BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB)No.16/BB/2021
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

Oswal Minerals Limited
R/o. at 8/11 Police Station Road,
Pallavaram, Chennai,
Tamil Nadu – 600 043
Corporate office:
"OSWAL'S", 1034,
2nd Floor, Dr. Rajkumar Road,
4th Block, Rajajinagar,
Bengaluru – 560 010 - Petitioner/Operational Creditor

And

Shimoga Precison Castings Private Limited
R/o. at No.61,
Shimoga-Bhadravathi Industrial Area,
Nidige Post,
Machenahalli – 577 222 - Respondent/Corporate Debtor

Date of Order: 2nd March, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

For the Petitioner	:	Shri Kiran.S
For the Respondent	:	None

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.16/BB/2021 is filed by Oswal Minerals Limited (Petitioner) U/s.9 of IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Shimoga Precison Castings Private Limited (Respondent) on the ground that it has committed default for an amount of Rs.3,35,09,513/-.

2. Brief facts of the case, as mentioned in the instant Company Petition, which are relevant to the issue in question, as follows:

   (1) Oswal Minerals Limited (hereinafter referred as Petitioner/ Operational Creditor), is a Limited Company, was incorporated on 07.04.1996, bearing CIN: L30006TN1996PLC035973. It is involved in the business of imports and trades various metals. The Company's metals include in various low carbon and high carbon ferro alloys, nitrogen bearing ferro alloys etc.

   (2) Shimoga Precison Castings Private Limited (hereinafter referred to as Respondent/Corporate Debtor), is a Private Limited Company, was incorporated on 15.02.1995, under the Companies Act, 1956 bearing CIN: U02710KA1995PTC017206. The Nominal Share Capital is Rs.50,00,000/- and Paid-up Share Capital is Rs.49,65,000/-. It is involved in the business of for the manufacture of castings under investment process.

   (3) Both the parties have been carrying on business for a long time. The present Petition pertains to various Pos, issued by the Corporate Debtor to the Operational Creditor in terms of which the Operational Creditor had supplied various materials, namely Electrolytic Manganese Metal, L.C. Ferro Chrome, Ferro Silicon Calcium, Silicon Metal etc., as per the requirement of the Corporate Debtor, vide raising of invoices payable along with at an simple interest rate of 18% p.a. on account of delay payment. The Corporate Debtor usually was making part payment at

certain intervals to clear the invoices raised by Operational Creditor. Over a period of time, the Principal amount piled up to Rs.1,19,00,000/- payable along with interest @ 18% p.a. on account of delay payment, amounting to Rs. 2,06,09,513/- and Rs.10,00,000/- towards legal and other miscellaneous outlays, amounting to Rs.3,35,09,513 /-, which is due and outstanding after adjusting the last payment received for a sum of Rs.30,00,000/- on dated 13.02.2020.

(4) The Operational Creditor sent regular requests and reminders to the Corporate Debtor for clearing the outstanding payment, as the due amount exceeded the payment terms of overall 90 days. (Credit period varied invoice to invoice). The Corporate Debtor had accepted that they will make a monthly payment of Rs.10,00,000/- (Rupees Ten Lakhs Only) to Rs.15,00,000/- (Rupees Fifteen Lakhs Only) and clear the entire outstanding due to the Operational Creditor. But the Corporate Debtor failed and neglected to clear the dues against the materials utilized by them. After remitting a sum of Rs.30,00,000/- on 13.02.2020, the Corporate Debtor with malafide intentions deliberately stopped further payments.

(5) The Corporate Debtor has received, accepted and utilized the materials since long time, and has not raised any dispute/denial with regard to the accounts confirmation. The issuance of balance confirmation at several events, latest on 3.01.2020 is an admission of the liability by the Corporate Debtor to pay the debt to Operational Creditor.

(6) The Corporate Debtor sent email dated 21.01.2020, and urged for a meeting to settle the issue, further issued letter No.1903/19-20 dated 21.01.2020 to the Operational Creditor where it acknowledged the Demand Notice dated 26.12.2019 and

the amount outstanding to the Operational Creditor and post apologizing requested not to initiate legal proceedings; which itself is an admission of liability by the Corporate Debtor to pay the Outstanding Debt to the Operational Creditor.That the Corporate Debtor knowing the gravity of the grouse and after receiving the Demand Notice sent on 27.02.2020, at the Registered office address as well as on the registered email of the Company, didn't come forward to clear the total Outstanding amount.

3. Heard Shri Kiran .S, learned Counsel for the Petitioner, **through Video Conference** and none appeared for the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made there under and law on the subject.

4. Shri Kiran.S, learned Counsel for the Petitioner, submits that the Party is willing to settle the issue in question. Therefore, he has urged the Adjudicating Authority to dispose of the instant Company Petition by directing the Respondent to settle the remaining claim in terms of email dated 21.01.2020.

5. Since the Company Petition is not yet admitted, and part payment was paid by the Corporate Debtor, we are inclined to dispose of the instant Petition by directing the Parties to settle the remaining claim in terms of the email dated 21.01.2020.

6. In the result, C.P.(IB)No.16/BB/2021 is hereby disposed of with the following directions:

   (1) The Respondent is directed to settle the remaining claim with mutual agreement within a period of three (3) months from the date of receipt of a copy of this Order, failing which, the

Petitioner is at liberty to file fresh Company Petition in, accordance with law.

(2) The Registry is directed to forward a certified copy of this order to both the Parties.

(3) No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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