

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM:**  
**SHRI P.S.N. PRASAD,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

**Company Petition No. (IB)- 151/9/JPR/2019**

(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:**

**BMSS STEEL INDUSTRIES PRIVATE LIMITED**

**...OPERATIONAL CREDITOR/  
APPLICANT**

**VERSUS**

**POWERFORGE ENGINEERING PRIVATE LIMITED**

**...CORPORATE DEBTOR/  
RESPONDENT**

**For the Applicant**

**:**

**Divesh Sharma, Adv.**

BMSS Steel Industries Private Limited  
Versus  
Powerforge Engineering Private Limited



For the Respondent : Amol Vyas, Adv.

**MEMO OF PARTIES**

**BMSS STEEL INDUSTRIES PRIVATE LIMITED**  
**366, S.V.P. Road,**  
**Prathana Samaj, Mumbai - 400004**

...Operational Creditor/Applicant

**VERSUS**

**POWERFORGE ENGINEERING PRIVATE LIMITED**  
**H1-603/603, RIICO Industrial Area,**  
**Chopanki, Bhiwadi, District Alwar,**  
**Rajasthan - 301019**

...Corporate Debtor/Respondent

**Order Pronounced On: 07.09.2020**

**ORDER**

Per: Shri Raghu Nayyar, Technical Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code ('IBC'), 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by BMSS Steel Industries Private Limited ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency

BMSS Steel Industries Private Limited  
 Versus  
 Powerforge Engineering Private Limited



Resolution Process against Powerforge Engineering Private Limited ('Respondent'), the Corporate Debtor herein. This Application is filed through Mr. Rajiv Himatlal Goradia, an Authorised Representative of the Applicant, authorised vide letter dated 22.05.2019.

2. The Applicant is a Private Limited Company, registered with Registrar of Companies, Mumbai, with CIN: U74999MH1987PTC030023 and its Registered Office is at 366, S.V.P. Road, Prathana Samaj, Mumbai - 400004.
3. The Respondent is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 11.10.2011, duly registered with Registrar of Companies, Jaipur, bearing CIN: U28112RJ2011PTC062297 and the Registered Office of the Respondent is at H1-603/603, RIICO Industrial Area, Chopanki, Bhiwadi, District Alwar, Rajasthan - 301019. The authorized share capital of the company is Rs. 2,00,00,000/- (Rupees Two Crores Only) and paid up share capital is Rs. Rs. 1,78,00,000/- (Rupees One Crore Seventy Eight Lakhs Only), as per Master Data of the Company.
4. It is the case of the Applicant that the Applicant used to supply tools and die steel to the Respondent and raised its invoices worth Rs. 18,25,181/- against purchase orders pertaining to such transactions. The commercial



relationship thus sustained between the parties. The Respondent had been making payments periodically, hence maintaining a continuous account.

5. The Applicant further submitted that as per the terms and conditions of the invoices, an interest of 24% p.a. would be applicable in case of delayed payment against the said invoices. The Respondent made part payments against the outstanding amount, but later stopped making payments against these invoices.
6. The Applicant furthermore stated that the first incidence of default had occurred on 18.03.2018. The Applicant sent a Demand Notice in Form 3 dated 12.04.2019, through e-mail to the Respondent on their registered e-mail id on the website of Ministry of Corporate Affairs and on the e-mail id of the whole-time director of the Respondent. The Applicant still did not receive any payment towards the outstanding amount.
7. The details of the unpaid invoices, as stated by the Applicant, are given below:

CRN  
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Invoice	Dated	Amount
00203	08.05.2017	26,757.66/-
00204	08.05.2017	2,54,917/-
0025	08.07.2017	1,65,910/-
0026	02.10.2017	1,08,350/-
0390	02.10.2017	2,25,144/-
0597	16.11.2017	2,42,030
0675	02.12.2017	4,19,298/-
0763	18.12.2017	1,07,319/-
<b>Total</b>		<b>15,49,725/-</b>

8. As a consequence of non-payment of the due amount and interest, this Application was filed. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 22,73,431/- (Rupees Twenty Two Lakhs Seventy Three Thousand Four Hundred Thirty One Only), as an outstanding amount, as reflected in Part IV of the Form - 5 filed which is as tabulated hereinbelow:

#### PART IV

Particulars of Operational Debt	
Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Outstanding Principal Amount Rs. 15,49,725 /- <i>Add: Interest @18%</i> Rs. 6,23,706/- <i>Add: Legal expenses</i> Rs. 1,00,000/- <b>Total Debt Amount</b> <u><b>Rs. 22,73,431/-</b></u>

*CRN*

Amount claimed to be in default and the date on which the default occurred	Total amount of debt claimed to be in default is Rs. 22,73,431/- (Rupees Twenty Two Lakhs Seventy Three Thousand Four Hundred Thirty One Only) including interest @ 18% per month and legal expenses.  Date of default: 18.03.2018
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Note: In part IV of the Application, interest is shown to be charged @ 18% p.a., however after perusing the computation sheet annexed with the application, it is noticed that the interest is calculated @ 24% p.a. in accordance with the invoices attached.

9. Various allegations and counter-allegations seem to have been raised in respect of the claimed and other invoices, which have been weaved into an intermingled narrative by the Respondent, in portrayal of alleged dispute and its expanded projection. Hence, it is best to analyse the position of the Applicant/ Operational Creditor and the Respondent with respect to these invoices in the following manner:

I. Claimed Invoices

- A. The Respondent vide e-mail dated 30.04.2019 raised a dispute in respect of crack in die block supplied vide invoice no. 204 dated 08.05.2017. The Applicant/ Operational Creditor vide response e-mail of the same date informed the Respondent that crack on die

block occurred due to reasons at their end like improper/ incorrect die setting, excessive load on die, etc. The die block was supplied as per the Test Certificate which had been accepted by the Respondent. The said e-mail exchange is part of annexure 4 of the Application. The Respondent still allegedly raised a debit note for Rs. 5,78,200/- on 05.05.2019, which is more than the amount mentioned in the invoice no. 204, i.e. Rs. 2,54,917. It is relevant to note here that almost after 2 years of supply of the die block and after receipt of the demand notice, the Respondent had raised this dispute which implies that the Respondent is trying to create a dispute and delay the matter. The Respondent claims to have put a specific handwritten note in the purchase order, in view of the claimed breaking of the die blocks and cracks appearing therein, stating, "Material must be written guaranteed against crack, life or any other defect". However, no such noting has been endorsed on the corresponding purchase order related to invoice no. 204.

- B. The Respondent submitted that the die block purchased vide invoice no. 26 dated 08.07.2017, broke during production and the same was reported to the Applicant by e-mail dated 11.08.2017. In this regard, the Respondent raised a debit note of Rs. 2,16,701/- on 14.09.2017. It was mutually agreed by both the parties to send the die blocks for

an expert opinion but the Respondent was not satisfied with the expert opinion on the ground that it was not a comprehensive opinion. Subsequently, in respect of the said invoice, on 01.10.2017, the Applicant issued a credit note for 50% amount, i.e. for Rs. 1,08,350/-. That seemingly ended any controversy with respect thereto, but the same seems to have been raked up by the Respondent for amplification of other alleged disputes. Thus, the Respondent appears to be attempting to fob-off liability to pay.

- C. The Respondent submitted that it reported crack in die block by e-mail dated 16.02.2018, which was purchased vide invoice no. 597 dated 16.11.2017. The Respondent further stated that the Applicant in purported reply to the aforesaid e-mail, allegedly refused to replace the die block vide email dated 08.03.2018. However, after perusing the said e-mails, it is seen that only a typed copy of the alleged e-mail of Respondent to the Applicant, has been filed by the Respondent and the veracity of the same is questionable. If the e-mail in question was still available in outbox/ sent items of the Respondent/ Corporate Debtor, a printout of the same could have been furnished. Else, photocopy of a paper printout record of the original e-mail sent could have been provided alongwith the typed copy. It is thus seen that the Respondent has not furnished proper

documents or proof in support of its claim in respect of alleged crack in die block bought vide invoice no. 597.

- D. With respect to invoice nos. 203, 25, 390, 675 and 763 as claimed by the Applicant, the Respondent/ Corporate Debtor has not raised any dispute in this regard.

II. Other Invoices

- A. The Respondent stated that they had regularly been placing orders with the Applicant for purchase of die blocks and inserts, but on few occasions the goods/ products supplied by the Applicant did not give satisfactory results. In this regard, the Respondent had earlier sent an e-mail dated 12.09.2015 regarding the defects in die blocks, wherein the Applicant adjusted payments against the damaged products and had been replacing them from time to time. Again, this pertains to previous time and is not related to the matter at hand. The Respondent is trying to interweave previous complaints and issues into the present proceedings which is not pertinent thereto.
- B. The Respondent/ Corporate Debtor also submitted that it issued a debit note dated 12.05.2018 against invoice no. 1484, dated 28.02.2017, for Rs. 4,58,355 /- as a result of crack in die blocks. But the Applicant refused to accept the debit note vide email dated

12.05.2018, stating that the die block was supplied as per the Test Certificate which was accepted by the Respondent. However, this invoice does not fall within the canvas of the present proceedings.

- C. The Respondent/ Corporate Debtor vide e-mail dated 10.09.2018, again reported breakage in the die block purchased vide invoice no. 443 dated 25.11.2016. The Applicant in response, sent an e-mail dated 04.11.2018, wherein it stated that the die blocks may break due to one or more reasons at the user's end like improper die setting, excessive load on die, dove tail machining, etc. It is pertinent to note here that the Respondent again has raised complaint after 2 years of supply for a consumable item like die block. Moreover, this invoice is not related to the present case and it is not claimed by the Applicant.
- D. The Respondent vide e-mail dated 25.05.2019, again reported a crack in the die block purchased vide invoice no. 104 dated 19.04.2017. The Applicant vide response e-mail of the same date stated that the crack that was found in the die block sold, was supplied 2 years ago which shows the malafide intention of raising complaint at this juncture after receiving the demand notice. In any case, the said invoice no. 104 is not part of the subject matter of these proceedings.

10. It is pertinent to mention here that the Applicant sent an e-mail dated 23.01.2018 to the Respondent in respect of previous dishonoured cheques and deposit of post-dated cheques, that were issued by the Respondent in lieu of outstanding payments. The Respondent in its response e-mail dated 31.01.2018, agreed to honour minimum of Rs. 3-4 lakhs of cheques, as the funds would be arranged around 15<sup>th</sup>-20<sup>th</sup> February. But subsequently, the Respondent issued the following debit notes:

<b>Date</b>	<b>Invoice No.</b>	<b>Date</b>	<b>Debit Note (Rs.)</b>
25.07.2016	180	30.03.2019	1,87,473
25.11.2016	443	01.10.2018	2,09,880
28.02.2017	1484	12.05.2018	4,58,355
08.05.2017	204	05.05.2019	5,78,200
--	--	31.03.2019	12,50,800

11. The abovementioned debit notes have been issued after a time gap of 15-30 months of the date of invoice in respect of consumable die-blocks. There is no proof of transmission of the said debit notes or their acceptance by the Applicant. The debit note amounting to Rs.

12,50,800/- dated 31.03.2019 has been allegedly raised by the Respondent but it does not correspond to any invoice or any supporting documentation. It seems like an accounting entry added to the accounts of the immediately preceding financial year ending 31.03.2019. It is seen that the demand notice of the Applicant/ Operational Creditor was headed to the Respondent and was received around the same time as on 12.04.2019.

12. The Respondent also claims to have sent a letter dated 31.05.2018 to the Applicant and requested them to visit the plant of the Respondent in order to ascertain the real cause of the cracks appearing in the die blocks and resolve the technical/ commercial issues. This does not seem to have been a bottleneck between the Respondent and Applicant, who has submitted that if this was an issue, the Respondent would not have effected payments of Rs. 2,31,522.34/-, which is shown as paid on 28.08.2018 in the ledger account submitted by the Applicant and not denied by the Respondent. Further, payments of Rs. 25,000/- each were made by the Respondent in December, 2018 and February, 2019. From e-mails of the Respondent, it seems that it was facing cash flow problems.
13. The Applicant demanded the outstanding amount vide notice dated 12.04.2019. In response to the demand notice, the Respondent sent a

reply dated 02.05.2019, stating that the Respondent is not liable to pay any amount to the Applicant and rather the Applicant is liable to pay a sum of Rs. 6,00,000/- approximately towards damage caused to the Respondent, due to supply of defective goods. Such claim arose for the first time and there is no antecedent narrative in this regard.

14. The Applicant/ Operational Creditor has filed written submissions stating that the complaint raised by the Respondent towards the quality of die blocks was raised after the receipt of earlier notice under Section 138 of Negotiable Instruments Act for cheque bouncing, which clearly indicates the intentions of the Respondent to avoid and delay the legitimate claim and legal liability towards the Applicant. It is also submitted that fresh complaints pertaining to quality were lodged after the demand notice was issued to the Respondent.
15. The Applicant submitted that the Respondent had previously placed orders of die blocks on regular intervals and made payments of various invoices consistently and also issued post-dated cheques against the supplies. The Respondent stopped buying only after the Applicant insisted that further products will be supplied only after the payments are made for the goods/ products already supplied.
16. In rebuttal of the Respondent's assertions about the terms and conditions, the Applicant submitted that the clauses pertaining to terms and conditions

were printed at the reverse side of the purchase order, but the Applicant claims to have received only the front page of the purchase order copy by mail and the Respondent never insisted on the acceptance by the Applicant of all the terms and conditions as printed on the reverse side. The Applicant submitted that die blocks are consumables and the issue of cracks, etc. therein arises due to usage conditions as per industry practice.

17. The Applicant further submitted that the material supplied was always accompanied with a test certificate and the Respondent accepted the material as per the terms and conditions and then took it for use. If the Respondent had any doubt with respect to the quality of die blocks then it should not have bought or accepted the same from the Applicant. Moreover, as a gesture of goodwill and to maintain cordial business relationship, the Applicant had entertained the Respondent's first two complaints regarding crack in the die blocks and also alleviated the same through part adjustment.
18. Further, the Applicant claims that there was no correspondence from the Respondent regarding issue of various alleged debit notes worth Rs. 22,26,353/-, which neither the Applicant received, nor was aware of till the Applicant received a reply to the Application from the Respondent.
19. On the scrutiny of the files and averments it is found that, when shorn off interweaving and extrapolation of disputes, a tenuous defence has been put



together by the Respondent. It doesn't need a very deep dissection but just needs a simple correlation of the relevant invoices and their dates alongwith corresponding purchase orders, with linkage to the claimed e-mails, to analyse the same. The Respondent's defence, as sought to be built up, seems tenuous when the relevant facts are cogently viewed in a structured manner.

20. Upon a detailed consideration of the Application and documents filed, it is evident that before the issuance of demand notice, there doesn't seem to be a pre-existing dispute with respect to the invoices claimed by the Applicant. In the matter of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited reported in (2018) 1 SCC 353*, the Supreme Court observed that, "*What is important is that the existence of the dispute and/ or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.*" The Supreme Court further stated that, "*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 defence which is mere bluster.*" It is apparent that the Respondent has not been able to establish that there was a pre-existing dispute in

respect of the claimed amount before the issuance of the demand notice. The Respondent had raised some complaints about old/ unrelated invoices after issuance of demand notice which raises doubts about the intentions of the Respondent to portray that payment is not made due to quality issues.

21. Therefore, the payment of claim amount (excluding legal expenses) as mentioned in Part IV of Form 5 has been defaulted by the Corporate Debtor. Hence, this Tribunal is inclined to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
22. This Tribunal appoints Mr. Lalit Mohan Sharma, with Registration No. IBBI/IPA-002/IP-N00770/2018-2019/12379 (email: lalitsharma7324@gmail.com), as the Interim Resolution Professional ('IRP') of the Corporate Debtor. The IRP is directed to take all such steps as are required under relevant provisions of the Code.
23. Consequences of initiation of CIRP shall be inter-alia as follows:
  - (i) The Resolution Professional Mr. Lalit Mohan Sharma, with the Registration No. IBBI/IPA-002/IP-N00770/2018-2019/12379 (email: lalitsharma7324@gmail.com), is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and discharge duties as required to be performed by him under the provisions of IBC, 2016 including

issue of publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016, and calling for the claims from the creditors of Corporate Debtor and collation of the same.

- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time apprising this Tribunal about the progress of CIRP unfolding in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP

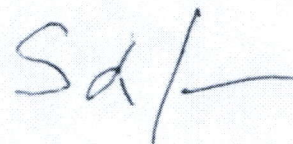
during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Tribunal to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

24. Accordingly, CP No. (IB)-151/9/JPR/2019 is admitted.



**SH. RAGHU NAYYAR,  
MEMBER (TECHNICAL)**



**SH. P.S.N PRASAD,  
MEMBER (JUDICIAL)**