

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

**C.P.(IB)/920/MB/C-III/2022**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

*In the matter of*

**Sanyo Special Steel Manufacturing India Pvt. Ltd.,**

Through Mr. Pradeep Salian (CS)

74, Ganesh Apartments, Lady Jamshedji Road,  
Mahim, Mumbai - 400 016

**...Operational Creditor/ Applicant**

Vs

**M/s. Supreme Engineering Ltd.**

R-223, MIDC Complex, Thane, Belapur, Road, Rabale,  
Navi Mumbai, Maharashtra - 400 701

**...Corporate Debtor/ Respondent**

**Order Pronounced on: 11.01.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI  
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG  
HON'BLE MEMBER (J)**

***Appearances:***

For the Operational Creditor: Adv. Kavita Pawar

(Did not mark her appearance)

For the Corporate Debtor : Adv. Bhavik Manek a/w Adv Pranav Chavan  
i/b Mahesh Menon and Co.

**Per: Charanjeet Singh Gulati, Member (T)**

**ORDER**

1. The Present Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**“IBC”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Sanyo Special Steel Manufacturing India Pvt. Ltd. (**“Operational Creditor”**) through Mr. Pradeep Salian (CS) for initiating Corporate Insolvency Resolution Process (**“CIRP”**) against M/s. Supreme Engineering Ltd. (**“Corporate Debtor”**) for default in repayment of ₹ 1,17,56,287/- (Rupees One Crore Seventeen Lakhs Fifty Six Thousand Two hundred and Eighty Seven only) as on 30.06.2022.

**Relevant Brief Facts as mentioned in the Petition**

2. The Operational Creditor is a private limited company. The name of the company changed from ‘Mahindra Sanyo Special Steel Private Limited’ to ‘Sanyo Special Steel Manufacturing India Private Limited’.
3. The Operational Creditor has been in business relations with Corporate Debtor for more than 18 years. Corporate Debtor used to issue various orders with delivery schedules over telephone conversations and sent through Emails for supply of alloys steel and special steel products from the operational creditor for supply of material. The operational creditor has also supplied the material as per schedule decided with corporate debtor over the telephone conversations and Emails the operational creditor has supplied materials to the corporate debtor and completed the said order as mutually decided with corporate debtor. The copies of order with delivery schedules, Purchase orders are annexed to the petition.
4. There was no dispute relating to quantity and quality of the material supplied to the Corporate Debtor. Thereafter, from 14.02.2019 to 30.04.2019 the

operational creditor issued invoices to the corporate debtor, in which on the back side of every invoice the terms and Conditions of the sale are specifically mentioned in Clause 4 (Page 24) as under: -

***“The payment shall be made by the buyer on or before the due date or as per the terms of the payment stated in this invoice, failing to which the Company will charge the interest @15% per annum on such unpaid bill amounts.”***

5. The Operational Creditor made this fact clear on the invoice that payment after due date will be charged along with interest **@15% per annum** and since this fact was mentioned on the invoice that is considered as an Agreement between both parties and said terms are binding on both the parties, which confirms the rate of interest on outstanding payment after due date.
6. The Principal debt amount of debt is 80,63,110/- and along with interest calculated till the date of filing of present case is 1,17,56,287/- which is above the threshold limit of Rs. 1 Crore and which complies the requirements of sec 4 of IBC read with notification no. S. O. 1205 (E) dated 24.03.2020 meets with criteria of 1 Crore.
7. The Operational Creditor took follow up of with the Corporate Debtor through various emails on various occasions and on 12.07.2019 through letter the Corporate Debtors one of the divisions i.e. Supreme Steel gave confirmation of the statement of Account on 12.07.2019 that amount of Rs. 93,63,110/- was due and payable by the Corporate Debtor which is annexed to the Petition.
8. The Corporate Debtor and Operational Creditor had few emails exchanged in between them regarding the outstanding payment which are annexed to the Petition.

9. After the rigorous follow up and various emails the Corporate Debtor has issued 3 (three) cheques of the Bank of Baroda for outstanding amount with interest for Rs.93,63,108/- on 13.08.2020 to 1.09.2020. These cheques got dishonoured and therefore Legal Demand Notice, dated 30.09.2020 were sent to Corporate Debtor which remains non replied. The details of the cheques are as under:

Sr. no.	Cheque no.	Dates	Amounts
1.	001176	13.08.2020	45,06,126/-
2.	001175	01.09.2020	18,42,275/-
3.	001174	01.09.2020	30,14,707/-
<b>Total</b>			<b>93,63,108/-</b>

10. The Operational Creditor issued a demand notice dated 09.04.2022 under Section 8 of IBC. The said demand notice was served to the Corporate Debtor.
11. The said notice was replied to by the Corporate Debtor and he denied the contents of the notice. The Corporate Debtor denied the entire amount including interest and challenged the maintainability of the claim and raised the dispute.
12. The Operational Creditor filed the case before this Tribunal and after that notices were issued to the Corporate Debtor, but even after appearing before this forum, the Corporate Debtor failed to file their affidavit in reply. Hence matter was posted for ex-parte order on 22.12.2022. Thereafter on 26.12.2022 the Corporate Debtor filed the Interlocutory Application for setting aside ex-parte order and their reply was taken on record.
13. The Petitioner has relied on the Judgement of the Hon'ble NCLAT Principle Bench in **Company Appeal (AT) (Ins) no. 690 of 2022** (Arising out of order dated 07.06.2022 passed by Adjudicating Authority/ National Company Law

Tribunal, Mumbai Bench in CP IB No. 1443/MB-IV/2020) MR. PRASHANT AGRAWAL VS VIKASH PARASRAMPURIA AND ORS.

**Reply by the Corporate Debtor:**

14. The Corporate Debtor in its affidavit in reply dated 08.10.2022 stated that the petition is false, frivolous, mischievous, vexatious and bad in law. This Tribunal has no jurisdiction to try and entertain the present Petition because the claim of Operational Creditor is far less than the amount of Rs.1 crore which is the pecuniary threshold for filing any application under Section 9 of IBC.
15. It is also submitted that the Operational Creditor has attempted to add interest on the principle amount to increase its claim over Rs. 1 Crore so that the present Petition becomes maintainable. The Corporate Debtor had never agreed to pay interest @15% p.a. or at other rate as claimed by the Operational Creditor in order to bring the present petition under the jurisdiction of this Tribunal.
16. The Operational Creditor has suppressed true material facts with a view to mislead this Tribunal. The Operational Creditor is guilty of *supressio very and suggesio falsi*.
17. A part of the claim of the Operational Creditor is also barred by the law of limitation. In the circumstances, the Petition filed by Operational Creditor is liable to be dismissed *in limine*.
18. The Form 3 notice dated 09.04.2022 was replied by the Advocates of the Corporate Debtor vide its letter dated 19.04.2022, wherein it was pointed out to the Operational Creditor that no application under IBC would be maintainable because the alleged principle amount is less than Rs. 1 crore.

19. The Corporate Debtor pointed out that the Operational Creditor has not proposed any Interim Resolution Professional which by itself indicates that there is no need for appointing any Interim Resolution Professional (“IRP”).
20. The Corporate Debtor denied amount of Rs. 1,17,56,287/- as an operational debt. The said amount has been arrived at by adding interest @15% p.a., which was never agreed by the Corporate Debtor.
21. The Corporate Debtor have also submitted that when the Operational Creditor sent the notice dated 20.09.2020, to the Corporate Debtor, there was no demand of interest at the said rate or at any other rate. If there been any contract relating to interest, the same would have been specified by the Operational Creditor in the said notice. None of the emails and letters of the Operational Creditor have ever demanded interest on the outstanding dues payable by the Corporate Debtor.
22. The purchase orders dated 26.11.2018 and 19.02.2019 which was accepted by the Operational Creditor also does not have any clause relating to interest which has been agreed by the Corporate Debtor. The terms contained in the rear portion of the invoices have not been accepted by the Corporate Debtor. The Corporate Debtor denied that there was any agreement to pay interest @15% or any other rate. The letter dated 12.07.2019 also shows that the Corporate Debtor had then only confirmed an amount of Rs. 93,63,110/- as the balance confirmation as on 30.06.2019. This amount is below Rs. 1 Crore, is not within the jurisdiction of this Tribunal to try and entertain the present Petition.
23. The Corporate Debtor has submitted that at page 10 of the Petition, the principle amount is only Rs.80,63,110/- and an amount Rs. 70,84,816/- has been added to arrive at the amount of Rs. 1,17,56,287/- (which should

actually total as Rs. 1,51,47,926/-) to bring the present Petition within the Jurisdiction of this Tribunal.

24. The Corporate Debtor by additional affidavit dated 18.07.2023 submitted that the Books of Account maintained by the Corporate Debtor as on 30.06.2019, Rs.93,63,110/- was outstanding amount due and payable by the CD and it is pertinent to note that No Interest was charged on the balance amount by the Operational Creditor prior thereto.
25. The Operational Creditor issued letter dated 12.07.2019 confirming the Balance Amount with Statement of Accounts as on 30.06.2019. The Operational Creditor has confirmed the Amount Receivable as on 30.06.2019 is Rs. 93,63,110/- and that too without interest.
26. After receipt of Balance confirmation letter by the Operational Creditor, Corporate Debtor have paid Rs. 10,00,000/- (Rupees Ten Lakhs only) on 08.08.2019 and Rs. 3,00,000/- (Rupees Three Lakhs only) on 05.06.2020, total amounting to Rs. 13,00,000/- (Rupees Thirteen Lakhs only).
27. After deducting the payment made by the Corporate Debtor, current amount payable is Rs. 80,63,110/- (Rupees Eighty Lakhs Sixty-Three Thousand One Hundred Ten only) as on 05.06.2020, therefore that total claim amount does not fall under pecuniary jurisdiction of this Tribunal.

**Observations and Findings:**

28. We have heard the Ld. Counsels for the Petitioner and the Respondent and perused the record.
29. In reply to the petition, the Corporate Debtor itself has acknowledged the debt of Rs. 80,63,110/-. The issue at hand pertains to whether the operational debt should include interest or not, and the other issue concerns limitation.

30. The Corporate Debtor acknowledged the liability of outstanding dues owed to the Operational Creditor through Letter dated 12.06.2019 and sent statement of confirmation of accounts. Therefore, the period of limitation is to be calculated from 12.06.2019, and the petition is to be filed on or before 11.06.2022.

31. However, Hon'ble Supreme Court of India in **Misc Application no.21 of 2022 in Misc. Application no.665 of 2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020** stated that-

“5.....

- I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. in the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

32. In the aforesaid judgement, the Hon'ble Supreme Court took the cognizance of the difficulties that might be faced by the litigants in filing Petitions/Applications/Suits/Appeals/all other proceedings in view of the situation arising from the massive outbreak of coronavirus pandemic and consequently excluded the period from 15.03.2020 to 28.02.2022 for the purposes of computing the limitation. If this period is excluded, then in this case limitation for filing petition would extend to 11.06.2024. As this Petition

has been filed on 22.07.2022, therefore, the present Petition falls well within the limitation period.

33. Further, in relation to the issue, whether the operational debt is to be calculated along with interest or not, reference is made to the judgement of the Hon'ble National Company Law Appellate Tribunal in **Prashant Agarwal vs. Vikash Parasrampur & Anr. Company Appeal (AT) (Ins.) No 690 of 2022**. where three Member Bench of the Appellate Tribunal held that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which is stipulated in the invoice has to be added. The relevant para is as follows:

*“9(vi) It is, therefore, clear from these facts **that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself.** It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O I205(E) dated 24.3.2020 (Supra), and meets the criteria of Rs. 1 crore as per Section 4 of IBC and Application is therefore maintainable in present case.*

*We concur with the orders of Adjudicating Authority on this issue also.”*

**(Emphasis Provided)**

34. The aforementioned judgement has been reaffirmed in the case of **Mr. Anuj Sharma Vs. Rustagi Projects Pvt. Ltd. & Anr. Company Appeal (AT) (Ins.) No. 550 of 2023 dated 04.07.2023**.

35. In the present case, the Operational Creditor's claim is based on three invoices dated 14.02.2019, 23.04.2023 and 30.04.2019, each containing the terms and Conditions of the sale on their reverse side. The relevant clause is as follows:

Clause 4:

*"The payment shall be made by the buyer on or before the due date or as per the terms of the payment stated in this invoice, failing to which the Company will charge the interest @15% per annum on such unpaid bill amounts."*

36. In view of the facts and above mentioned judgment, we are of the view that the claim shall encompass both principal debt amount and interest as stipulated in the invoice. Further the contention of the Corporate Debtor that they have never agreed to pay any interest is of no avail in view of the specific stipulation in the reverse side of the invoice. Each invoice includes a note that refers to the terms and conditions on the reverse side, which are considered an integral part of the invoice and are therefore agreed upon. Additionally, on 30.09.2020, the Operational Creditor sent a legal notice to the Corporate Debtor, requesting both principal amount and interest, same was never objected by the Corporate Debtor.

37. In the present case, the claim comprises the principal debt amount of Rs. 80,63,110/- and an interest amount (@15%) of Rs. 36,93,177/-. The total outstanding amount aggregates to Rs. 1,17,56,287/-. Consequently, the Operational Creditor has substantiated the debt beyond the threshold limit specified in Section 4 of IBC, demonstrating valid issuance and service of the demand notice and default by the Corporate Debtor. Therefore, it is a fit case to be admitted under CIRP. Accordingly this ***petition is admitted*** with the direction as follows:-

- a. The above Company Petition No. (IB) -920(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Supreme Engineering Ltd.**
- b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Umesh Balaram Sonkar** ([rosonkar1603@gmail.com](mailto:rosonkar1603@gmail.com)); 7874447169, IP Registration No: IBBI/IPA-001/IP-P-02619/2021-2022/14043 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses only and not towards fee till his fees is decided by COC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

38. Accordingly, this Petition is **admitted**.

39. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
40. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**

Arpan, LRA