

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(Arguments through web-based video conferencing platform)**

**CP (IB) No.410/Chd/Pb/2019**

**Under Section 9 read with Rule 6  
of the Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

M/s. K.K. Steels

Through proprietor Mr. Amarnath  
having its registered office at  
Shop No. 10, Bansal Complex,  
Industrial Area-B, Gill Road  
Ludhiana (Punjab)

...Petitioner-Operational Creditor

Vs.

M/s Dev Rolling Mills Private Limited  
through its director(s) Mr. Deepak Gupta &  
Ms. Sonia Gupta (jointly and severally)  
Having its Registered office at  
Muradpura, Chaaju Ram,  
GRN Punnu Milerganj,  
Ludhiana, Punjab, 141001

...Respondent-Corporate Debtor

**Judgment delivered on: 11.01.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

**Present:**

For the Petitioner-Operational Creditor : Mr. Surjeet Bhadu, Advocate

For the respondent-Corporate Debtor : Mr. Alok Jagga, Advocate  
Mr. APS Madaan, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

## JUDGMENT

The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC**' / '**Code**'), by M/s K.K. Steels (for brevity, '**Operational Creditor**'/'**Petitioner**'), represented by its proprietor Mr. Amarnath with a prayer to initiate the Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Dev Rolling Mills Private Limited (for brevity, '**Corporate Debtor**'/ '**Respondent**').

2. The Corporate Debtor namely, M/s Dev Rolling Mills Private Limited, is a Company incorporated on 11.04.2007 under the provisions of the Companies Act, 1956 with CIN No. U27109PB2007PTC031050 with its registered office at Muradpura Chaaju Ram GRN Punnu Milerganj, Ludhiana PB 141001 IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. A copy of the master data of the corporate debtor is attached with the main petition as Annexure A-I.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is engaged in the business of trading in steel and scrap of steel products. The goods were supplied to the corporate debtor on various occasions. A copy of the invoices is attached as Annexure-3. A copy of the ledger account statement of the corporate debtor maintained by the operational creditor is attached as Annexure A-2. A copy of the ledger account statement of the operational creditor maintained by the corporate debtor is attached as Annexure-5. A copy of the compromise deed dated 13.02.2019 is attached as Annexure-6. A copy of the declaration (Form no. 27C) made by a buyer for obtaining goods is attached as Annexure-4. A

copy of Form-3 dated 08.04.2019 along with the postal receipt and email dated 29.04.2019 is attached as Annexure-7

4. Notice of this petition was issued to the corporate debtor vide order dated 13.08.2019 to show cause as to why this petition be not admitted. Pursuant to the notice, the reply has been filed by the corporate debtor vide Diary No. 1540 dated 25.02.2020, wherein it is stated that the date of default is not mentioned. Further, the respondent has submitted that there is no delivery of demand notice on the corporate debtor, and the respondent had issued a debit note of Rs. 58,65,585/- and thus, there is no question of any operational debt due to the petitioner. It is further submitted that there is the existence of a dispute with respect to the amount in default. The corporate debtor has written to the operational creditor raising its concern regarding the poor quality of scrap supplied on various occasions through emails dated 30.06.2018, 21.07.2018, 17.08.2018 and 31.03.2019. Further, the corporate debtor has also filed a civil suit against the petitioner-operational creditor on 06.05.2019 to recover the balance amount of Rs. 3,27,743/- as per the debit note issued by the corporate debtor. It is further stated that the compromise dated 13.02.2019 relied upon by the petitioner has no evidentiary value, and the claim of the petitioner is barred by a period of limitation.

5. The petitioner-operational creditor has filed its rejoinder vide Diary No. 00663/1 dated 17.05.2022, wherein the averments made by the corporate debtor have been denied. It is submitted that the debit note does not exist and is created by the corporate debtor as a mere ploy to circumvent its liability of unpaid operational debt due to the operational creditor. Further, it is

stated that the aforementioned emails by the corporate debtor are non-existent and never sent to the petitioner.

6. We have heard the learned counsel for the petitioner and have perused the records.

7. The first issue for consideration is whether there is an absence of a date of default. It may be noted that the petitioner has submitted in Form 5, Part IV that the amount claimed to be in default is Rs.55,37,841/-. The corporate debtor made the last payment on 10.12.2018 vide cheque dated 07.12.2018 for Rs. 3,01,417/- to the operational creditor, leaving a pending amount to the tune of Rs.55,37,841/-. The same can be inferred from the ledger statement maintained by the operational creditor and the corporate debtor. Therefore, the first default occurred on 11.12.2018.

8. The next issue is whether the demand notice has been served to the corporate debtor. The relevant Rule 5 (2) (b) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as relied upon by the corporate debtor is extracted hereinbelow:

*“(2) The demand notice or the copy of the invoice demanding payment referred to in subsection (2) of section 8 of the Code, may be delivered to the corporate debtor.*

*(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.”*

9. It is observed from the record available that a demand notice in Form 3 dated 08.04.2019 is stated to be issued to the operational creditor through speed post, which was returned with the endorsement “factory closed”. Thereafter, demand notice in Form 3 was served through an e-mail dated 29.04.2019 on the email address of the corporate debtor registered with the

MCA i.e., at [devrollingmillspltd@gmail.com](mailto:devrollingmillspltd@gmail.com). The same has not been bounced back. Therefore, it can be concluded that the service has been done effectively.

10. Considering the third issue of whether the respondent-corporate debtor has issued a debit note dated 31.03.2019 of Rs. 58,65,585/-, it is observed from the record that the respondent-corporate debtor had business transactions with the petitioner-operational creditor. The same can be inferred from the ledger statement appended by the corporate debtor to its reply, and the last transaction was of 10.12.2018. Moreover, there is a compromise deed dated 13.02.2019, wherein Mr. Kishan Chand, the erstwhile director, who resigned on 07.07.2018, has admitted that it had purchased iron scrap from K.K. Steel (the petitioner-operational creditor) in June 2018 for about 74 Lakhs for the factory, but due to domestic dispute, the factory has been closed down. Further, the civil suit filed by the corporate debtor stands dismissed in default vide order dated 12.10.2021 by the Civil Court. Moreover, the said suit has been filed on 06.05.2019 i.e., after the demand notice. It is also observed that the corporate debtor has taken the benefit of Form 27C under the Income Tax Act, as well as of the Input Tax Credit of goods and Services tax paid by the petitioner on the said goods. Keeping in view of the above facts, especially the appropriation of the tax benefits by the corporate debtor, we hold that there is a categorical acknowledgement and admission of debt by the corporate debtor. Also, after making the declarations under the statutory Form 27C, the corporate debtor cannot subsequently claim that the goods were defective and hence, not consumed in manufacturing activities. No evidence of the return of the

alleged defective goods has been placed before us in this proceeding. Therefore, it is not open for the respondent-corporate debtor to raise the issue of unpaid operational debt through a debit note at the fag end. Even there is no evidence present that the said debit note was communicated to the petitioner.

11. The fourth issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that the corporate debtor has written to the operational creditor raising its concern regarding the poor quality of scrap supplied on various occasions through emails dated 30.06.2018, 21.07.2018, 17.08.2018 and 31.03.2019. However, the petitioner-operational creditor has stated that the above-said emails are non-existent and never received by them. It may be noted that the ledger statement of the corporate debtor indicates that after the first email dated 30.06.2018, allegedly regarding defective goods, more than 10 bills of purchase have been raised by the petitioner, and there are subsequent transactions as shown below:

29-Jun-18	By Bill No. 160, Dt. 29-JUN-18 Qty	PG		2,00,256.00	93,14,244.00	Cr
29-Jun-18	By Bill No. 161, Dt. 29-SEP-18 Qty	PG		3,66,309.00	96,80,563.00	Cr
30-Jun-18	By Bill No. 165, Dt. 30-JUN-18 Qty	PG		2,20,170.00	99,00,723.00	Cr
30-Jun-18	By Bill No. 164, Dt. 30-JUN-18 Qty	PG		3,47,734.00	1,02,48,457.00	Cr
02-Jul-18	By Bill No. 168, Dt. 02-JUL-18 Qty	PG		3,04,978.00	1,05,53,435.00	Cr
04-Jul-18	By Bill No. 177, Dt. 04-JUL-18 Qty	PG		3,90,080.00	1,09,43,515.00	Cr
05-Jul-18	By Bill No. 178, Dt. 05-JUL-18 Qty	PG		2,65,098.00	1,12,08,613.00	Cr
09-Jul-18	By Bill No. 187, Dt. 09-JUL-18 Qty	PG		2,83,342.00	1,14,91,955.00	Cr
10-Jul-18	By Bill No. 189, Dt. 11-JUL-18 Qty	PG		1,91,673.00	1,16,83,628.00	Cr
11-Jul-18	By Bill No. 192, Dt. 11-JUL-18 Qty	PG		3,25,965.00	1,20,09,593.00	Cr
11-Jul-18	By Bill No. 193, Dt. 11-JUL-18 Qty	PG		3,01,638.00	1,23,11,231.00	Cr
11-Jul-18	By Bill No. 195, Dt. 11-JUL-18 Qty	PG		1,80,818.00	1,24,92,049.00	Cr
11-Jul-18	By Bill No. 196, Dt. 11-JUL-18 Qty	PG		1,55,842.00	1,26,47,891.00	Cr
11-Jul-18	To RTGS	BB28	10,00,000.00		1,16,47,891.00	Cr
12-Jul-18	To RTGS	BB28	5,00,000.00		1,11,47,891.00	Cr
16-Jul-18	By Bill No. 206, Dt. 16-JUL-18 Qty	PG		3,91,368.00	1,15,39,259.00	Cr
16-Jul-18	To RTGS	BB28	5,00,000.00		1,10,39,259.00	Cr
20-Jul-18	To NEFT	BB28	5,00,000.00		1,05,39,259.00	Cr
20-Jul-18	To NEFT	BB28	5,00,000.00		1,00,39,259.00	Cr
24-Jul-18	To RTGS	BB28	10,00,000.00		90,39,259.00	Cr
27-Jul-18	To RTGS	BB28	6,00,000.00		84,39,259.00	Cr
01-Aug-18	To RTGS	BB28	5,00,000.00		79,39,259.00	Cr
02-Aug-18	To RTGS	BB28	5,00,000.00		74,39,259.00	Cr
15-Oct-18	To Chq No. 000022 k.k steel	BB32	10,00,000.00		64,39,259.00	Cr
17-Nov-18	To Chq No. 000023 to k.k steel	BB32	6,00,000.00		58,39,259.00	Cr
10-Dec-18	To Chq No. 00027 TO K.K STEEL	BB32	3,01,417.00		55,37,842.00	Cr
31-Mar-19	To Being the amount Debit Note on A/c of Defective Quality of scrap supplied by you to us ,the amount debited to our account by our customers and same is herewith debited to your account	JB	58,65,585.00		3,27,743.00	Dr
Total				1,81,50,974.00	1,78,23,231.00	



12. The subsequent bills of purchase by the corporate debtor raise a reasonable question against the claim of the corporate debtor as despite the so-called "poor quality" of scrap supplied by the petitioner-operational creditor, the respondent-corporate debtor continued to place the demand orders for the same goods from the operational creditor. Moreover, the respondent-corporate debtor has availed the benefit of tax collected at source through declarations made under Form 27C of the Income Tax Act, which clearly shows that the iron scrap was consumed by the corporate debtor in its manufacturing activities. Thus, estoppel would operate against the respondent-corporate debtor. Further, it is stated by the petitioner-operational creditor that no reply was received to Form 3 dated 08.04.2019 served through email dated 29.04.2019 regarding the payment or notice of the existence of any dispute except a notice dated 21.05.2019 in a civil suit filed before Civil Judge, Ludhiana.

13. In this regard, we are conscious of the decision of Hon'ble NCLAT in the order dated 17.11.2021 in ***Henan Boom Gelatin Co. Ltd. v Sunil Healthcare Limited*** Company Appeal (AT) (Insolvency) No. 256 of 2021, held that

*"23. The pre-existing dispute which may be ground to thwart an Application under Section 9 has to be real dispute a conflict or controversy, a conflict of claims or rights should be apparent from the reply as contemplated by Section 8(2). The Corporate Debtor is not to raise bogie of disputes but there has to be real substantial dispute. It is true that the Adjudicating Authority has to see the reply and the contents therein and has not to enter into adjudication of the dispute. He is only required to look into the substance of the pleading to find out whether there is a real dispute is decipherable from the reply."*

14. As discussed above, there is no reply to the demand notice from the petitioner and the civil suit filed by the corporate debtor regarding the amount due as per the debit note dated 31.03.2019 has been dismissed in default vide order dated 12.10.2021 by the Id. Civil Judge. Also, the corporate debtor has admittedly used the so-called defective material and claimed tax benefits on the same. In view of the above facts and the decision of the Hon'ble NCLAT, there is no real dispute or conflict, which is decipherable from the record available and averments made by the corporate debtor.

15. The other issue for consideration is whether this application is filed within limitation. This application was filed on 09.07.2019 vide Diary No.3302. Whereas the first default occurred on 11.12.2018, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

16. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹ 55,37,841/-. The operational creditor has provided iron scrap to the corporate debtor and raised invoices attached as Annexure A-3. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

17. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is

undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

18. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s Dev Rolling Mills Private Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below.

- I. 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;
- II. transferring, encumbering, alienating, or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- III. 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- IV. the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- V. 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 the moratorium period. 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- VI. 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 the corporate debtor under Section 33 as the case may be.

19. In Part III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Nikhil Sachdeva, Insolvency Resolution Professional. The Law Research Associate of this Tribunal has checked the credentials of Mr. Nikhil Sachdeva, and there is nothing adverse against him, and his AFA is valid up to 21.09.2023. In view of the above, the appointment of Mr. Nikhil Sachdeva, Registration [No.IBBI/IPA-001/IP-P-02743/2022-2023/14184,Email:nikhilsachdeva.ca@gmail.com](mailto:nikhilsachdeva.ca@gmail.com), mobile No. 8699003124 as the Interim Resolution Professional with the following directions:-

- i. The term of appointment of Mr. Nikhil Sachdeva shall be in accordance with the provisions of Section 16(5) of the Code;
- ii. The Interim Resolution Professional i.e., Mr. Nikhil Sachdeva is directed to file his written consent within seven days of this order.

- iii. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended, and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iv. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- v. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency

Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- vi. It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vii. The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors is to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share

with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- viii. The Interim Resolution Professional/ Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies, and other entities with a request for information/documents available with those

authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Interim Resolution Professional/Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- ix. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the 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 the constitution of the Committee; and
- x. The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

20. We direct the financial creditor to deposit a sum of ₹70,000/- (Rupees Seventy Thousand Only) with the Interim Resolution Professional to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as

accounted for by the Interim Resolution Professional on the conclusion of CIRP.

21. The petition is admitted accordingly.

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

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

January 11, 2023  
PB/ASH