

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 1086/MB/2022

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

NAVMI STEEL TRADERS PRIVATE LIMITED

[CIN: U51420MH2002PTC136512]

Registered Office: Office No. 8, Kusum Vijay House

174/180 Modi Street, 2nd Floor, Fort

Mumbai-400001, Maharashtra.

...Operational Creditor

V/s

MARUTI STRIPS AND FERRO ALLOYS PRIVATE LIMITED

[CIN: U27101PN2008PTC131771]

Registered Office: Clover Center, Office No. D-544

5th Floor, 7 Moledina Road, Pune Camp

Pune-411001, Maharashtra.

...Corporate Debtor

Pronounced: 07.05.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv. Raina Birla a/w Adv. Deepali Jaiswar

Corporate Debtor: None (*ex parte*).

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Company Petition bearing C.P. (IB) No. 1086/MB/2022 (Application) was filed on 28.09.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by Navmi Steel Traders Private Limited, the Operational Creditor (OC), through Mr. Kundan Sethia, Director of the OC, authorised *vide* Board Resolution dated 30.06.2022 for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Maruti Strips and Ferro Alloys Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.48,80,96,914/- (Forty-Eight Crore Eighty Lakh Ninety-Six Thousand Nine Hundred Fourteen Rupees) which is based on unpaid invoices issued by the OC regarding supply of Hot Rolled (HR) Coils to the CD during the period of 17.03.2012 to 05.04.2012.

1.3 The date of default as mentioned in Part IV of the Application is 05.04.2012 i.e., the date on which the last invoice bearing No. LC0019 was raised for the amount of Rs.49,13,115/-. Despite acknowledgment of debt by the CD on various occasions, with last acknowledgment on 30.11.2021 *vide* its letter, the CD allegedly defaulted in payment of outstanding dues; hence, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

2. CONTENTIONS OF OC

- 2.1 The OC is engaged in the business of Steel and HR Coils while the CD is manufacturer of High-Quality Stainless Steel and other materials. The OC had supplied huge quantities of HR Coils to the CD as per the orders mentioned in the invoices raised by the OC during the period of 17.03.2012 till 05.04.2012.
- 2.2 The OC approached the CD through telephonic calls and personal meetings for settling the outstanding payment which was due by the CD, and during the period of 2012-13, the CD made part payment of outstanding dues. In support of its claim, the OC relied upon the confirmation of accounts from 01.04.2011 to 31.03.2022 which bears the signature and stamp of the CD.
- 2.3 It is submitted that the last tax invoice was issued on 05.04.2012 and the OC received last payment from the CD on 17.04.2013. Default date for each invoice is to be taken into consideration and limitation with reference to each date of default is to be ascertained for the purpose of determining limitation.
- 2.4 The OC further submits that it sent several reminders to the CD for payment and it received replies from the CD, where the CD not only acknowledged its debt but also sought extension of time on several issues including financial stringency and COVID-19 Pandemic. The OC's first reminder letter dated 07.04.2014 was replied by the CD *vide* letter dated 30.04.2014, by which the CD acknowledged the outstanding dues as well as requested for extension of time for 15 (fifteen) months. It was

followed by issuing of reminders dated 02.06.2015; 12.05.2016; 16.04.2018; 15.04.2020, 15.05.2021; and 14.11.2021, which were all replied to by the CD. However, it merely gave assurances of payment as well as sought extension of time for ensuring payment. After 17.04.2013, the OC did not receive any payment from the CD towards settlement of outstanding dues.

2.5 The OC sent last reminder on 01.03.2022 but it did not receive any reply from the CD. Thereafter, the OC approached the CD's office, through their representative, when the CD again sought further extension of time for payment on account of severe financial crisis faced by it.

2.6 The OC, *vide* its Additional Affidavit dated 12.09.2023, complied with the order dated 22.08.2023 and provided copies of delivery challans for the period from 17.03.2012 till 05.04.2012, along with the OC's balance sheet for the years 2013-14 and 2021-2022 as also its Value Added Tax Return for the year 2013-14. The OC relied upon the copies of delivery challans to confirm delivery of goods to the CD. These show that the CD had accepted the goods without raising any dispute over the quality or quantity of supply.

2.7 The OC issued a Demand Notice under Section 8 of the Code to the CD on 05.08.2022 which was returned on 17.08.2022 with endorsement "*Item Returned Addressee moved*" by India Post. Later, the OC's Counsel sent the Demand Notice *vide* email dated 27.08.2022 to hokanakgroup@gmail.com which is the CD's email ID as available from the MCA records. However, the CD neither responded to the said Demand Notice nor released any payment to the OC till date.

2.8 The OC submits that it has produced the record of default of the CD from the Information Utility (IU) dated 29.08.2022, and the date of default as mentioned in the Part- IV of the Application is the same as reflected in the IU record annexed to the Application. The OC further submits that it has furnished affidavit in terms of Section 9(3)(b) of the IBC with the Application affirming that there is no dispute of unpaid operational debt raised by the CD.

3. CONTENTIONS OF CD

3.1 The OC sent email communication dated 27.09.2022 and 25.10.2022 as well as through registered post on 29.10.2022 to the CD regarding filing of the Application before the Adjudicating Authority. The OC filed affidavit of service dated 01.11.2022. The Registry served notice to the CD on 02.11.2022. Despite the above, the CD chose not to appear and plead its case. The CD remained absent during the entire proceedings of the present Application. The Ld. Counsel for the OC argued that CD's conduct, as demonstrated by its continuous non-appearance, indicates that it has no respect for the law. In view of the above, the CD was set *ex-parte* on 21.06.2023, and thus, we have no option but to proceed with the matter as per the law.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard the Ld. Counsel for the OC.

4.2 The date of default mentioned in Part IV of the Application and the demand notice is the same, viz., 05.04.2012; the Application is filed on 28.09.2022. On the face of it, the Application seems to be barred by limitation on account of it being filed after the expiry of three years from the date of default. However, upon perusal of available documents, we find that the CD had already acknowledged the outstanding dues by its replies to the OC's reminders, the first reply dated 30.04.2014 followed by replies dated 30.06.2015; 30.05.2016; 30.04.2018; 30.04.2020; 30.05.2021; and 30.11.2021. Since, in all the replies sent by the OC, the CD had been seeking extension of time for payment for one reason or the other, and did not dispute the outstanding dues, it clearly proves extension of limitation period under Section 18 of the Limitation Act, 1963. The law on this point is already settled, especially with the judgment of the Hon'ble Supreme Court in *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-Operative Bank Ltd. & Anr.*, [(2021) 7 SCC 313], wherein it was held that an acknowledgment of liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation, from the date on which the acknowledgement is signed. The only condition, however, is that the acknowledgement must be made before the period of

limitation. In the present Application, the CD, *vide* its replies to the OC's reminders, not only acknowledged its liability towards the OC but also sought extension of time for payment of debt, on more occasions than one. After series of extensions for payment, the CD finally acknowledged outstanding dues to the OC on 30.11.2021, from which date a new period of limitation would be reckoned. The confirmation of accounts from 01.04.2011 to 31.03.2022, bearing the CD's signature and stamp also unequivocally proves debt and liability of the CD to the OC. The present Application is filed by the OC on 28.09.2022; hence falls within limitation.

4.3 In the light of the foregoing discussions, we have no hesitation to hold that the OC has satisfactorily established the existence of operational debt for Rs.48,80,96,914/-, which is in default by the CD.

4.4 Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 9 of the IBC.

4.5 The OC has proposed the name of Mr. Vishnu Kant Kabra, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P02178/2021-2022/13747 as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. The proposed IRP has given its written consent and the same is placed on record.

ORDER

This Application bearing C.P. (IB) No. 1086/MB/2022 under Section 9 of the IBC, filed by Navmi Steel Traders Private Limited, the OC, for initiating CIRP in respect of Maruti Strips and Ferro Alloys Private Limited, the CD is **admitted.**

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

- I. We prohibit-
 - a) the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the

- resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Vishnu Kant Kabra**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P02178/2021-2022/13747 and **e-mail- vishnukabra@rediffmail.com**, having valid Authorisation for Assignment up to 17.10.2024, as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and be paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//