**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**AHMEDABAD**
**DIVISION BENCH**
**COURT - I**

**ITEM No.304- C.P.(IB)/111(AHM)2021**
**ITEM No. 305 - IA/500(AHM) 2022**
**In**
**C.P.(IB)111(AHM)2021**

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Navkar Enterprise ........**Applicant**
V/s
Milano Papers Pvt Ltd ........**Respondent**

**Order delivered on 08/04/2024**

**Coram:**

**Mr. Shammi Khan, Hon'ble Member(J)**
**Mr. Sameer Kakar, Hon,ble Member(T)**

**PRESENT:**

For the Applicant :
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

**-Sd-** **-Sd-**

**SAMEER KAKAR** **SHAMMI KHAN**
**MEMBER (TECHNICAL)** **MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY**
**NATIONAL COMPANY LAW TRIBUNAL**
**AHMEDABAD BENCH**
**COURT-I**

**CP (IB)-111 of 2021 with IA/500 (AHM) 2022**

*(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of **M/s. Milano Papers Pvt. Ltd.**

**NAVKAR ENTERPRISE**
Proprietary Firm with its Sole Proprietor
Mrs. Laxmiben Shantilal Shah
Through Power of Attorney Holder,
Shantilal Mulchand Shah
Having its office at
D-405, Ganesh Meridian,
Opp. Amiraj Farm, Sola Road,
S. G. Highway, Ahmedabad.

**........Applicant/Operational Creditor**

**VERSUS**

**M/s. Milano Papers Pvt. Ltd.**
Regd. Office At:
Survey No. 153, National Highway No. 8-A,
Sartanpar Village, Vakaner-363622
Distt. Morbi, Gujarat-363622.

**......Respondent/Corporate Debtor**

**Order pronounced on 08.04.2024**

**<u>CORAM:</u>**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**
**SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For Applicant : Mr. P.M. Lakhani, Advocate
For Respondent : Mr. Arpit Singhvi, Advocate

**O R D E R**
[Per Bench]

1. The present application is filed by the Applicant **Navkar Enterprise** (hereinafter referred to as **'Operational Creditor'**) against the Respondent **M/s. Milano Papers Pvt. Ltd.** (hereinafter referred to as **'Corporate Debtor'**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **"IB (AAA) Rules, 2016"**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **"IRP"**) and declare the moratorium for having defaulted payment of the operational debt of **Rs.1,00,39,395/-** including interest**.** The date of default as stated to be 01.04.2020.

2. A perusal of Part-I of the Form-V reveals that this application is filed through its Navkar Enterprises through Mr. Shantilal Mulchand Shah, Power of Attorney holder of Mrs. Laxmiben Shantilal Shah, the sole proprietor of M/s. Navkar Enterprise. The applicant herein is registered with GST Authorities under GSTIN No. 24ABIPJ6055F and has

having office at D-405, Ganesh Meridian, Opp. Amiraj Farm, Sola Road, S. G. Highway, Ahmedabad.

3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one M/s. Milano Papers Pvt. Ltd Private Limited having CIN No. U2109GJ2010PTC060581. The Respondent/Corporate Debtor was incorporated on 05.05.2010 and having registered office at Survey No. 153, National Highway No. 8-A, Sartanpar Village, Vakaner-363622, Distt. Morbi, Gujarat–Pin 363622.

4. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not proposed the named any IRP under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP).**

5. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs. 1,00,39,395/- which includes interest on the delayed payment calculated at 12% p.a. from the due date.

6. The applicant herein has supplied the waste papers as raw material to the Corporate Debtor in terms of oral agreement dated 05.01.2017 as and when called for.

7. It is stated that the Corporate Debtor did not raise any dispute to the quality and quantity of the supplies.

8. The purchase orders are attached at Exhibit-B. Despite repeated demands, the Corporate Debtor has not paid the outstanding amounts. The Operational Creditor (Operational Creditor) issued demand notice dated 26.05.2021 in Form-3 which was replied by the Corporate Debtor vide letter dated 05.06.2021. The Corporate Debtor has not paid the outstanding amount nor has given any information as to any dispute and hence, present petition.

9. The date of default is mentioned as 01.04.2020. The computation of default and interest is attached at Exhibit-D.

10. The Operational Creditor relies upon the following documents.

    a) Copy of ledger accounts of M/s Milano Papers Pvt Ltd maintained by Navkar Enterprise and a copy of the copy of ledger accounts of Navkar enterprise maintained by the Corporate Debtor Milano Papers Pvt Ltd. as a confirmation of accounts, the same are annexed hereto and marked as 'Exhibit-F(Collectively)'.

    b) Affidavit of Mr. Shantilal Mulchnad Shah, the Power of Attorney holder of the Sole proprietor of Navkar Enterprise i.e Mrs. Laxmiben Shantilal Shah, to the effect that an appropriate and legal reply to the notice has not been given by the Corporate Debtor relating to dispute of the unpaid operational debt, the said affidavit is annexed hereto and marked as 'Exhibit-G'.

c) A copy of the whatsapp chat conversation of the Director of Corporate Debtor and the Power of Attorney holder - Operational Creditor regarding confirmation and non-payment of debt outstanding is hereto annexed as "Exhibit -H".

d) A copy of the Special Power of Attorney given by the Sole proprietor of Navkar Enterprise i.e Mrs. Laxmiben Shantilal Shah to Mr. Shantilal Mulchnad Shah to conduct the present legal litigation on her behalf is annexed hereto and marked as "Annexure-I" to this petition..

11. Form –D was filed by the Operational Creditor under Diary 2412 and shows the status 'Deemed to be authenticated'.

**REPLY**

12. A reply was filed by the Corporate Debtor under Diary No. D-2275 dated 07.12.2021 which is affirmed by one Mr. Nishant Kalaria. The objections raised to represent application are summarized as below:-

i. Application is not maintainable in view of notification dated 24.03.2020 whereby the pecuniary limit has been raised to Rupees One Crore. According to the applicant the principal amount of Rs. 85,43,690/-.

ii. The alleged date of default is 01.04.2020 which is after date of notification dated 24.03.2020.

iii. The alleged demand notice was issued on 26.05.2021 i.e. after the notification dated 24.03.2020.

iv. The applicant has not attached the copy of invoices along with the notices and petition.

v. Demand notice is not as per the format provided under the Rules and is incomplete. Demand notice issued by one Mr. Shantilal Mulchand Shah, Power of Attorney holder of the Proprietor. The said Power of Attorney is defective and does not validly authorize the holder to issue the said demand notice.

vi. The goods received were defective.

vii. The respondent is a going concern, in light of the above, the respondent seeks dismissal of the present application.

**REJOINDER**

13. Rejoinder was filed under diary No. 1828 dated 11.04.2022. The summary in rebuttal affidavit is as under:

i. The default amount is Rs. 1,00,39,395/- which is above threshold limit. Thereafter, the applicant has relied upon the following judgments:

(a) DF Deutsche ForfaitAG & Anr V/s. Uttam Galva Steel Ltd, 2017 Scconline NCLT 546.

(b) Gulf Oil Lubricants India Ltd. V/s. Eastern Coalfields Ltd. CP (IB) No. 228(KB)/2018.

ii. The demand notice was issued in prescribed format. The Corporate Debtor has issued the cheques in favour of the Operational Creditor which have since bounced and criminal proceedings are pending against the Corporate Debtor. There are several criminal and civil proceedings pending against the Corporate Debtor.

iii. The Operational Creditor has attached the copy of invoices along with the rejoinder.

14. Synopsis was filed by the Operational Creditor under diary No. 2504 dated 21.03.2024 which is since been considered by us.

**IA/500(AHM)/2022**

15. IA/500(AHM)/2022 was filed by the Operational Creditor seeking the following prayers:

*a. Your Lordship may be pleased to allow the present application;*

*b. Your Lordship may be pleased to grant ad-interim to the tune of restraining the present Respondent and Original Corporate Debtor from selling, alienating or creating third party interest upon its assets until pendency and final disposal of the main matter of the petitioner being CP (IB) No. 111/2021 pending before this Hon'ble Tribunal.*

c. *Your Lordship may be pleased to grant any other/ further relief(s) as may be deemed fit in the interest of justice.*

16. The applicant has relied upon the matter of *NUI Pulp and Paper Industries Pvt. Ltd. V/s. M/s. Roxcel Trading GMBH (IBA No. 598/2019)* and sought the present relief.

17. The applicant as well as respondent has filed their written submissions in support of their contentions which is considered by us.

18. We have heard the various Counsels and perused the records as have been placed before us. The Operational Creditor is claiming a sum of Rs. 1,00,39,395/- towards the material supplied to the Corporate Debtor. "The Corporate Debtor has admitted receipt of the goods and has raised feeble defense regarding the quality of the goods supplied by the Operational Creditor." The demand notice was issued on 26.05.2021 claiming principal amount of Rs. 85,43,690/- and interest thereon aggregating to Rs. 14,95,705/- in all aggregating to Rs. 1,00,39,395/-.

19. Upon going through the various invoices, it has come to our notice that certain invoices are covered under the Section 10 (A) period of eclipse. The details of such invoices is provided below:-

| Invoice No. | Date | Amount (Rs.) |
|---|---|---|

| | | |
|---|---|---|
| T/189 | 04.11.2020 | 1,05,788.00 |
| T/191 | 04.11.2020 | 24,392 |
| T/192 | 06.11.2020 | 1,08,676 |
| T/193 | 06.11.2020 | 29,343 |
| T/194 | 07.11.2020 | 85,492 |
| T/199 | 09.11.2020 | 33,725 |
| T/200 | 09.11.2020 | 87,906 |
| T/215 | 12.11.2020 | 19,404 |
| T/224 | 23.11.2020 | 71,557 |
| T/225 | 23.11.2020 | 2,76,397 |
| T/226 | 23.11.2020 | 3,04,194 |
| T/227 | 23.11.2020 | 74,793 |
| T/228 | 23.11.2020 | 65,446 |
| T/231 | 24.11.2020 | 66,848 |
| T/232 | 30.11.2020 | 38,158 |
| T/233 | 03.12.2020 | 21,042 |
| T/234 | 06.12.2020 | 9,178 |
| T/235 | 07.12.2020 | 38,882 |
| T/236 | 14.12.2020 | 1,58,572 |
| T/237 | 15.12.2020 | 2,17,780 |
| T/238 | 15.12.2020 | 3,68,222 |
| T/239 | 15.12.2020 | 3,43,728 |
| T/240 | 16.12.2020 | 4,66,909 |
| T/241 | 16.12.2020 | 5,15,026 |
| T/242 | 16.12.2020 | 4,98,093 |
| T/243 | 16.12.2020 | 3,10,538 |
| T/244 | 16.12.2020 | 3,76,358 |
| T/245 | 17.12.2020 | 99,214 |
| T/246 | 17.12.2020 | 2,05,842 |
| T/247 | 18.12.2020 | 5,08,032 |
| T/248 | 18.12.2020 | 2,29,209 |
| T/249 | 19.12.2020 | 5,47,534 |
| T/250 | 19.12.2020 | 1,19,940 |
| T/251 | 22.12.2020 | 1,10,566 |
| T/265 | 12.01.2021 | 54,948 |
| T/266 | 13.01.2021 | 1,35,124 |
| T/288 | 22.03.2021 | 3,16,008 |
| T/289 | 22.03.2021 | 2,55,276 |
| T/290 | 24.03.2021 | 2,50,194 |
| Total | | 75,48,334.00 |

20. From the above table, it is clear cut that the sum of Rs. 75,48,334/- qua the tax invoices raised with effect from 04.11.2020 to 24.03.2021 is covered within the exempted period of Section 10 (A) of the IBC. The issue of applicability of Section 10 (A) was not raised by the respondent in its reply. However, the same was raised by the Bench during the final hearing held on 01.04.2024. The applicant's Counsel was unable to satisfy this Bench as to how the applicant is able to escape the said Provisions of the Code.

21. However, As per Section 10A of IBC, 2016, any default occurred between the periods 25.03.2020 to 25.03.2021 is exempted and no IBC proceedings shall ever be initiated against the Corporate Debtor for the default which occurred during the period from "25th March, 2020 to 25th March, 2021. The focus of the law which was brought by Section 10A was that when the Corporate Debtor suffers default on account of Covid-19, they should be protected from the filing of any Insolvency Application in the default committed during the said period.

22. In this aspect we rely upon the judgment of Hon'ble Supreme Court in the matter of ***Ramesh Kymal vs. M/s Siemens Gamesa Renewable Power Pvt Ltd***., Civil Appeal No.4050 of 2020 and relying upon the above, we dismiss the present application.

23. In view of the above, we are of the view that the present petition does not meet the threshold as prescribed under Section 4 of the IBC, 2016 as the debt fell due against the tax invoices raised with effect from 04.11.2020 to 24.03.2021 is not maintainable being hit by exempted period U/s 10A of the IBC.

24. It appears that the present application is filed only for the purpose of recovery. We rely upon the judgment of Hon'ble Principal Bench in the matter of ***Ms. Rita Malhotra and Ors. Vs. M/s. Orris Infrastructure Pvt. Ltd. (CP (IB) -234 (PB)/2019)*** wherein it is said that IBC cannot be used as a tool of recovery.

25. As such **CP (IB) 111 of 2021** is dismissed as not maintainable; **IA/500(AHM) 2022** is also dismissed with no order as to costs.

26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-Sd-** | **-Sd-**

**SAMEER KAKAR**
**MEMBER (TECHNICAL)**

**SHAMMI KHAN**
**MEMBER (JUDICIAL)**

Mehul Desai / Steno