

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1094/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

M/s Vyash Vanijya Private Limited

[CIN : U51909WB2011PTC171506]

Address: 1/A, Madan Mohan Burman
Street, Kolkata Kolkata WB 700007

... Operational Creditor/Applicant

V/s.

Omicron Steel Trades Private Limited

[CIN: U27310MH2009PTC196778]

Address: Office No.115, Loha Bhavan,
Princess Dock, Division P.D'mellow Road
Masjid Bandar (E), Mumbai- 400009

... Corporate Debtor/Respondent

Order Dated: 10.08.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : None present.

For the Respondent(s) : None present.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **M/s Vyash Vanijya Pvt. Ltd.**, (“the Operational Creditor”) on 26.09.2022, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Omicron Steel Trades Private Limited** (“the Corporate Debtor”).
2. The Corporate Debtor is a Company incorporated on 30.10.2009 under the Companies Act, 2013, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U27310MH2009PTC196778. Its registered office is at Office No.115, Loha Bhavan, Princess Dock, Division P.D’mellow Road Masjid Bandar (E), Mumbai- 400009. Therefore, this Bench has jurisdiction to deal with the present Petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of ₹22,47,12,269/- (Rupees Twenty-two Crores Forty-seven Lakhs Twelve thousand two hundred Sixty-nine only). The Operational Creditor submitted that he has supplied goods to the Corporate Debtor till 14.02.2014. The last Invoice No.69 was raised on 14.02.2014 for Rs.43,39,069/-. The

last date of default is 14.02.2014 as per the invoice given in Part-IV of the Petition.

4. The Operational Creditor submits that the payment of last tax invoice dated 14.02.2014 had fallen due on 14.02.2014 and thereafter the same has remained unpaid till date by the Corporate Debtor.
5. The Operational Creditor has been demanding payment by way of various phone calls, personal meetings and emails with the Corporate Debtors with an intention to collect the due amount.
6. Reminder letter send by the Operational Creditor and reply received by the Corporate Debtor are as under:
 - 6.1. The Operational Creditor had sent a letter on 07.04.2014 requesting for payment of material to the Corporate Debtor for the outstanding dues and vide letter dated 30.04.2014 Corporate Debtor has requested for extension of time.
 - 6.2. The Operational Creditor has sent reminder letter on 07.04.2014 and reply from the Corporate Debtor was received on 30.06.2015 requesting further extension of time.
 - 6.3. The Operational Creditor has sent reminder on 12.05.2016, 16.04.2018, 15.05.2021, 14.11.2021 and received reply letter dated 30.05.2016, 30.04.2020, 30.05.2021, 30.11.2021 from the Corporate Debtor.

- 6.4. Apart from this Corporate Debtor had requested for the payment several times through phone calls and personal meetings and also mentioned that he will be forced to take legal action if the commitments are not fulfilled.
- 6.5. The Operational Creditor has sent final reminder for payment on 01.03.2022, but not received any reply from the Corporate Debtor. When no reply received, the Operational Creditor through their representative visited office of the Corporate Debtor and again Corporate Debtor has requested for extra time as they were facing severe financial crises and promised to close all the outstanding amount in 1 year' time frame.
7. The Operational Creditor submitted that as the Corporate Debtor completely failed to pay the balance amount of Rs.22,47,12,269/- even after repeated calls and follow ups, Operational Creditor had no other option but to take legal action against the Corporate Debtor. On 05.08.2022, its Advocate sent a demand notice in Form 3 under Rule 5 demanding payment under the Insolvency and Bankruptcy Code, 2016. Thereafter, on 27.08.2022 email was sent by Advocate informing about the demand notice sent along with soft copy of the demand notice for their ready reference.
8. This matter was first listed on 13.10.2022, Counsel for the Operational Creditor was present, and Court Notice was ordered. Even after issuance of Court Notice, Corporate Debtor did not appear when the matter was listed on 22.12.2022, 21.02.2023.

Thereafter, matter was listed on 10.04.2023 and 15.05.2023, none present for both the parties. On 07.07.2023, Counsel for the Operational Creditor was present and matter was again listed on 26.07.2023. The Operational Creditor and the Corporate Debtor did not appear on 26.07.2023, however, this Bench perused the material available on records and matter was reserved for orders.

Findings:

9. The Operational Creditor has claimed an amount of Rs.22,47,12,269/- due on the invoice raised for goods sold. H.R. Coils was sold to the Corporate Debtor and invoices were raised by the Operational Creditor for good supplied. The Operational Creditor has raised invoices and copy of invoices are attached with the Petition. Also, the Operational Creditor has filed affidavit of service dated 20.12.2022, it is seen that the mails/registered post exchanged between the concerned persons of both the parties, which makes it clear that the services were rendered by Operational Creditor, for which the payment was acknowledged as due by the Corporate Debtor. Accordingly, we feel that an operational debt of ₹22,47,12,269/- is due from the Corporate Debtor, who had defaulted in payment thereof despite numerous follow-ups and promise to pay.
10. Though, the Corporate Debtor was not represented by anyone in the hearing and not filed any reply to the Petition, we find that the case of Operational Creditor is clear and does not need any further

clarification from the Corporate Debtor in view of fact that the Corporate Debtor had opportunity to refute the claim of debt when it was served the statutory demand notice dated 05.08.2022 via Speed Post. It is pertinent to note that, Counsel for the Corporate Debtor neither appeared nor filed any submissions.

11. This Bench noticed that Prima facie, this petition appears to be not maintainable on the ground of limitation as the default is stated to have occurred in the year 2014, and no acknowledgment of debt is on record except few letters from the Corporate Debtor, which are general in nature. Accordingly, vide order dated 15.05.2023 The parties were asked to clarify how these letters tantamount to acknowledgment under Section 18 of the Limitation Act.
12. No response was received from the Operational Creditor thereafter. On perusal of letters referred in preceding para(s) also, it is noticed that the Corporate Debtor is stated to have responded on 30.05.2016, 30.04.2018, 30.04.2020, 30.05.2021, 30.11.2021. Though, these letters expresses inability to pay on part of corporate debtor and further assurances, but this Bench notices that letter from Corporate Debtor and Letters from Operational Creditor are identical in font and appearance, giving rise to doubt whether it is a case of colluded petition. This suspicion is further fortified by the fact that the none of invoice contains details as to how material came to be transported to the Corporate Debtor, the operational Creditor kept relying on singular communication every year that

the payment would come. Further, the material is stated to have been supplied between 27.1.2014 to 14.2.2021, however, there is nothing on record about the credit period agreed between the parties, except statement of computation of default suggesting that the payment was to be made on same day. The balance confirmation for each year signed by the corporate debtor are undated. It is incomprehensible to us that the Operational Creditor continued to supply material worth Rs. 22.47 crores, without even receiving the amount of Output tax, which it was under obligation to deposit. The whole of transaction between these parties appear to be sham, and the present petition is nothing but a colluded attempt to cover these sham transactions.

13. In view of foregoing, we feel that this Petition deserves to be dismissed. Hence, the C.P.(IB)/1094(MB)2022 is **dismissed as not maintainable**.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

10.08.2023/Bmb