



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-1

ITEM NO. 301
C.P.(IB) No. 133(AHM)2022

Order under section 9 IBC

IN THE MATTER OF :

Heena Metal Pvt. Ltd.

....Applicant

V/s.

Global Extrusions Pvt. Ltd.

....Respondent

Order delivered on: 29.11.2023

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 order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



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

CP (IB) No.133/AHM/2022

(Application 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:

**M/s. Heena Metal Private
Limited**

Registered office at:
117, Kika Street, Gulal Wadi,
Mumbai, Maharashtra-400004
CIN:U28991MH1989PTC050769

**Applicant/
Operational Creditor**

VERSUS

**Global Extrusions Private
Limited**

Registered office at:
Plot No. 238, GIDC Phase-II,
Dared, Jamnagar,
Gujarat-361005
CIN:U74999GJ1993PTC020533

**Respondent/
Corporate Debtor**

Order pronounced on: 29.11.2023



CORAM:

MR. SHAMMI KHAN (MEMBER JUDICIAL)

MR. SAMEER KAKAR (MEMBER TECHNICAL)

APPEARANCE:

For the Operational Creditor: Ms. Nitu Chaturvedi, Adv. a/w.
Mr. Aditya Raval, Adv.

For the Corporate Debtor: Mr. Dhiren Dave, Adv.

O R D E R

1. The Present Application is filed on 03.05.2022 by **Heena Metal Private Limited** (hereinafter referred to as “**the Applicant/Operational Creditor**”) against Global Extrusions Private Limited (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Corporate Debtor for having defaulted in payment of its outstanding dues of **Rs.1,44,39,812/-**. The date of default is stated to be 02.01.2020.



2. On perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is one Heena Metal Private Limited a company incorporated under the provisions of the Companies Act, 2013 with CIN No. U28991MH1989PTC050769. The registered office of the Applicant/Operational Creditor is situated at 117, Kika Street, Gulal Wadi, Mumbai, Maharashtra-400004.
3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one Global Extrusions Limited a company incorporated under the provisions of the Companies Act, 1956 with CIN No. U74999GJ1993PTC020533. The registered office of the Applicant/Operational Creditor Company is situated at Plot No. 238, GIDC Phase-II, Dared, Jamnagar, Gujarat-361005.
4. An affidavit for filing this application is signed by one Director Mr. Sunilkumar Kantilal Shah authorized by Board Resolution dated 20.11.2021 which is annexed at Annexure-B.
5. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has proposed the name of Mr. Sunil



Kumar Kabra having registration no. IBBI/IPA-001/IP-P01011/2017-2018/11662 to act as Interim Resolution Professional.

6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs.1,44,39,812/- consisting of Rs.1,19,67,353/- being principle and amount of Rs.24,72,466/- as interest up-to 03.05.2022.
7. The averments made by the operational creditor in its application are summarized hereunder:-
 - a) The Operational Creditor is engaged in the business of manufacturing and trading of ferrous and non-ferrous metals and has unit at Mumbai and also at Jamnagar. The Unit at Jamnagar was closed in 2020.
 - b) The Corporate Debtor is engaged in the business of manufacturing copper and zinc alloys based brass rods, coils, tubes, nut clamps etc.
 - c) Both the parties were purchasing and selling goods to each other.



d) **Transaction with respect to Jamnagar unit:-**

The debit balance as per the ledger account of the Operational Creditor as on 01.04.2016 is Rs.47,52,169/-. Thereafter, as per the demand of the Corporate Debtor the Operational Creditor has supplied and raised invoices as under:-

(1)	Invoice No. TD/001 dated 25/05/2016	for Rs.10,64,476/-
(2)	Invoice No. TD/002 dated 26/05/2016	for Rs.10,63,966/-
(3)	Invoice No. TD/003 dated 28/05/2016	for Rs.10,67,713/-
(4)	Invoice No. TD/004 dated 30/05/2016	for Rs.10,61,071/-
(5)	Invoice No. TD/011 dated 26/06/2017	for



		Rs.3,58,097/-
(6)	Invoice No. TD/012 dated 26/06/2017 for	Rs.3,89,236/-
(7)	Invoice No. TD/013 dated 26/06/2017 for	Rs.3,79,505/-
(8)	Invoice No. TD/014 dated 26/06/2017 for	Rs.3,50,312/-
(9)	Invoice No. TD/015 dated 26/06/2017 for	Rs.3,69,774/-
(10)	Invoice No. TD/016 dated 27/06/2017 for	Rs.3,50,410/-
(11)	Invoice No. TD/017 dated 27/06/2017 for	Rs.3,69,775/-
(12)	Invoice No. TD/018 dated 27/06/2017 for	Rs.3,60,044/-
(13)	Invoice No. TD/019 dated 27/06/2017 for	Rs.3,89,236/-
(14)	Invoice No. TD/020 dated 27/06/2017 for	Rs.3,26,251/-
(15)	Invoice No. TD/021 dated 27/06/2017 for	Rs.44,219/-

The Operational Creditor had purchased materials from the Corporate Debtor and the amount of purchase was adjusted against the earlier outstanding invoices raised upon the Corporate Debtor.

After adjusting the purchase and sale the debt outstanding of Corporate Debtor with respect to Jamnagar unit amounts to Rs.73,59,095/-. The



Operational Creditor had made last purchase from the Corporate Debtor on 11.03.2019 thus the debt became due on 11.03.2019.

e) Transaction with respect to Mumbai Unit:

The debit balance as per the ledger of the Operational Creditor as on 01.04.2019 is Rs.24,73,361/-. Thereafter, as per the demand of the Corporate Debtor the Operational Creditor has supplied and raised invoices as under:

(1)	Invoice No. 109 dated 17/10/2018 for Rs.6,72,006/-
(2)	Invoice No. TS/056/19-20 dated 27/04/2019 for Rs.9,50,933/-
(3)	Invoice No. TS/057/19-20 dated 27/04/2019 for Rs.13,61,829/-
(4)	Invoice No. 028 dated 06/05/2019 for Rs.9,95,143/-
(5)	Invoice No. 037 dated 27/05/2019 for Rs.9,90,130/-

The Operational Creditor had purchased materials from the Corporate Debtor and the amount of purchase was adjusted against the earlier



outstanding invoices raised upon the Corporate Debtor.

The Jamnagar Unit of the Operational Creditor was closed in 2020, it was mutually agreed that the credit balance of Rs.73,59,059/- with respect to Jamnagar Unit will be transferred to the Mumbai Unit.

After adjusting the debit and credit balances, a principal debt of Rs.1,19,67,353/- is due from the Corporate Debtor.

The last purchase made by the Operational Creditor was on 02.01.2020 therefore, date of default is 02.01.2020.

f) Subsequently, the Operational Creditor served a demand notice dated 22.11.2021 upon the Corporate Debtor under Section 8 of the Code which was sent to Corporate Debtor through post and the same was delivered on 25.11.2021.

g) A preliminary reply was given by Corporate Debtor to the demand notice through letter dated



05.12.2021 thereafter, a detailed reply was given vide letter dated 13.12.2021 wherein it is stated as under:

1. Certain invoices are prima facie barred by the law of limitation.
2. If the amount of the respective invoices which are time barred are reduced from the principal amount than the amount which is due and payable would be much less than the prescribed limit under Insolvency and Bankruptcy Code, 2016.
3. There was no agreement between the parties for payment of interest therefore, the amount of Rs.24,72,466/- claimed as interest is not legally due and payable.
4. The Operational Creditor have not furnished particulars nor have attached invoices of purchase made from Corporate Debtor.



5. The Corporate Debtor denies that last purchase made by Operational Creditor was made on 11.03.2019. It is stated that even after 11.03.2019 Operational Creditor has made following purchases which are not considered or discussed:-

Sr. No.	Date	Invoice No.	Party Name	Amount
1.	19.06.2019	99	Heena Metal	4,62,480
2.	26.06.2019	123	Heena Metal	1,90,360
3.	06.07.2019	136	Heena Metal	2,34,243
4.	01.08.2019	166	Heena Metal	88,757
5.	13.08.2019	178	Heena Metal	1,91,354
6.	22.08.2019	187	Heena Metal	1,40,765



TOTAL	13,07,959
--------------	------------------

The said purchases amounting to Rs.13,07,959/- (invoice dated 16.05.2019 of Ramdev Metal amounting to Rs.5,80,036/- is excluded from the above table) are made by Operational Creditor in Financial Year 2019-2020 and even thereafter Operational Creditor had made purchases which are due and payable.

6. The Corporate Debtor denies debit balance of Rs.2,47,336/- as on 01.04.2019 with reference to Mumbai unit.
7. The Corporate Debtor states that even after 02.01.2020 the Operational Creditor has made purchase on 27.09.2020.
8. The Corporate Debtor denies that it was mutually agreed to transfer credit balance of Rs.73,59,059/- of Jamnagar Unit to Mumbai



Unit. Further, it is not specified as to on which date the amount of Rs.73,59,059/- was due.

9. Computation of debt is erroneous and incorrect and done in arbitrary manner.

10. Ledger account does not display true and correct picture of the transactions carried out between parties.

h) The Operational Creditor has relied upon below mentioned documents to prove its case:-

(i) Sale invoices dated 25.05.2016, 26.05.2016, 28.05.2016, 30.05.2016, 5 invoices dated 26.06.2017 and 6 invoices dated 27.06.2017 pertaining to Jamnagar Unit.

(ii) Purchase invoice dated 11.03.2019 pertaining to Jamnagar Unit.

(iii) Sale invoices dated 17.10.2018, 27.04.2019, 27.04.2019, 06.05.2019, 25.05.2019 pertaining to Mumbai Unit.



- (iv) Purchase invoices dated 16.05.2019, 09.06.2019, 26.06.2019, 06.07.2019, 01.08.2019, 13.08.2019, 22.08.2019 and 02.01.2020 pertaining to Mumbai Unit.
- (v) Bank Statement from March, 2018 to May, 2018 and December, 2019 to January, 2020.
- (vi) Ledger account of Operational Creditor and acknowledgement of Corporate Debtor.
- (vii) Ledger account of Corporate Debtor.
- (viii) Notice dated 22.11.2021.
- (ix) Reply to notice dated 05.12.2021 and 31.12.2021.

8. The Corporate Debtor has filed its reply on 23.02.2023 the averments of the Corporate Debtor in the reply are stated below:-

- a) The petition is admittedly time barred. The invoices that Operational Creditor have claimed are of 2016 to 2018 (Part-V, Para 5, Page 13-14 of the Petition). The petition is affirmed on 3rd March, 2022 (Page



18 of the Petition) and filed on 3rd May, 2022. More than 3 years from the date of last invoice.

- b) The submissions made in the Petition are based on bald statements there were no talks and understanding and the story is concocted to bring debt within limitation.
- c) Para 6 and 7 of Part II have no documentary evidence.
- d) The Corporate Debtor in the reply has denied the contents of Part-IV of the application. It is stated that neither principal amount is due nor any interest is payable. The debt is time barred and not payable to the applicant. There was no understanding to adjust the amount receivable by the Corporate Debtor from the time barred payment of the Operational Creditor. The present application is filed by the Operational Creditor when the Corporate Debtor asked for their due payment. There was no understanding among the parties and



the story has been created only to bring the time barred outstanding within limitation period.

- e) The debt is time barred and the last invoice date is 17.10.2018.
- f) There are no terms and conditions of interest payment on invoice. Further, there was no agreement for interest payment and applicant has arbitrarily calculated interest and claimed in the petition which is time barred in nature.

9. We have heard the Ld. Counsel for both the parties and perused the material available on record.

10. It is observed that certain invoices raised by Corporate Debtor upon Operational which are mentioned at Para 4 of reply to demand notice dated 22.11.2021 are not accounted by the Operational Creditor. Further, no rebut is given by the Operational Creditor despite the reply of the Corporate Debtor leaves doubt of a plausible dispute.



11. The Hon'ble Supreme Court in the case of **Mobilox Innovations Pvt. Ltd. V/s. Kirusa Software (P) Limited** in Civil Appeal number 9405 of 2017 (reported in 2017 SCC Online SC 1154) vide order dated 21.09.2017 held as below:-

"40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application"

12. On perusal of invoices raised by Operational Creditor upon Corporate Debtor it is observed that no payment



period is specified in the invoices forcing us to the conclusion that said invoices are payable immediately upon presentation. Therefore, it is considered that the below mentioned invoices are out of limitation period.

Sr. No.	Inv. No.	Date	Amount
1	TD001	25.05.2016	4,79,450
2	TD002	26.05.2016	10,63,966
3	TD003	28.05.2016	10,67,713
4	TD004	30.05.2016	10,61,071
5	TD011	26.06.2017	3,58,097
6	TD012	26.06.2017	3,89,236
7	TD013	26.06.2017	3,79,505
8	TD014	26.06.2017	3,50,312
9	TD-15	26.06.2017	3,69,774
10	TD-016	27.06.2017	3,50,410
11	TD017	27.06.2017	3,69,775
12	TD018	27.06.2017	3,60,044
13	TD019	27.06.2017	3,89,236
14	TD020	27.06.2017	3,26,251
15	TD021	27.06.2017	44,219
	Total		73,59,059

After deducting the amount of above time barred invoices amounting to Rs. 73,59,059/- from the Principal amount in default i.e. Rs.1,44,39,812/- the debt falls below the threshold limit of Rs. 1.00 Crore as specified under section 4 of Insolvency and Bankruptcy Code, 2016.



13. In view of the reasons mentioned above this application is rejected and is dismissed.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Arati-LRA