

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III  
IB-405(ND)/2022**

Order 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:**

**GT Iron Store**

*Address:* WZ-149, Kailash Park, New Delhi-110015.

*Through its Proprietor*

Mr. Vinod Kumar

**..... Operational Creditor**

**VERSUS**

**M/s. Amba Shakti Ispat Limited**

*Having its registered office at:*

Shop No. 24, First Floor, Community Centre,

Near Sapna Cinema, East of Kailash, New Delhi-110065.

**..... Corporate Debtor**

**Order Delivered On: 22.12.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Ravi Vashisht, Mr. Piyush Maurya Advs.

For the Respondent : Mr. Aishwarya Adlakha, Ms. Natasha, Advs.

**ORDER**

**PER ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. This Application has been filed by GT Iron Store, the Applicant/Operational Creditor on 25.05.2022 before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016

**IB-405(ND)/2022**

**Date of Order: 22.12.2023**

("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. Amba Shakti Ispat Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding principal payment of a sum of Rs. 1,04,67,903/- (Rupees One Crore, Four Lacs, Sixty-Seven Thousand, Nine Hundred and Three Only) including interest amount to the tune of Rs. 17,40,301/- (Rupees Seventeen Lakh Forty Thousand Three Hundred and One Only). As per the Form-5, Part-IV, the date of default in the present matter is 13.08.2021.

**2. Submissions of the Applicant/Operational Creditor:**

- i. The Applicant/Operational Creditor, M/s GT Iron Store is engaged in the business of supplying M. S. Iron Scrap and acts as agent of Corporate Debtor to arrange supplies to the Corporate Debtor of M.S. Scrap (Raw Material) either through its firm or arrange from others.
- ii. As per the case of the Applicant, the Respondent had supplied M.S. Iron Scrap to the Applicant vide different invoices raised from 29.05.2019 to 31.03.2020, 01.04.2020 to 31.03.2021 and 01.04.2021 to 13.08.2021.
- iii. The Applicant has submitted that the Respondent has failed to make payment after 13.08.2021 and Rs. 1,04,67,903/- is a principal amount due to be paid by the Respondent to the Applicant as on 13.08.2021.
- iv. The Applicant has further submitted that after adding interest w.e.f. 28.04.2021 up to 15.02.2022 with respect to the unpaid invoices, a total outstanding amount of Rs.1,22,08,204/- is due and outstanding to be paid by the Respondent to the Applicant.
- v. It is case of the Applicant that Applicant from time and again demanded payment of Rs. 1,04,67,903/-, however the Respondent

failed to adhere to the same. Hence, Applicant served a demand notice dated 15.02.2022 in Form 3 as well as Form 4 in terms of Section 8 of the Code upon the Respondent.

**3. Submissions of the Respondent/ Corporate Debtor:**

- i. The Corporate Debtor is a company incorporated under the Companies Act 1956 and is engaged in the business of manufacturing MS Billets, MS TMT Bars, MS Angle and channels and for the said business, the Corporate Debtor is required to purchase M.S. Scrap.
- ii. It is the case of the Respondent that it procures raw material (M.S. Scrap) inter alia from Mr. Vinod Kumar, who is the sole proprietor of G.T. Iron Store, the Applicant herein and their business relations are governed by the Agency Agreement dated 01.04.2019 and 01.01.2021.
- iii. The Respondent has submitted that on the receipt of supplies and the invoices from firms, as mentioned in Agency Agreements, the Respondent released the payment along with GST levied as per the invoices and thereafter the Respondent claimed Input Tax Credit from the GST Department.
- iv. As per the Agency Agreements, the Agent i.e. the Applicant would ensure/arrange supply of M.S. Scrap to the Respondent from firms/entities enlisted in the Agency Agreements and the list also included the G.T. Iron Store i.e., the Applicant as one of the supplier firms.
- v. The Respondent has further submitted that as per covenants of the Agency Agreements, Mr. Vinod Kumar as an agent was under an obligation to ensure and verify in writing that all the enlisted suppliers are reputable, have acceptable credit rating and have the financial and other means to be able to meet the requirement as decided with the Respondent.
- vi. The Respondent has submitted that Mr. Vinod Kumar as per the Agency Agreement dated 01.01.2021 undertook to indemnify the

Respondent, against any and all such liabilities arising out of any non-compliance by supplier firms enlisted in Agency Agreements dated 01.01.2021, which included M/s. Mahesh Trading Co. & M/s. Rajshree Trading Co., including for a loss as may accrue to the Respondent w.r.t. payment of the GST and availing of Input Tax Credit on the invoices raised by the said firms.

- vii. The Respondent has submitted that on 20.07.2021, a raid was conducted by officials of Directorate General of GST Intelligence ("DGGI") on the premises of the Respondent due to illegal and bogus invoices raised by the M/s. Mahesh Trading Co. & M/s. Rajshree Trading Co. against the supplies of MS Scrap made to the Respondent. The Respondent was informed by the officials of DGGI that M/s. Mahesh Trading Co. & M/s. Rajshree Trading Co. have been found to be non-existent at their registered addresses and suppliers to the said firms do not have any inward of M. S. Scrap. In view of the same, it was alleged that the Respondent has only received invoices from the aforesaid entities without actually receiving the raw materials i.e., M.S. Scrap.
- viii. The Respondent had availed Input Tax Credit to the tune of Rs. 3,56,97,169/- on account of invoices raised in name of these bogus/shell entities. Further, the Respondent has already paid Rs. 1,00,000,00/- in form of penalty to the GST department on 23.08.2021, which as per Agency Agreement dated 01.01.2021, liable to be compensated by Mr. Vinod Kumar, the sole proprietor of the Applicant. The Respondent has further submitted that the aforesaid two firms had supplied the raw materials worth Rs. 23.78 Crores to the Respondent and the Respondent thereupon had availed a total Input Tax Credit worth Rs. 3,56,97,169/-. The break-up of the Input Tax Credit availed by the Respondent is as follows:

<b>Supplier Firm</b>	<b>ITC availed for FY 2020-21</b>	<b>ITC availed for FY 2021-22</b>	<b>Total ITC availed by the Respondent</b>
M/s Mahesh Trading Co.	1,00,41,673/-	75,55,162/-	1,75,96,835/-
M/s. Rajshree Trading Co.	59,12,471/-	1,21,87,863/-	1,81,00,334/-
Total	1,59,54,144/-	1,97,43,025/-	3,56,97,169/-

The Respondent thus claims that the Input Tax Credit of Rs. 3,56,97,169/-, as wrongly availed by the Respondent is liable to be compensated by the Applicant.

- ix. The Respondent has also submitted that it has duly made its reply to the Section 8 demand notice dated 15.02.2022 through an email dated 28.02.2022 and via speed post dated 28.02.2022, bringing to the notice of Applicant a pre-existing dispute prior to the issuance of demand notice.

#### 4. **Analysis and Findings**

- i. We have heard the Ld. Counsel appearing for both parties. We have also perused the documents on record.
- ii. The only issue to be examined in this Application is as to whether the transaction involved between the Operational Creditor and the Corporate Debtor is Operational Debt or not.
- iii. The Applicant in order to prove its operational debt has placed reliance upon invoices along with e-way bills, ledger and bank statements. We have observed that in few of the invoices, the amount does not match with that mentioned in their corresponding e-way bill.
- iv. The Applicant has not produced any agreement or other document/evidence to show the nature of its business relation with the Respondent and as such there is no basis for the Applicant to make a claim of interest @ 18% p.a., which interestingly has been included by the Applicant in “total amount of debt after adding interest” in Row 1 of Form-5, Part IV however has not been shown in “amount claimed to be in default” in Row 2 of Form-5, Part IV being “Particulars of Operational Debt”.
- v. Further, the Applicant has concealed that the Applicant had received a reply to the Section 8 demand notice vide email dated 28.02.2022 and via speed post dated 28.02.2022, and thus to conclude, we are of the considered view that the Applicant has concealed facts from this Adjudicating Authority.

- vi. It will be appropriate to refer to the provisions of Agency Agreements which are placed on record by the Respondent:

**“WHEREAS,** *Principal is engaged in the business of manufacturing of MS Billets, MS IMI Bars, MS Angle and Channels; and*

**WHEREAS,** *Principal require to purchase M.S. Scrap for produced MS Billets (hereinafter referred to as the "Finished Goods/Intermediate Goods"); and*

**WHEREAS,** *Agent is in the business of providing services to arrange M.S. Scrap (Raw Material) either through its own firms or arrange from another firms directly "ship to us" and/or sometimes directly "bill to and ship to us" basis (hereinafter referred to as the "Services" / "Sales"); and*

**4. AGENT’S DUTIES AND RESPONSIBILITIES**

*ii. Arranging qualified suppliers (the "Suppliers") of the M.S. Scrap. Prior to engagement, Agent shall provide Principal with a vendor profile including KYC of supplier and agent will verify the Genuinity of the Firms and their promoters/directors/partners as the case may be. For the avoidance of doubt, the term “qualified” as used in this Section 4(A)(ii) shall mean Suppliers that are reputable, have acceptable credit ratings and have a good Barn financial position.”*

- vii. From the perusal of the above-quoted provision, it is evident that the Applicant was to ensure/arrange supplies of M.S. Scrap to the Respondent, who may choose to do it by oneself or through other entities which are enlisted in the said agreement. Given the same, it will not be wrong to state that if the Applicant is supplying said raw material to the Respondent by oneself, the same comes within the purview of the Agency Agreements only.
- viii. It is evident that the onus was on the Applicant as an agent to ensure the genuinity of these third-party entities, which the Applicant has failed to perform as two of these third-party entities i.e., M/s. Mahesh Trading Co. and M/s. Rajshree Trading Co. as per records

placed before us later on turned out to be bogus and shell, clearly having a consequence of causing loss to the Respondent.

- ix. Further, the Agency Agreement dated 01.01.2021 provides an Indemnification clause for Applicant's liability in the following terms:

*“9. **INDEMNIFICATION.** Agent agrees to indemnify and save harmless Principal, its subsidiaries and affiliates, and each of their respective directors, officers and employees from any and all liabilities, causes of action, lawsuits, penalties, claims or demands (including the costs, expenses and reasonable attorneys' fees on account thereof), arising or alleged to have arisen in whole or in part from the negligent or wilful acts or omissions of Agent and supplier's appointed by Agent mentioned in Section 4(D) or other suppliers added by agent after this agreement or from the breach by Agent of any of its obligations hereunder, or from the failure of Agent/suppliers to comply with any federal, state or local statute, regulation, order or requirement, or with any international law or legal requirement, or otherwise arising out of or in connection with the Services / material provided by Agent hereunder, including, without limitation, any loss arising out of dishonest or fraudulent acts or any claim, demand, proceeding or action brought against Principal, its subsidiaries, affiliates and each of its or their respective directors, officers and employees, or by reason of any alleged or actual negligence, bad faith or wilful misconduct on the part of Agent, including but not limited to any such claim or proceeding arising out of or in connection with: the Material (M.S. Scrap), or (2) any demand/penalty/interest/ taxes claimed by any department under any law due to failure/ fraud or omission by agent and suppliers through which material was supplied.”*

- x. In view of the above-quoted indemnity clause, it is further clear that the Applicant is under an obligation to compensate the Respondent for the penalty amount levied and paid by the Respondent, if any, and the same gives a right to the Respondent to set off and

counterclaim under Agency Agreements, which tantamount to a contractual dispute, to be adjudicated by appropriate court/tribunal/forum having jurisdiction to decide the same.

- xi. The Hon'ble NCLAT in ***Jain Irrigation Systems Ltd. Versus Pragyawan Technologies Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 311 of 2023***, held that

*“Section 9 Proceedings are not the proceedings where the dispute raised by the parties arising out of contract between the parties can be gone into and adjudicated. The scheme of Insolvency Proceedings contemplate that the proceeding shall go on only when there is an admitted debt and default, forum is not for deciding and adjudicating the contractual dispute between the parties.”*

- xii. In light of the above-quoted judgement, we are therefore of the considered view that the judgment passed by Hon'ble NCLAT in ***M/s. Jain Irrigation Systems Ltd. (supra)*** will apply to the present case. This Adjudicating Authority is not empowered to adjudicate the issues relating to the dispute raised by the parties arising out of the contract between the parties.
- xiii. In view of the above, we find that the Applicant has failed to prove their claim and also concealed the facts. Further, in view of the law laid down by the Hon'ble Supreme Court of India in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. reported in (2018) 1 Supreme Court Cases 353*** wherein the Hon'ble Supreme Court held that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code. Thus, the present application is legally untenable.
- xiv. We do not find any cogent reason to entertain this application, which is liable to be dismissed on the grounds mentioned in the preceding paragraphs.
- xv. However, the claim under any other law, if permissible, can be pursued by the Applicant/Respondent and the parties are at liberty

to approach the appropriate forum/court and may explore other legal remedies available as per law.

5. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present application fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:
- i.** The Application bearing **IB-405(ND)/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.
  - ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**