

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT- II  
KOLKATA**

**C.P(IB) No. 1448/KB/2019**

*A 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*

**In the matter of:**

**Bajrang Steelmet Trading Private Limited**

CIN: U27100WB2010PTC149525

... Operational Creditor

versus

**Ramkrishna Engineering Private Limited**

CIN: U29253WB2013PTC196024

... Corporate Debtor

**Date of Pronouncement: 29 December 2022**

**Coram: Shri. Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

Appearances (through Video Conferencing/ physical hearing)

1. Mr. Ratul Das, Advocate } For Operational Creditor  
2. Mr. Nikunj Berlia, Advocate }

1. Mr. Victor Dutta, Advocate } For Corporate Debtor  
2. Mr. Sourajit Dasgupta, Advocate }

**ORDER**

**Per: Balraj Joshi, Member (Technical)**

1. The Court convened via hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on behalf

of **Bajrang Steelmet Trading Private Limited** ('Operational Creditor'), by Mr. Shashi Churiwala, duly authorized vide Board Resolution dated 14<sup>th</sup> June, 2019<sup>1</sup> for initiation of Corporate Insolvency Resolution Process ('CIRP') against **Ramkrishna Engineering Private Limited** ('Corporate Debtor').

3. The present Petition was **filed on 21 August, 2019** before this Adjudicating Authority. The total amount claimed in default is Rs.80,99,665/- (Rupees Eighty Lakh Ninety Nine Thousand Six Hundred Sixty Five only), inclusive of interest calculated @24% per month from the date of default being the date on which the last invoice. The first default occurred in **06 July, 2013**.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.1,00,00,000/- (Rupees One Crore only) with paid up Capital as Rs.28,00,000 /- (Rupees Twenty-Eight Lakh only).
5. ***Submissions by the Ld. Counsel on behalf of the Operational Creditor***
  - 5.1 The Operational Creditor has been carrying on the business of supplying Iron and Steel and also end products of Iron and Steel being Hot rolled Steel Plates (alloy). Based on the verbal order issued by the Corporate Debtor, the Operational Creditor used to supply goods to the Corporate Debtor. After successful supply of goods the Operational Creditor raised invoices.
  - 5.2 The Corporate Debtor initially carried on business under the name and style of Ramkrishna Engineering, a proprietorship concern, and *vide* a Deed of Takeover dated 03 April, 2014<sup>2</sup> and in terms of Clause I of the said Agreement, all the liabilities and assets of the erstwhile Ramkrishna Engineering was assigned and transferred to the Corporate Debtor i.e. Ramkrishna Engineering Private Limited.
  - 5.3 There was a running contract between the parties wherein verbal purchase orders would be communicated by the Corporate Debtor and

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<sup>1</sup> Annexure-C, Page 30 of the Petition

<sup>2</sup> Annexure- D, Pages 31 to 34 of the Petition

thereafter on acceptance, the supply was duly fulfilled by the Operational Creditor and subsequently invoices were raised.

- 5.4 Two invoices dated 06 July, 2013 were raised by the Operational Creditor seeking payment of Rs. 14,73,203/- (Rupees Fourteen Lakh Seventy-Three Thousand Two Hundred and Three only) and Rs.18,54,405/- (Rupees Eighteen Lakh Fifty Four Thousand Four Hundred and Five only) totaling to a sum of **Rs. 33,27,608/- (Rupees Thirty-Three Lakh Twenty-Seven Thousand Six Hundred and Eight only)**.<sup>3</sup>
- 5.5 The Operational Creditor on several occasions requested the Corporate Debtor to pay the dues. The Corporate Debtor by way of an email dated 24 May 2016 acknowledged the balance confirmation and re-acknowledged the same on 03 June 2016 *vide* an email.<sup>4</sup>
- 5.6 The Corporate Debtor has made a few payments to the account of the sister concern of the Operational Creditor, lastly on 25 June 2019 of an amount of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only).
- 5.7 In spite of various verbal reminders to repay the sum due, the Corporate Debtor failed to honor the same. The Operational Creditor issued a demand notice dated 04 April 2019, under section 8 of the Code to the Corporate Debtor. The said notice was sent by Speed Post and the same had not returned, following which the Operational Creditor issued the said notice by way of email dated 24 June 2019 to the official email id of the Corporate Debtor.

## **6. Submissions by the Ld. Counsel on behalf of the Corporate Debtor**

- 6.1 The Corporate Debtor contends that the claim of the applicant is hopelessly barred by the laws of limitation. The Operational Creditor pleaded that it has issued a Demand notice dated 31 March 2019 whereas the notice annexed as Annexure-G at Page 43 of the Application reflects the date as 04 April 2019. It further states that

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<sup>3</sup> Annexure-E, Pages 35 to 42 of the Petition

<sup>4</sup> Annexure-F, Pages 42A to 42C of the Petition

it had not received any such demand notice and the track report itself clearly reflects that the said notice was never served or delivered on the Corporate Debtor and therefore no reliance can be placed on the said notice.

- 6.2 The Corporate Debtor only received the email dated 24 June 2019. It contends that the delivery of a demand notice under Section 8 of the Code is the condition precedent for initiating proceedings under the Code and not the mere issuance thereof.
- 6.3 The Corporate Debtor denies that there has been any default of any amount of Rs. 80,99,665/- or any part thereof as claimed in the present application. It also denies supplies made as alleged by the applicant has been utilized by the Corporate Debtor and states that the Corporate Debtor has never acted on the basis of verbal orders.
- 6.4. The Corporate Debtor disputes the existence and authenticity of the balance confirmation statement dated 24.05.2016 and 03 June 2016 and states that the sign and seal of the Corporate Debtor as appearing on such balance confirmation is not that of the Corporate Debtor. It states that even if it assumes that the Balance Confirmation Statement is a genuine document, since the demand notice was issued and delivered on the Corporate Debtor on 24 June 2019, the claim of the applicant is ex facie barred by the laws of limitation as it exceeds three years from the date of acknowledgement of liability i.e., 03 June 2016 and hence on this ground alone, the present application deserves to be rejected.

## **7. Issue**

- 7.1 Is the application barred by limitation?

### **Analysis and Findings:**

8. Heard the learned Counsel for the Operational Creditor and the learned Counsel for the Corporate Debtor and perused the records.
9. The main contention of the Corporate Debtor is that the Company Petition is barred by limitation.

- 10.** The invoices were issued on 06 July 2013 and according to the submissions of the learned Counsel for the Operational Creditor, the Corporate Debtor defaulted in payment of the amount since July 2013.
- 11.** On perusal of the record, the acknowledgement i.e. the account confirmation given on 03 June 2016 which has been vehemently denied by the Corporate Debtor. The Corporate Debtor has disputed that the seal and signature in the acknowledgement are fabricated but the Corporate Debtor has failed to substantiate the same with any document, hence the argument of the Corporate Debtor does not hold water.
- 12.** Taking the acknowledgement i.e. the account confirmation given by the Corporate Debtor dated 03 June 2016 into consideration, it is seen that it has been given within three years from the date of issuance of invoice. Hence, the period of limitation is extended from such date of acknowledgement.
- 13.** The demand notice was sent *via* post on 04 April 2019 which was not delivered to the Corporate Debtor, therefore, the Operational Creditor sent the demand notice *via* email dated 24 June 2019 which was duly served upon the Corporate Debtor. The Corporate Debtor has acknowledged the receipt of the notice.
- 14.** The learned Counsel for the Corporate Debtor has fervently argued that the Company Petition is barred by limitation. Taking the Corporate Debtor's defence into consideration, let us go through the timeline of events.
- 15.** The invoices were issued on 06 July 2013 and the letter of confirmation was emailed on 03 June 2016, which was given within three years hence, the period of limitation is extended from 03 June 2016. Thereafter, the Demand Notice was sent on 24 June 2019, which has been sent after 3 years and 21 days. The Company Petition has been filed on 21 August 2019, i.e. after 3 years 2 months and 18 days from the date of acknowledgment.
- 16.** From the above timeline, it is clear that the Company Petition has been filed beyond the period of three years from the last date of acknowledgement i.e. 03 June 2016. Thus, the Company Petition is clearly barred by limitation.

- 17.** In view of the above circumstances **CP (IB) No. 1448/KB/2019** is hereby rejected. Needless to say, the Operational Creditor is at liberty to resort to other remedies that may be available to it under other law.
- 18.** Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

This order is pronounced on 29<sup>th</sup> day of December, 2022.