Harnam Singh Thakur)
Member (J)