

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**C.P. (IB) 951/MB/2023**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Bhuleshwar Steel and Alloys Pvt Ltd**

Having Its Registered Office- Gat 233, Village  
Yawat, Daund, Pune, Maharashtra- 412214

**..... Petitioner/ Operational Creditor**

**Versus**

**V M Matere Infrastructures (India) Pvt Ltd**

Having Its Registered Office- Matere House,  
Sector no. 14, Pradhikaran, Gat no. 62,  
Boradewadi, Moshi, Pune,  
Maharashtra- 412105

**..... Respondent/Corporate Debtor**

**Order Delivered on :- 13/02/2024**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

***Appearances:***

For the Operational Creditor : Adv. Amey Hadwale  
a/w Adv. Aashika Gopani

For the Corporate Debtor : Adv. Bhushan Deshmukh  
a/w Adv. Aditya M.

**ORDER**

***Per: - Kuldip Kumar Kareer, Member (Judicial)***

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Bhuleshwar Steel and Alloys Pvt Ltd** (hereinafter called as "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s V M Matere Infrastructures (India) Pvt Ltd** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called "the Code") for resolution of an unresolved Operational Debt of Rs. 1,94,72,556/- (Rupees One Crore Ninety-Four Lakhs Seventy-Two Thousand Five Hundred And Fifty-Six).

**The submissions of the Operational Creditor are as follows:**

2. It is submitted that the Corporate Debtor approached the Operational Creditor for supplying the goods to the corporate debtor pursuant to which the Corporate Debtor through its purchase orders placed its demand for supply of goods from time to time.

3. The Operational Creditor after delivering the goods to the satisfaction of the Corporate Debtor, raised invoices in respect thereof. It was agreed between the parties that the payment will be made within the time frame as per the Mode/Terms of payment mentioned in the invoices.
4. Despite, providing defect free & quality goods, the Corporate Debtor has failed to perform their obligation of honouring the amounts raised under the invoices attached. The Ledger Account of Corporate Debtor maintained in the books of Operational Creditor show that the Corporate Debtor is liable to pay a sum of Rs. 1,94,72,556/- to the Operational Creditor.
5. The Applicant/Operational Creditor has been patiently approaching the Corporate Debtor to release the outstanding payment. The Corporate Debtor never denied having received the goods nor raised any objection as to the quality of the goods supplied and assured payment of dues by seeking further time on one pretext or the other.
6. Despite reminders and after granting more than enough time, the Corporate Debtor has hopelessly defaulted in fulfilling its assurances of payment. Thereafter, the Operational Creditor sent demand notice dated 31.05.2023 in Form 4 as per the provisions of section 8 of IBC, 2016, ("Demand Notice"). In the said Demand Notice, the Operational Creditor through its Advocate called upon the Corporate Debtor to make payment of the balance unpaid amount of Rs. 1,94,72,556.00/- (Rupees One Crore Ninety-Four Lakh Seventy Two Thousand Five Hundred and Fifty Six). The Corporate Debtor was further informed that in the event of non-payment of debt within 10 days of the receipt of the legal notice, the Operational Creditor may file an Application before the Adjudicating Authority for initiating a corporate

insolvency resolution process under Section 9 of the Insolvency and Bankruptcy Code, 2016.

7. The said Demand notice was duly replied by the Corporate Debtor vide its reply dated 06.06.2023. Vide its reply the Corporate Debtor has acknowledged the outstanding debt to the tune of Rs 1,25,83,719.60/against the invoices and also stated that the corporate debtor was struggling financially etc. The Operational Creditor have provided the Corporate Debtor enough time to pay the outstanding dues which remained unpaid despite several attempts of reminders for repayment.
8. Based on the documents placed on record, it is evident that the Corporate Debtor has defaulted in making the payment of the due invoices. Further, in the facts and circumstances as set out herein above, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is deemed to become commercially insolvent. In such circumstances, it is imperative that the Corporate insolvency process to be initiated against the Corporate Debtor. Hence the present Company Petition.

**Analysis and Findings:**

9. We have heard the Counsel for the parties and gone through the record.
10. At the very outset, it has been pointed out by the Counsel for the Corporate Debtor that the entire amount of operational debt of Rs. 1,94,72,556/- has already been paid to the Operational Creditor and in the light of this fact,

according to the Counsel for the Corporate Debtor, the Petition does not survive and cannot be prosecuted any further.

11. Counsel for the Petitioner has not disputed the fact that the amount of Rs. 1,94,72,556/- has been received by the Operational Creditor but he contends that the matter can still be prosecuted further.
12. Having considered the contentions raised by the parties, in our considered view, once the entire amount of Rs. 1,94,72,556/-, which has been claimed in part (IV) of the Petition under Section 9 of the Code, has been paid in its entirety, the Petition cannot be proceeded with any further. In this regard a reference can be made to the law laid down in case of ***'S.S. Polymers Vs. Kanodia Technoplast Limited'*** in ***'Company Appeal (AT) (Ins) No. 1227 of 2019 decided on 13.11.2019'*** whereby it has been held by the Hon'ble NCLAT that if before the admission of an application under Section 9 of the Code, the Corporate Debtor paid the total debt, the application for realization of interest cannot be pursued any further as it would be against the principle of IB Code and is liable to be treated as an application pursued by the Applicant with malicious intent (to realize interest only) which is not the purpose of the Code. In this regard a further reference can also be made in case of ***'Permal Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd.'*** in ***Company Appeal (AT) (Ins) No. 36 of 2023 decided on 17.01.2023'*** whereby it has been held that IBC is not a recovery proceeding and the Application, which has been filed by the appellant in the present case, is only for recovery of balance amount of the interest and is not filed for resolution of any insolvency of the of the Corporate Debtor and the same is liable to be rejected. In the light of the law laid down in the aforesaid cases, in our considered view, after the payment of the amount in question in its entirety as claimed in part (IV) of the Petition

under Section 9 of the Code, the Operational Creditor is not entitled to proceed with the case any further for recovery of the outstanding interest.

13. As a result of the above discussion, we are of the considered view that the Petition is liable to be **dismissed** on account of the fact that the entire amount claimed in the Petition has already been admittedly paid. It is ordered accordingly. File be closed and consigned to records.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**  
*Sushil*

**Sd/**  
**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**