

In the National Company Law Tribunal
Mumbai Bench.

C.P.(IB)-1527/MB/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

SKM Steels Pvt. Ltd. : Petitioner/ Operational Creditor

V/s

Nirmiti Stamping Pvt. Ltd. : Respondent/ Corporate Debtor

Order delivered on: 18.11.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

For the Petitioner(s) : 1. Mr. Nithish Bangera, PCS.

Per M.K. Shrawat, Member (Judicial).



ORDER

1. A Petition u/s.9 has been submitted in Form No.5 on 17.04.2018 by the Operational Creditor M/s. SKM Steels Limited, against the Corporate Debtor M/s. Nirmiti Stampings Pvt. Ltd., Pune for an Operational Debt of ₹57,00,656/- Plus Interest @ 24% ₹17,00,949/- totalling **₹74,01,605/-**, reproduced below:-

Amount Claimed :- ₹74,01,605												NIRMITI STAMPINGS PVT LTD	
Sr. No.	Purchase Order No.	Date of Purchase Order	Sales Invoice No.	Sales Invoice Date	Sales Price	Delivery Challan Date	Lorry Receipt No.	Lorry Receipt Date	Date on which payment is due	Interest @24% p.a.	Total Due Amt.	Interest Calculation as per Current Date	Total No. of Days From Payment Due Date
1	66	2/1/2016	15501/2015-16	21-Feb-2016	21931	2/22/2016	MH06-AC-7509	2/21/2016	4/7/2016	9247	31050	1/23/2016	642
2	69	3/1/2016	16330/2015-16	06-Mar-2016	251576	3/8/2016	MH14-DM-0448	3/3/2016	5/3/2016	104215	359793	1/23/2016	610
3	69	3/1/2016	16330/2015-16	06-Mar-2016	37837	3/6/2016	MH14-DM-0448	3/3/2016	4/4/2016	16349	124236	1/23/2016	610
4	82/49	3/1/2016	16346/2015-16	09-Mar-2016	291796	3/4/2016	MH02-AM-833	3/3/2016	5/4/2016	120864	412480	1/23/2016	629
5	98	3/1/2016	16518/2015-16	06-Mar-2016	119773	3/14/2016	MH18-AS-9877	3/14/2016	5/7/2016	40201	151074	1/23/2016	626
6	45	3/1/2016	16548/2015-16	14-Mar-2016	108452	3/14/2016	MH06-AC-7509	3/14/2016	5/13/2016	44376	131229	1/23/2016	630
7	50	3/2/2016	17653/2015-16	25-Mar-2016	134803	3/10/2016	MH16-AR-2678	3/29/2016	5/28/2016	53467	187270	1/23/2016	605
8	50	3/2/2016	17675/2015-16	30-Mar-2016	104019	3/10/2016	MH16-AR-2678	3/29/2016	5/29/2016	120749	428788	1/23/2016	602
9	1	4/9/2016	599/2016-17	14-Apr-2016	47148	4/14/2016	MH06-AC-7509	4/14/2016	6/13/2016	18760	65408	1/23/2016	580
10	1	4/9/2016	600/2016-17	14-Apr-2016	48547	4/14/2016	MH06-AC-7509	4/14/2016	6/13/2016	18774	67077	1/23/2016	580
11	1	4/9/2016	601/2016-17	14-Apr-2016	45809	4/14/2016	MH06-AC-7509	4/14/2016	6/13/2016	17243	65589	1/23/2016	580
12	51	4/9/2016	673/2016-17	16-Apr-2016	296270	4/15/2016	MH06-AC-7509	4/14/2016	6/13/2016	114742	411012	1/23/2016	589
13	51	4/9/2016	764/2016-17	16-Apr-2016	110833	4/29/2016	MH12-CY-2654	4/18/2016	6/17/2016	42640	151482	1/23/2016	585
14	51	4/9/2016	1012/2016-17	24-Apr-2016	46371	4/24/2016	MH46-F-4367	4/24/2016	6/13/2016	17654	64025	1/23/2016	579
15	EMAIL	4/26/2016	1348/2016-17	26-Apr-2016	47826	-	MH11-F-5502	-	6/25/2016	18145	65977	1/23/2016	577
16	3	5/7/2016	2025/2016-17	15-May-2016	234201	5/15/2016	MH46-F-3678	5/15/2016	7/18/2016	85129	101130	1/23/2016	558
17	5	5/7/2016	2991/2016-17	07-Jun-2016	270336	6/2/2016	MH46-F-3678	6/2/2016	8/1/2016	29723	360445	1/23/2016	560
18	5	5/7/2016	2993/2016-17	03-Jun-2016	43144	6/2/2016	MH46-F-3678	6/2/2016	8/2/2016	17063	64207	1/23/2016	559
19	5	5/7/2016	3994/2016-17	03-Jun-2016	59891	4/7/2016	MH46-F-3678	6/2/2016	8/2/2016	18037	68925	1/23/2016	539
20	5	5/7/2016	9129/2016-17	07-Jun-2016	46440	-	MH11-F-5502	-	6/6/2016	16337	62777	1/23/2016	536
21	5	5/7/2016	3640/2016-17	19-Jun-2016	73841	6/19/2016	MH46-AR-8489	6/19/2016	8/18/2016	29596	99238	1/23/2016	528
22	14	6/12/2016	5995/2016-17	16-Aug-2016	396972	8/14/2016	MH17-F-7578	8/14/2016	10/11/2016	121879	518876	1/23/2016	467
23	14	6/12/2016	6743/2016-17	20-Aug-2016	44061	8/20/2016	MH14-DM-0448	-	10/13/2016	16396	70445	1/23/2016	461
24	16	9/12/2016	7729/2016-17	18-Sep-2016	46450	9/18/2016	MH14-V-4035	-	11/13/2016	15394	59441	1/23/2016	432
25	16	9/12/2016	7931/2016-17	20-Sep-2016	29043	9/21/2016	MH14-6652	9/21/2016	11/10/2016	8332	37295	1/23/2016	430
26	16	9/12/2016	7982/2016-17	21-Sep-2016	43050	9/21/2016	MH46-AR-3345	9/21/2016	11/20/2016	13354	61604	1/23/2016	429
27	16	9/12/2016	8102/2016-17	24-Sep-2016	281839	9/24/2016	MH12-RA-2771	9/24/2016	11/23/2016	78486	80529	1/23/2016	426
28	16	9/12/2016	8212/2016-17	26-Sep-2016	145753	9/27/2016	MH14-RA-2771	9/27/2016	11/25/2016	39236	179488	1/23/2016	414
29	16	9/12/2016	8886/2016-17	06-Oct-2016	51374	9/21/2016	MH14-6652	9/21/2016	12/5/2016	15985	65330	1/23/2016	414
30	19	12/14/2016	32432/2016-17	20-Dec-2016	134341	12/20/2016	MH46-AR-8489	12/20/2016	2/18/2017	29905	140464	1/23/2016	338
31	19	12/14/2016	32438/2016-17	20-Dec-2016	151818	12/20/2016	MH14-6652	12/20/2016	2/18/2017	33843	186530	1/23/2016	339
32	19	12/14/2016	33540/2016-17	22-Dec-2016	103887	12/22/2016	MH46-F-3678	12/22/2016	2/20/2017	23025	169982	1/23/2016	337
33	20	2/18/2017	15058/2016-17	20-Feb-2017	187005	2/20/2017	MH46-F-3678	2/20/2017	3/6/2017	34661	221063	1/23/2016	277
34	20	2/18/2017	15228/2016-17	23-Feb-2017	134973	2/23/2017	MH06-AC-3137	2/23/2017	4/24/2017	20552	134425	1/23/2016	274
35	20	2/18/2017	15229/2016-17	23-Feb-2017	102900	2/23/2017	MH06-AC-3137	2/23/2017	4/24/2017	19079	124999	1/23/2016	274
36	19	3/4/2017	15773/2016-17	05-Mar-2017	150973	3/7/2017	MH06-AC-7509	3/5/2017	5/4/2017	26208	177183	1/23/2016	264
37	EMAIL	3/4/2017	15799/2016-17	06-Mar-2017	50613	3/7/2017	MH06-AC-7509	3/5/2017	5/3/2017	8732	59364	1/23/2016	263
38	21	3/15/2017	16505/2016-17	19-Mar-2017	259750	3/20/2017	MH12-GL-9636	3/20/2017	5/19/2017	42699	302449	1/23/2016	256
39	21	3/15/2017	16598/2016-17	20-Mar-2017	52004	3/20/2017	MH16-AR-2678	3/20/2017	5/19/2017	2874	60079	1/23/2016	249
40	21	3/15/2017	16762/2016-17	23-Mar-2017	79348	3/26/2017	MH46-F-3678	3/26/2017	5/22/2017	12835	93183	1/23/2016	246
41	21	3/15/2017	16762/2016-17	23-Mar-2017	311845	3/26/2017	MH46-F-3678	3/26/2017	5/22/2017	45843	361788	1/23/2016	243
42	21	3/15/2017	16970/2016-17	26-Mar-2017	153762	4/1/2017	MH14-6652	4/1/2017	6/30/2017	24845	183660	1/23/2016	218
43	21	3/15/2017	17176/2016-17	31-Mar-2017	103848	4/1/2017	MH12-RA-2771	4/1/2017	7/30/2017	176106	1271018	1/23/2016	208
				TOTAL	5700656					1700949	7401605		

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2. The Petitioner/ Operational Creditor has submitted:-

2.1. That, the Operational Creditor Company is in the business of steel trading and the Corporate Debtor is in the business of Manufacture of Precision Metal Stamping, Parking Brake Levers, Sheet Metal Stampings, Shock Absorbers and Sheet Metal & Turned Components.

2.2. That, the Operational Creditor supplied H.R. Pick Coil and H.R. Coil to the Corporate Debtor from 21.02.2016 to 31.03.2017 and raised Sales Invoices on the Corporate Debtor aggregating to Rs.57,00,656/- as per the Purchase Orders purportedly placed by the Corporate Debtor.

2.3. That, Interest of Rs.17,00,949/- was charged @ 24% p.a. and the total outstanding amount including Interest worked out to Rs.74,01,605/-.

2.4. That, since the outstanding amount was not paid by the Corporate Debtor, on 13.02.2018, the Petitioner Creditor sent a Demand Notice to the Corporate Debtor demanding the outstanding amount. However, the Demand Notice was stated to be returned as "left" from the address.

2.5. That, as a consequence, the Operational Creditor sent Demand Notice in the name of the Directors of the Corporate Debtor, viz. Mr. Haresh Naik and Mrs. Sarika Talegaonkar, on the address of the Corporate Debtor mentioned in the MCA portal, however, the same was also returned as "left" and "unclaimed". Thereafter the Demand Notice was allegedly sent in the Factory address of the Corporate Debtor which is stated to have been acknowledged by the Respondent.

Handwritten text on a document:

MR- Haresh Naik
 C/o Nirmiti Stampings Pvt. Ltd
 115/2, General Block
 MIDC - Bhosari
 Pune - 4110026

There are two circular stamps at the bottom of the document. The one on the left is a faint circular stamp. The one on the right is a circular stamp with the text "Nirmiti Stampings Pvt. Ltd. Bhosari Pune" around the perimeter and a central logo.



2.6. That, the Bank Statement of the Corporate Debtor, issued by the Bank of India, for the period from 01.03.2017 to 31.03.2017 is placed on record.

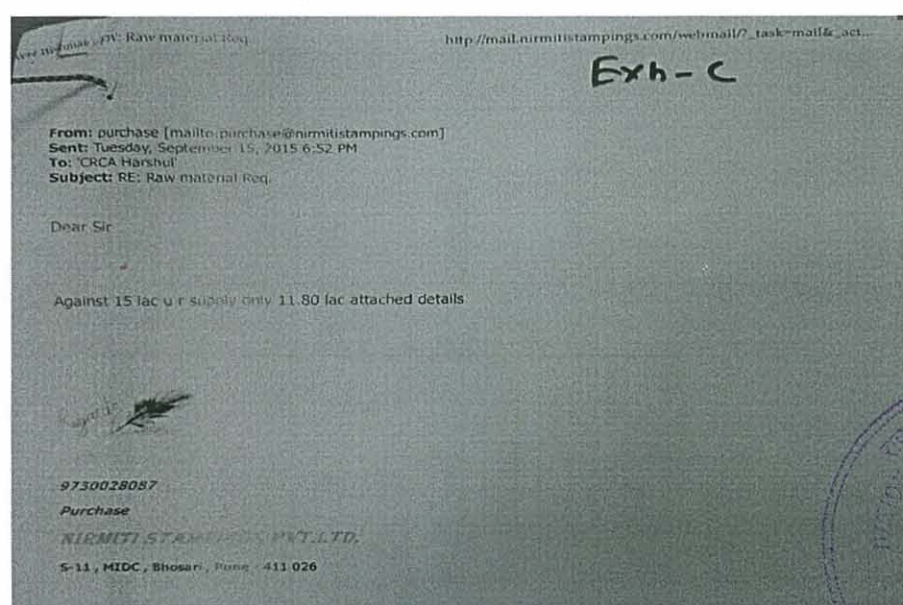
2.7. That, from the date of delivery of goods till date, no notice of dispute was raised by the Corporate Debtor or any communication had been received from the Corporate Debtor in this regard.

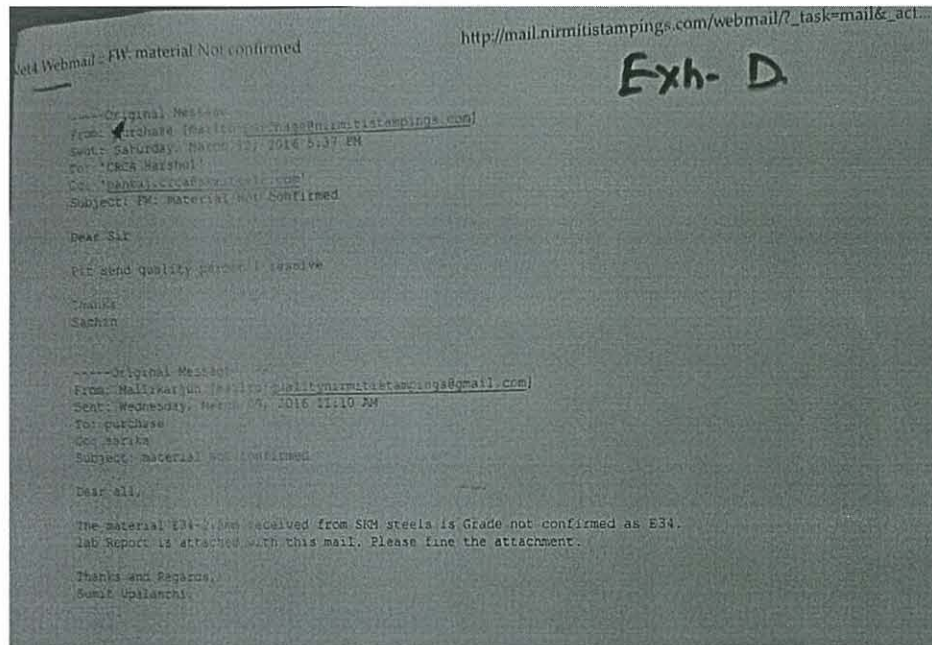
3. Submissions from the side of the Respondent Debtor:-

3.1. From the side of the Respondent Debtor, it was submitted in the written statement that the goods supplied to the Corporate Debtor were of bad quality due to which it was causing great loss to the business of the Corporate Debtor and also affected the goodwill of the Corporate Debtor. Therefore, the Corporate Debtor decided to discontinue the supply of the said goods from the Operational Creditor.

3.2. That, the Corporate Debtor requested the Operational Creditor to take back the goods supplied as the same were bad in quality and also damaged, thus not competent to supply to outsiders. However, the same were not taken back by the Operational Creditor.

3.3. The Corporate Debtor further submitted that the goods delivered were not as per purchase order and also not as per the quality assured by the Operational Creditor. In support, Two email communications dated 15.09.2015 and dated 12.03.2016 addressed to the Operational Creditor have been placed on record by the Corporate Debtor, as below:-





3.4. That, the conclusion in the Lab Report submitted by the Respondent Debtor says, quote: "Conclusion: *The above Sample Conforms to IS 1079:2009:HR2(D), Tensile 1 only*", unquote.

3.5. The Respondent Debtor claimed that the Operational Creditor never sent demand notice to Haresh Naik and Sarika Talegaonkar, Directors of the Corporate Debtor, as claimed by the Operational Creditor. The Respondent further alleged that the Operational Creditor has not produced the email communication papers; also not produced the debit note dated 19.04.2017; not cleared the material rejection note with sample report dated 09.04.2017 of an amount of Rs.2,74,519.71.

Rejoinder by the Petitioner/ Operational Creditor :-

4. The Petitioner/ Operational Creditor in Rejoinder dated 14.02.2019 submitted its rebuttal of the allegations of the Corporate Debtor, refuting the allegations for want of documentary evidence. According to the Petitioner, the objection raised by Respondent Debtor in Para No.21 of the Reply submitted that the purported objection raised vide letter dated (blank), has not been received by the Operational Creditor nor Corporate Debtor himself is aware about the date of such objection letter raised by him or such letter is enclosed with the affidavit in reply. Petitioner vehemently pleaded that from the date of delivery of goods till date of filing Petition no notice of dispute has been raised by the Corporate Debtor nor the



Operational Creditor received any communication from the Corporate Debtor regarding any dispute. The Petitioner also alleged that several Invoices have not been considered in the Ledger of the Corporate Debtor. As regards Para 24 of the reply of the Corporate Debtor, Petitioner submitted that the alleged Debit Note for Rs.2,74,519.71 has already been considered in the ledger of Operational Creditor.

- 4.1. Petitioner also submitted that the Corporate Debtor in their email dated 03.02.2017 had 'admitted' that the outstanding amount in 2017 was Rs.50,00,000/-.

FINDINGS:-

5. Considering the facts and circumstances of the case, it is evident that the Petitioner had issued Demand Notice to the Respondent Debtor. However, the same was returned twice undelivered citing the reason "left". Thereafter, the Petitioner issued Demand Notice at the factory address of the Respondent Debtor Company to Mr. Harish Naik, one of the Directors of the Corporate Debtor Company, discussed in Para 2.5 (*supra*). Petitioner has submitted a proof of acknowledgement of this communication. This case was first listed on 10.07.2018, 23.08.2018, 22.10.2018, 10.12.2018, 21.01.2019, 28.02.2019, 02.05.2019, 08.07.2019 and lastly on 19.08.2019. Even after a lapse of considerable time after first listing of this Petition, no serious effort appeared to have been made by the Corporate Debtor to settle the outstanding amount.
6. From the side of Respondent Debtor, on 10.12.2018, an Advocate appeared and sought time for filing Vakalatnama. Time was granted subject to payment of cost of Rs.20,000/-, to be paid to the Petitioner and matter was adjourned to 21.01.2019.
7. The Corporate Debtor has submitted evidence of short supply of goods by the Operational Creditor as per para 3.3 (*supra*) and the quality of the goods supplied. As a consequence, the Corporate Debtor has allegedly raised Credit Note amounting to Rs.2,74,520/- on 09.04.2017. The said Credit Note has been accounted for in the books of the Petitioner on 09.04.2017. However, the Resolution Professional shall reconcile the minor difference appearing in the Closing Balance of Rs.57,00,656/-



appearing in the Ledger Accounts of the Petitioner/ Operational Creditor with the Closing Balance of Rs.48,87,699.51 appearing in the Ledger Account of the Respondent Debtor.

8. As a consequence, keeping the admitted facts in mind that, the Operational Creditor has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Operational Creditor, it is our conscientious view that this Petition deserves "Admission".
9. The Operational Creditor has proposed the name of Interim Resolution Professional **Mr. Prakash Dattatraya Naringrekar**, Registration No. IBBI/IPA-002/IP-N00270/2017-2018/10783, Address: 503-A, Blue Diamond CHS Ltd. Chincholi Bunder/ Link Road Junction, Malad (West), Mumbai – 400 064. The IRP has submitted his consent in Form No.2 and also certified that no Disciplinary Proceedings are pending against him. Accordingly, this Bench appoints the said IRP **Mr. Prakash Dattatraya Naringrekar** to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
10. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Insolvency Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
11. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium** Period". This direction shall have



effect from the date of this Order till the completion of Insolvency Resolution process.

12. Accordingly, this CP (IB)-1527/(MB)/2018 stood "**Admitted**".

13. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Date : 18.11.2019

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Sd/-
M.K. SHRAWAT
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 09/12/2019

Assistant Registrar
National Company Law Tribunal Mumbai Bench