

**NATIONAL COMPANY LAW TRIBUNAL**  
**CHANDIGARH BENCH (COURT-II)**  
**Company Petition No. (IB) 39/CHD/HRY/2020**

**IN THE MATTER OF:**

**HAPPY FORGINGS LIMITED**

BXXIX, 2254-1, Kanganwal Road  
PO Jugiana, Ludhiana, Punjab 141120  
Email ID: [cs@happyforgingsltd.co.in](mailto:cs@happyforgingsltd.co.in)  
PAN: AAACH4369J

**...Operational Creditor**

**VERSUS**

**THE HI-TECH GEARS LIMITED**

PLOT NO. 24, 25, 26, SECTOR- 7,  
IMT Manesar Gurgaon Haryana 122050  
Email ID: [secretarial@thehitechgear.com](mailto:secretarial@thehitechgear.com)  
PAN: AAACH0156K

**... Corporate Debtor**

**UNION OF INDIA,**

Ministry of Corporate Affairs,  
Through its Secretary,  
5th Floor, A-Wing, Shashtri Bhawan,  
Dr. Rajender Prasad Road,  
New Delhi- 110001

**Section: 9 of the IBC, 2016**

**Judgement Delivered on: 30.08.2024**

**CORAM**

**SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)**

**SH. VELAMUR GOVINDAN VENKATA CHALAPATHY, HON'BLE MEMBER (T)**

**PRESENT:**

**For Operational Creditor** : Dr. Rajansh Thukral, Advocate

**For Corporate Debtor** : Mr. Rohit Khanna, Advocate

## **JUDGEMENT**

**PER: SH. HARNAM SINGH THAKUR, M(J)**

**SH. VELAMUR GOVINDAN VENKATA CHALAPATHY, M(T)**

“Happy Forgings Limited” (for brevity, hereinafter referred to as the **‘Operational Creditor’**) has filed the present petition 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 with a prayer to initiate the Corporate Insolvency Resolution Process against “The Hi-Tech Gears Limited” Erstwhile “Hi-Tech Gears Limited” (for brevity, hereinafter referred to as the **‘Corporate Debtor’**).

2. The Corporate Debtor namely, The Hi-Tech Gears Limited is a Company incorporated on 23.10.1986 with CIN L29130HR1986PLC081555 under the provisions of the Companies Act, 1956 having its registered office at Plot No. 24, 25, 26, Sector- 7, IMT Manesar Gurgaon Haryana 122050, which is situated within the jurisdiction of this Tribunal. The Authorized Share Capital of the Corporate Debtor is Rs.20,00,00,000/- and the Paid- up Share Capital is Rs.18,76,80,000/- as per the Master Data annexed.

3. The Operational Creditor is a Company registered under the provisions of the Companies Act 1956, and is a manufacturer serving the Forgings industry. The company has had 40 years of

experience in catering to the automotive, tractor, railway, earth moving, Forgings parts for transmission gears, shaft, ring gear, pinions and crank shafts. As per submissions, the Corporate Debtor "The Hi-Tech Gears Limited" erstwhile "Hi-Tech Gears Limited" purchased the components developed and manufactured by Operational Creditor for which Corporate Debtor issued the Rate Contracts/ Purchase Order No. HGL/PUR/RC/2015-2016 dated 09.02.2016, HGL/PUR/RC/2015-2016 dated 10.03.2016 and the Rate Contract clearly shows that payment terms were of 60 days. The total summary of claims reads thus:

<b>Summary of claims</b>	
<b>Particulars of charges</b>	<b>Amount</b>
Amount unpaid against our supply invoices	74,21,412.00
Unpaid balance	5,77,884.00
Interest @24% for delayed period as on 15.03.2019	25,33,238.00
Development Cost	32,00,000.00
<b>Net Payable amount as on 15.03.2019</b>	<b>1,37,32,534.00</b>

4. The particulars of the Operational Debt in terms of the total amount of default and the date of default are mentioned in Part IV of the petition. The relevant scanned extracts are reproduced below:

<p>2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>The total amount in default including interest is Rs. 1,37,32,534.00 (Rs. One Crore Thirty-Seven Lacs Thirty-Two Thousand Five Hundred Thirty-Four only). As per terms and conditions of the Rate Contract Invoices dated 29.06.2017 to 25.08.2017 where in payments were due in 60 days and the last payment against the referred invoices was paid on 09.11.2017. The workings for the computation of default are detailed in <b>Annexure II-J @ Page No. 132</b> attached hereto.</p> <p>The default first occurred on 09.11.2017 and continued as corporate debtor made no payment till today.</p> <p>In-spite of repeated demands by the Operational Creditor as stated above, the Corporate Debtor failed to make the payment and cause of action continues till date.</p> <p>The default amount has become clearly due and payable in terms of the Rate contract between the parties.</p>
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Thus, as per Part IV of the petition (ibid), the Operational Creditor has claimed an unpaid Operational Debt of Rs.1,37,32,534/- (including interest) and relied upon 09.11.2017 as the date of default.

5. It is stated by the Operational Creditor that since the Corporate Debtor did not make the due payment of its operational debt, it issued a Demand Notice dated 17.04.2019 under Section 8 of IBC 2016, which was replied by the Corporate Debtor vide letter dated 02.05.2019 not amounting to “notice of dispute” in terms of IBC 2016. The Corporate Debtor tried to raise an illusionary dispute

regarding material saving clause to evade the payment vide the said reply. Further submitted that from time to time the petitioner company was audited by corporate debtor and this issue was never raised. In 2015 Happy Forgings Limited (HFL) had passed on material savings to the Corporate Debtor from time to time. A copy of chart showing material saving passed to corporate debtor is annexed as Annexure-II-I at page no. 131 of the petition. The Operational Creditor has placed the affidavit under Section 9(3)(b) of IBC, 2016 (Pg. 23-25) stating that there was no pre-existing dispute between the parties but a fabricated dispute has been shown as an afterthought.

6. On issuance of notice, the Corporate Debtor filed its reply dated 11.10.2022 & written submissions dated 11.09.2023 and has opposed the petition mainly on the following grounds:

- i) The Corporate Debtor has been fair in conduct to the Petitioner as an amount of Rs. 6,49,000/- has been admitted by the Corporate Debtor and it is willing to make the payment of the same to the Petitioner. In-spite of its offer to make payment of undisputed amount of Rs.6,49,000/-, the Petitioner has disputed the amount and raised its demand of Rs. 1,37, 32,534/- ( including interest of Rs.25,33,238/- @ 24% per annum). Copy of the

communication dated 01.11.2019 containing the said understanding is annexed as annexure R-3 of reply at Page16.

- ii) It was agreed between the parties that the Petitioner would use the steel lying with them which was at a different price and after exhausting the same, it would shift to the procurement from Mukund Steels Ltd. The amount of steel already procured was to be settled between the parties and Petitioner mentioned that they had 450 tonnes of steel procured from the earlier supplier which was at a different rate and on this basis, the Corporate Debtor permitted Petitioner to use these 450 tonnes for forging of the goods and stated that after consumption of the said 450 tonnes of steel, they would have to shift to the steel being supplied by Mukund Steels. The understanding so arrived between the Parties is contained in the communication dated 04.11.2014 and 25.08.2014 (Annexure R- 5 as part of the Reply Pg. 19-20).
- iii) The Petitioner again requested to adjust more tonnes of steel available with it of different company and not as per agreed brand and standards of steel. The Corporate Debtor permitted to use again and made it clear that there

would be no further adjustments permitted. Despite the understanding arrived above, the Petitioner again made request of adjustment of 238 tonnes steel from the earlier supplier. However, this time the Corporate Debtor did not permit any such adjustment as the Petitioner had taken the old rate for these supplies, the Corporate Debtor had debited an amount of Rs. 35,79,753/- on this account in debit note.

- iv) Thereafter, the Petitioner started procuring steel from Sunflag which was invoiced cheaper, but this difference in the price was not being passed on to the Corporate Debtor contrary to the understanding arrived between the parties. Therefore, the Corporate Debtor has issued a debit note of on these two accounts amounting to Rs. 74.21 lakhs on 30-09-2017. (i.e. Rs. 35.79 Lacs plus Rs. 38.41 Lacs). This was based on the information provided by the Petitioner and based on the difference between the raw material cost mentioned in the Rate Contract and the actual raw material cost which the Petitioner would have paid based on the invoices made available by Petitioner.
- v) The last invoice was raised on 25.08.2017 and a 60 days period was given to pay the amount in invoice which

expired on 25.10.2017 and the CD raised its debit note for payment of Rs. 74.21 Lakhs on 30.09.2017 i.e. before the amount allegedly raised in the last invoice became due and payable and hence, it is a case of pre-existing dispute between the parties and the same impacts the maintainability of the instant petition before the Tribunal as the case does not satisfies the pre-condition of section 9 of Insolvency and Bankruptcy Code, 2016. The same has been also laid down as principle of law in the case of **Gajendra Parihar v. Devi Industrial Engineers 2020 SCC Online**, where the Hon'ble Supreme Court of India held *"if there is existence of dispute prior to issuance of Demand Notice then the application under section 9 of IBC is not maintainable. Further Emails/ Letter can show existence of dispute and there is no require of a proper formal notice."*

- vi) As per the meetings held between the parties, the Petitioner undertook to bear 50% of the debit note amount and the same is also evident from the email conversation dated 17.09.2018 which is contrary to Petitioner's demand of Rs 1.37 crores. (Annexure R-11 page 42 - 43 of the Reply). Further, there has been disputes between the parties since 2015 and various meetings were held

between the Parties and all the meetings were attended and duly signed by the Parties.

- vii) The demand of Rs.32 lacs on account of development cost is totally without any basis, as per the contract between the parties, the CD was to pay development cost of Rs 2 Lakhs as agreed in writing for each of the products which was to be set off against the supply. In the event CD did not take a minimum of 3,000 components of a particular product, the development cost was to be borne by corporate debtor. It is stated that in regard to all the components, The CD had procured more than 3,000 number of all components except part 5609. In this regard, the development cost payable to the Petitioner by the CD on account of development charges is Rs 2 Lakhs against the amount of Rs.32 Lakhs as alleged by the Petitioner.

7. Subsequently, the Petitioner filed its rejoinder dated 10.03.2023, written submissions dated 04.09.2023 and additional written submissions dated 02.04.2024 mainly stating the following:

- i) The amount of Rs.6.49 lakhs is undisputedly payable by the CD to the Petitioner (admitted by CD at Page 2 & 16 of Reply), and this establishes the case of the Petitioner as

the amount payable is admittedly more than the threshold limit applicable at the time of filing this application under IBC 2016. This is without prejudice to the amount of default stated in the petition.

- ii) Admittedly the interest is payable by the Coporate Debtor @24% p.a. for two reasons (i) the payment of interest is a condition of sale as per invoice at condition no.3 and thus is covered by judgement of NCLAT in **Company appeal (AT)(INS) No.690 of 2022 in Prashant Agarwal Vs. Vikash Parasrampuriah & Another**; (ii) at page 2 of reply the interest is admitted on undisputed principal amount (Admission at page 2 of reply). Therefore, interest 24% p.a. on Rs. 6.49 Lakhs for a period of about 6.50 years comes to Rs. 10.12 lakhs besides Rs.32 lakhs on account of development cost which means the total undisputed admitted amount would come to Rs.48.61 lakhs.
- iii) The Respondent has admitted the payment of development cost of Rs. 2.00 lakhs in respect of part no. 5609. It is submitted that in addition to part no. 5609 the development cost is also required to be paid in respect of part nos. 5626, 5621, 5624, 5630, 5631, 5632, 5634, 5635, 5636, 5639, 5641, 5644, 5645, 5652, 5657. All

these components are clearly mentioned in page 137 of the petition in respect of total supplies for an amount of Rs.74.21 lakhs and the quantity of every component is less than 3000.

- iv) The alleged debit note is not followed by the return of goods supplied by the Petitioner to the CD. There is not even an iota of averment about what happened to the material supplied in respect of invoices which are allegedly reversed. Admittedly, as per the minutes of meeting held on 25.09.2017 the Petitioner had agreed only to the reversal of 50% (Page 7/40 of Reply) whereas debit note is raised for 100% without even returning the goods supplied.
- v) During the pendency of this petition, the Corporate Debtor is mischievously offering Rs.6.49 lakhs to wriggle out of the clutches of IBC by alleging pre-existing dispute about rest of the payment. It is submitted that Adjudicating Authority under IBC is not a settlement court and the admission of undisputed amount of Rs. 6.49 Lakhs along with interest and development cost, the total amount of Rs.48.61 lakhs, warrants the admission of this petition.
- vi) Thus, undisputed amount is more than the threshold limit

and therefore, mismatch of figures is no ground to reject the petition. Reliance is placed on the judgment of Hon'ble NCLAT in **Company Appeal No.(AT)(INS)180 of 2017 in the matter of Ajay Agarwal Vs. Central Bank of India and another.**

- vii) The CD has set up an absolutely false story of request for adjustment of 238 tonnes and submitted that if the CD did not wish to take the supplies in respect of processed steel of 238 tonnes, it was liable to return the material. The CD cannot retain and use the material and also raise the alleged debit note and it has resulted into unjust enrichment of the corporate debtor. However, all these issues are not necessary to be adjudicated since this is not a recovery case and the debt in default along with admitted amount of interest and the admitted amount of payment of development cost for 16 components is already more than the threshold limit, therefore this petition is liable to be admitted.

8. We have heard the parties and perused the pleadings on record including the written submissions filed by both parties. The Petitioner has claimed a total debt of Rs. 1,37,32,534/- (including interest). It has also contented that there was no pre-existing dispute but a fabricated dispute has been shown as an afterthought.

Per contra, the Corporate Debtor has submitted that it is willing to make the payment of the undisputed amount of Rs.6,49,000/- to the Petitioner. Further contended that it is a case of pre-existing dispute between the parties as the last invoice was raised on 25.08.2017 and a 60 days period was given to pay the amount in invoice which expired on 25.10.2017 and the CD raised its debit note for payment of Rs. 74. 21 Lakhs on 30.09.2017 i.e. before the amount allegedly raised in the last invoice became due and payable. In support of its contention the CD has placed on record the Debit Note 30.09.2017 (Pg. 35 of reply) and email dated 17.09.2019 (Pg. 42 of reply).

9. At the outset, we would like to examine whether the present Petition is within limitation period. As we have already noted in the present case, the date of default is 09.11.2017 and the date of filing of present petition is 06.12.2019. Thus, we find that the present petition is well within the limitation period of 3 years.

10. That the Corporate Debtor had objected towards the admission of the Petition on account of pre-existing dispute between the parties and the Corporate Debtor had relied upon debit note for Rs. 74.21 Lakhs, raised on account of rate difference on account of transaction between the parties.

11. Be that as it may, but it is worthwhile to note that the Corporate Debtor in its reply had admitted that Rs. 6.49 Lakh is the

undisputed amount which is due and payable. The offer to pay this amount has not been accepted by the petitioner, thereby the debt due exists beyond the threshold limit.

12. As noted above the present petition is preferred on 06.12.2019, which indicates that the threshold limit of Rs 1 Lakh will be applicable to the present petition.

13. Though the Petitioner had raised the debit note prior to the issuance of the demand notice, however this fact cannot be ignored that the Corporate Debtor had admitted an amount above the threshold limit, which due and payable to the Operational Creditor. All this Adjudicating Authority is required to see is whether there is a debt due and default has occurred in a petition u/s 9 of the Act. If at all the fact of pre-existing dispute is also to be taken into consideration then also in this case there is clear cut admission of debt of Rs. 6.49 Lakh. Thus the unpaid amount of default is above Rs 1 Lakh, this adjudicating authority is bound to admit the petition. It also appears there has been long term understanding between parties and there have been disputes, however, the supplied goods have been consumed, and not paid, subject to adjustments if any based on the agreement/contract entered between the parties. Thus, the plea of Corporate Debtor can be termed as moonshine defence i.e. was only raised after the goods were consumed by the Corporate Debtor. In this context reliance can be placed on the judgement of

Hon'ble NCLAT in **COMPANY APPEAL (AT)(INSOLVENCY) NO.1019 OF 2022 in the matter of Deepak Modi Vs. Shalfeyo Industries Pvt Ltd and another.** The relevant para of judgement of Hon'ble NCLAT (Supra) reads thus:

*“13. ....It is true that under the provisions of Code if Adjudicating Authority is satisfied with pre existing dispute at the time of entertaining an application filed under Section 9 of the Code there is no reason to initiate the same or admit the application. However, law is settled on the point that there must be pure pre-existing dispute. Meaning thereby that genuine pre-existing dispute must exist in rejecting an application Section 9 of the code. In the present case it is reflected from inspection report of SGB Infra Ltd dated 16.12.2019 which is at page 147 that the Corporate Debtor was asked by the SGB Infra Ltd to remove the flooring. This fact is itself enough to draw an inference that the Corporate Debtor had accepted the delivery of granite slabs made by the Operational Creditor without raising any dispute or objection. Otherwise the Corporation Debtor would have rejected the entire materials at the time of unloading of the same. However, it is clear that the granite slabs supplied by the Operational Creditor were utilised by the Corporate Debtor and had placed the same in the premises of Airport Authority of Jaipur. There may be plausible reasons for SGB Infra Ltd to ask the Corporate Debtor to remove the flooring but fact remains that the Corporate Debtor had accepted the granite slabs supplied by the Operational Creditor without raising any dispute or objection. On this score itself we are of the opinion that such plea of the Corporate Debtor regarding dispute can be termed as moon shine defence. On this plea there is no reason to accept as if there was pre-existing dispute in between the Operational Creditor and Corporate Debtor.....”*

14. In view of the admission made by the Corporate Debtor for an unpaid operational debt for an amount above the threshold limit, we have no other option but to admit the Petition.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the

Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

“(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

(f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.”

16. In IA No. 2089/2023, Mr. Deepak Thukral, Interim Resolution Professional has been proposed by the petitioner. The Form-2 wherein the written consent is submitted by the proposed Interim Resolution Professional is attached as Annexure-I of the IA No. 2089/2023. The Law Research Associate of this Tribunal has checked the credentials of Mr. Deepak Thukral and there is nothing adverse against him. In view of the above, we appoint

Mr. Deepak Thukral , Registration No. IBBI/IPA-002/IP-N00182/2017-18/10453, Email: [deepakthukral1@gmail.com](mailto:deepakthukral1@gmail.com), Mobile No. 9417496655 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under sections 15, 17, 18, 20 and 21 of IBC 2016.

17. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

19. A copy of order shall be communicated to both the parties. The

learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

**(DR. V. G. VENKATA CHALAPATHY)**  
**MEMBER (T)**

Sd/-

**(HARNAM SINGH THAKUR)**  
**MEMBER (J)**