

**THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH-II, CHANDIGARH"**

**(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 162/Chd/Pb/2022**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**M/s ARIHANT METALS  
A partnership firm  
Registered Office  
#134, Sector 20 B, Motia Khan,  
Mandi Gobindgarh,  
Punjab**

...Petitioner-Operational Creditor

Vs.

**M/s Gurudev Overseas Ltd.  
Registered Office  
Room Noza C 108 Phase V  
Shri Ram Plaza Ludhiana  
Punjab**

...Respondent-Corporate Debtor

**Judgement delivered on: 13.10.2023**

**Coram: Mr. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)  
Mr. UMESH KUMAR SHUKLA, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Petitioner-	Mr. Amar Pratap Singh, Advocate, Mr. Ankit Awal, Advocate.
For the Corporate Debtor-	Dr. Rajansh Thukral, Advocate. Dr. Surekha Thukral, Advocate. Sidharth Thukral, Advocate.

**Per: Mr. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)  
Sh. UMESH KUMAR SHUKLA, HON'BLE MEMBER (TECHNICAL)**

**JUDGMENT**

1. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC**' / '**Code**'), on behalf of **M/s Arihant Metals**, (for brevity '**Operational Creditor**' / '**Petitioner**'), by its partner Mr. Robin Bansal with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Gurudev Overseas Limited** (for brevity '**Corporate Debtor**' / '**Respondent**') for defaulting the payment of outstanding amount of Rs.2,55,95,255/- (including interest @24%, Rs.1,42,38,712/-).

2. The Corporate Debtor, namely, **M/s Gurudev Overseas Limited**, is a Company incorporated on 27.01.1983 under the provisions of Companies Act, 1956 with CIN No. U15312PB1993PLC012998 with its registered office at Room Noza C 108 Phase V Shri Ram Plaza Ludhiana Punjab. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure-A/2.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is a partnership firm engaged in the business of trading of M.S. bars, flat, round strips, angles/channels and ERW pipes, scrap etc. The operational creditor supplied old iron material and heavy metal scrap in terms of the purchase orders raised by the corporate debtor and there were multiple invoices and multiple payments so the applicant was maintaining a running account. As per the application, the amount of Rs.2,55,95,255/- is

recoverable from the corporate debtor (including principal amount of Rs.1,13,56,513/-).

4. The operational creditor has stated that the corporate debtor every time acknowledged the outstanding dues and assured the operational creditor that the same will be paid in the due course, but after 03.08.2018, the corporate debtor has stopped making payment.

5. Thereafter, the operational creditor has served the corporate debtor with notice under Section 8(1) of IBC, 2016 dated 24.02.2022, which was duly delivered to the corporate debtor on 26.02.2022. The Corporate debtor submitted its reply dated 07.03.2022 wherein it stated that the amount was paid and no amount is due and even an amount of Rs.3,76,244/- is recoverable from the operational creditor.

6. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.2,55,95,255/- including interest as on 15.02.2022. The default occurred on 03.08.2018 i.e. the date on which last payment was received in the running account. Copies of invoices (Annexure-A/8), Bank certificate in form 5A (Annexure-A/4) and the details of the amount claimed to be in default is given in table of default (Annexure-A/3) of the petition, which is reproduced below-

### Table of Default

Sr. No.	Reference No.	Invoice Date	Invoice Amount	Amount received	Due date	Amount Due (Rs.)
1	83	07-07-2016	669,538	380,637	14-07-2016	288,901
2	84	07-07-2016	610,585	0	14-07-2016	610,585
3	85	07-07-2016	517,878	0	14-07-2016	517,878
4	86	07-07-2016	384,084	0	14-07-2016	384,084
5	87	07-07-2016	439,181	0	14-07-2016	439,181
6	88	07-07-2016	613,782	0	14-07-2016	613,782
7	Highseas debit note (cons.130.540)	14-12-2016	1,876,382	0	21-12-2016	1,876,382
8	Highseas debit note (cons.319.224)	07-01-2017	4,633,536	0	14-01-2017	4,633,536
9	Highseas debit note (cons.137.250)	15-01-2017	1,992,184	0	22-01-2017	1,992,184
<b>Amount of unpaid invoices</b>						<b>11,356,513</b>
<b>Add: Interest @ 24% up till 15.02.2022</b>						<b>14,238,712</b>
<b>Total outstanding dues</b>						<b>25,595,225</b>

7. A demand notice in Form 3 is stated to be issued by the operational creditor on 24.02.2022 and the same has been delivered to the corporate debtor as postal receipt is annexed as Annexure-A/6 and corporate debtor replied to demand notice vide reply dated 07.03.2022 (annexure- A/9).

#### Reply of the corporate debtor

8. The Corporate Debtor has filed its reply dated 31.10.2022 and has raised specific objections against the petition stating above averments, which are enlisted hereunder:

- a) It is submitted that the petition is barred by limitation and the last invoice/debit note was admittedly raised on 22.01.2017 and accordingly the limitation expired on 21.01.2020, before the start of Covid lockdown, whereas the present petition was filed on 06.05.2022. In the absence of any acknowledgement of debt from the respondent, the last payment made on 03.08.2018 of

Rs.6,30,000/- cannot extend the period of limitation. The corporate debtor has relied upon the judgement attached as Annexure-1 to the reply.

- b) It is submitted that in response to the demand notice purported to have been sent u/s 8(1) of IBC, a reply was provided with proof of payment of alleged unpaid invoices. A statement is provided per which the entire amount in respect of purchases made by the respondent has been duly paid and an amount of Rs.3,76,244/- is recoverable from the applicant. (Annexure R-3 of the reply)
- c) It is submitted that the amount of interest is wrongly charged by the applicant. As per section 15(2)(d) of the CGST Act, 2017 the value of supply shall include interest, penalty and late fees for delayed payment of any consideration for supply of any goods or services or both. In this case, the applicant has neither raised any GST invoice, nor paid any GST on the same, nor charged and debited any such interest in the ledger account and all these demonstrate that no such amount is at all payable by the Respondent.
- d) It is submitted that the respondent company is solvent having positive net worth, the turnover of Rs.47 crores for the year ended 31.03.2022. (annexure R-7 of the reply)
- e) It is submitted that GST registration of the applicant is already cancelled and hence it ceases to be a legal entity.

f) It is submitted that the petition has been filed by an unregistered partnership firm and hence not maintainable.

g) It is submitted that IBC is not a recovery forum and it cannot be used for that purpose.

9. In the rejoinder the Operational Creditor has given a detailed reply to the reply of corporate debtor whereby it is submitted that the claim of amount Rs.3,76,244/- is frivolous and is not supported by documentary evidence. Further, the Operational Creditor relied on judgement in the matter of Mr. Prashat Aggarwal vs. Vikash Parasrampur in Company Appeal (AT) (Ins.) No. 690 of 2020 by NCLAT, Mumbai wherein the Hon'ble Appellate Tribunal has held that where the interest payment was stipulated in invoice, it will entitle right to payment and therefore, will form part of 'debt'. The copy of judgment is at annexure- A/10 of rejoinder submitted by Operational Creditor.

### **Analysis and findings**

10. We have heard the arguments advanced by the learned counsel for the petitioner and respondent and have also perused the records and written submissions made by the parties.

11. The prime issue for consideration is whether the application is filed within the limitation period. The date of default is 03.08.2018 i.e. the date on which last payment was received on the running account. The limitation expires on 02.08.2021. However, the period from 15.03.2020 till 28.02.2022

stands excluded for the purposes of limitation under any general or special laws in respect of all judicial or quasi-judicial proceedings vide the order passed in suo moto **writ petition © no. 3 of 2020 Re: Cognizance for Extension of Limitation by the Hon'ble Supreme Court.** Therefore, it is observed that the present petition is filed within the period of limitation.

12. It is observed that the Operational Creditor has sent a demand notice dated 24.02.2022 to the Corporate Debtor under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs.2,55,95,255/-. We observe that this notice was served in Form 3 via post and the respondent replied vide dated 07.03.2022. Therefore, we hold that the statutory notice under section 8(1) of Code was duly served. The instant application under section 9 of the Code was filed on 13.05.2022. Hence, the operational creditor complied with the Section 9(3)(a) and 9(3)(c).

13. The Corporate Debtor has raised the issue regarding admissibility of Interest claimed by Operational Creditor in view of non-payment of GST thereon. We have examined the relevant provisions of the CGST Act. As per section 9(1) of Central Goods and Services Tax Act, 2017, there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in

such manner as may be prescribed and shall be paid by the taxable person. As per section 15(2)(d) of the CGST Act, 2017 the value of supply shall include interest, penalty or late fees or penalty for delayed payment of any consideration for supply of any goods or services or both. Therefore, as per the above provisions, the interest would be leviable on the value of goods at the GST rate applicable on the value determined at the time of supply. However, in the present case, the GST act has come into force w.e.f. 01.07.2017 and the said act was not in force when Operational creditor has raised the invoices against the corporate debtor and therefore, there was no GST rate at the time of determination of the valuation of the goods.

14. The Adjudicating Authority has to determine the existence of debt and its default or whether there is any existing dispute. It is noted that the operational creditor has claimed the amount of the specific invoices/ debit notes shown in the table of default annexed at annexure A/3 of petition (refer preceding para 6 of this order). The Corporate debtor has submitted that these invoices have been paid by him and also has submitted the proof/ reference thereof, as shown below in the following table.

S.No.	Inv No.	Dated	Amount	Sub Total	Payment reference	Date of payment	Acknowledged at Page in notice
1.	82	07.07.2016	6,41,989/-				
2.	83	07.07.2016	6,69,538/-				
3.	84	07.07.2016	6,10,585/-				
4.	85	07.07.2016	5,17,878/-				
5.	86	07.07.2016	3,84,084/-				
6.	87	07.07.2016	4,39,181/-				
7.	88	07.07.2016	6,13,782/-	38,77,037/-	034DRU7161930001	12.07.2016	Page 48
8.	Highseas Debit note 130.540	14.12.2016	18,76,382/-	18,76,382/-	NEFT Rs.1,00,000/- RTGS Rs. 5,00,000/- RTGS Rs.6,30,000/- Adjust Rs.10,22,626/- Excess Rs.3,76,244/-	21.01.2017 24.03.2017 03.08.2018	Page 49 Page 49 Page 51
9.	Highseas Debit note 319.224	07.01.2017	46,33,536/-	46,33,536/-	034DRU7170210002	18.01.2017	Page 49
10	Highseas Debit note 137.250	22.01.2017	19,92,184/-	19,92,184/-	034DRU7170340001	15.01.2017	Page 49
		TOTAL	1,23,79,139/-				

15. These payments have not been denied by the operational creditor. In view of the above, the operational creditor has failed to establish the existence of debt and its default by the corporate debtor beyond reasonable doubt.

16. Therefore, the present section 9 application is dismissed without costs.

Sd/-  
**(Umesh Kumar Shukla)**  
**Member (Technical)**

Sd/-  
**( P.S.N. Prasad)**  
**Member (Judicial)**

**October 13, 2023**  
Vansh/Reet