

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.1594/MB.IV/2019

*Under section 9 of the Insolvency and  
Bankruptcy Code, 2016*

*In the matter of*

Haresh Trading Company, a  
proprietorship concern represented by  
its proprietor, Mr Haresh Dharmani  
...Operational Creditor

Versus

Sam Alloys Private Limited  
[CIN: U27100MH2004PTC144014]  
... Corporate Debtor

Order pronounced on : 15.07.2020

*Coram:*

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

*Appearances:*

For the Operational Creditor : Mr Vikramjit Garewal a/w  
Chintan Gandhii/b M/s Rajani  
Associates, Advocates  
For the Corporate Debtor : CS Prashant G. Tayshete a/w Mr  
Tushar Bhalshankar, Practising  
Company Secretaries, and Mr  
Tejas Rajesh Balsara, Advocate

ORDER

*Per: Rajasekhar V.K., Member (Judicial)*

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Haresh Trading Company (*Operational Creditor*) a proprietorship concern represented by its proprietor, Mr Haresh Dharmani, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sam Alloys Private Limited (*Corporate Debtor*).
2. The Corporate Debtor is a private company limited by shares and incorporated on 14.01.2004 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U27100MH2004PTC144014. Its registered office is at No.21, Rajiv Industrial Estate, Penkar Pada Road, Near Dahisar Check Naka, Mira Bhayandar, Mumbai 401 104, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 16.04.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹6,89,820.00 (Rupees six lakh eighty-nine thousand eight hundred and twenty only) as principal and ₹8,74,503.00 (Rupees eight lakh seventy-four thousand five hundred and three only) as interest as on 20.12.2013, which is stated to be the date of default.
4. The case of the Operational Creditor is that the Operational Creditor is a sole proprietorship firm engaged in the business of manufacturing and trading of ERW Pipes, GI Pipes, Spiral Pipes

and Coils and sheets. The Operational Creditor has been supplying goods to the Corporate Debtor and was raising invoices on the Corporate Debtor from time to time. However, one of the invoices – No.206 dated 20.12.2013 for a sum of ₹9,16,276/—remains unpaid (*para 1 at page 5 of the Petition*).

5. Invoices have been placed on record as Exhibit 'B' at pp.13. The invoices provide for interest in case of delayed payments, to be charged at the rate of 24% per annum. Bank statements are attached as Exhibit 'H' at pp.37-39. The total debt due and payable to the Operational Creditor is ₹15,64,323.00 (Rupees fifteen lakh sixty-four thousand three hundred and twenty-three only), as mentioned at page 12 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 01.02.2019 to the Corporate Debtor (Exhibit 'E', pp.17-20) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply, wherein they have stated that the amount claimed is under dispute from the beginning and pending for settlement against tax default made by the Operational Creditor in MVAT and Excise Duty for the Financial Year 2013-14, which was in turn paid by the Corporate Debtor with interest and penalty as levied by the respective tax authorities during the assessment. Without prejudice to this contention, the Corporate Debtor has also stated that the materials supplied was of inferior quality. The reply has been annexed at Exhibit 'G' at pp.31-32 of the Petition. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been annexed at p.43.

7. CS Prashant G. Tayshete, a/w Mr Tuishar Bhalshankar, Practising Company Secretaries, and Mr Tejas Rajesh Balsara, Advocate, appeared on behalf of the Corporate Debtor and made submissions.
8. In its reply dated 13.09.2019, the Corporate Debtor has set up the following defence:-
  - (a) There is an on-going dispute between the parties in respect of the Invoice No.206 dated 20.12.2013 which has already been informed to the proprietor of the Operational Creditor through email dated 24.09.2013(*sic*). Through this email, the Corporate Debtor has informed the Operational Creditor that "*all material load in 1 vehicle without any cover. All of you aware that last 2 days heavy rain going on this area. We have received this material completely soaked in water. (sic)*" (para 3 at page 4 of the Reply);
  - (b) The present petition has been filed after the expiry of the period of limitation (para 3 at page 5 of the Reply).
9. We have heard the arguments of both sides and perused the records.
10. The Corporate Debtor has stated that the claim of the Operational Creditor is not valid, on the following grounds: -
  - (a) That the claim is barred by limitation; and
  - (b) That there is a pre-existing dispute. The materials received were completely soaked in rain water since the Operational Creditor had sent the same in an open truck during heavy rains.
11. Before we look at the merits of the petition, we need to address the question of limitation. The transaction in question pertains to an invoice dated 20.12.2013. There are two separate copies of the invoice placed on record – one each by the Operational Creditor and

the Corporate Debtor. The one placed on record by the Operational Creditor is a typed invoice (at p.13 of the petition), whereas the one placed on record by the Corporate Debtor is a handwritten invoice (at p.14 of the Reply). Though the invoices in question are materially same, there was no answer from the learned counsel for the Operational Creditor as to why there are two different invoices, when a question was put in this regard by the Bench.

12. Additionally, since there is no due date on the invoice, the same became payable immediately. Therefore, limitation started to run from 21.12.2013. In terms of Article 137 of the Limitation Act, 1963, the period of limitation is three years, which expired on 20.12.2016, while the petition has been filed only on 16.04.2019, more than twenty-seven months after the limitation period expired. No material has been placed on record that would prove that the Corporate Debtor has acknowledged the debt within the period of limitation, which would extend the period of limitation in terms of section 18 of the Limitation Act, 1963. The present petition is, therefore, hit by limitation and is not maintainable.
13. For the reasons stated above, the present petition fails and therefore, the same is rejected.
14. Since we have held that the present petition is not maintainable on grounds of limitation, we have not gone into the merits of the matter.
15. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the

petitioner before any other judicial forum shall not be prejudiced on grounds only of dismissal of the present petition by this Adjudicating Authority.

16. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-  
Ravikumar Duraisamy  
Member (Technical)  
15.07.2020

Sd/-  
Rajasekhar V.K.  
Member (Judicial)