

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT - IV

IB/277/ND/2022

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Bhushan Power & Steel Limited

...Applicant/Operational Creditor

Versus

A.G. Pipes Pvt. Ltd.

...Respondent/ Corporate Debtor

Order Delivered on: 12.07.2024

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,

HON'BLE MEMBER (TECHNICAL)

PRESENT:

**For the Applicant : Adv. Chandra Shekhar Yadav,
Adv. Prem Ranjan Kumar, Adv. Pakhi Dutta
Roy**

**For the Respondent : Adv. Rakesh Kumar, Adv. Preeti Kashyap,
Adv. Ankit Sharma, Adv. Rishabh Arora,
Adv. Varun Pandit, Adv. Yash Dhawan**

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The instant application was filed by M/s Bhushan Power & Steel Limited (hereinafter referred as 'Applicant'/'Operational Creditor'), having registered office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutub Institutional Area, New Delhi-110067 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for

brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s A.G. Pipes Pvt. Ltd. (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 2,14,71,017.1/- only.

2. The Respondent Company M/s A.G. Pipes Private Limited having CIN: U26900DL2008PTC179166 was incorporated on 06.06.2008 under the provisions of the Companies Act, 1956 having its registered office situated at G-7, Gupta Plaza, LSC of Enclave, Paschim Vihar, New Delhi-110087. Since the registered office of the Respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.
3. The present petition was filed on 16.12.2021 before this Adjudicating authority by Ms. Garima Vashist, the Authorized Representative of the Operational Creditor's Company, authorized vide Power of Attorney dated 05.08.2021 executed by Mr. Anil Kumar Singh, Executive Vice President and Whole Time Director of Operational Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code"). It is submitted that Mr. Anil Kumar Singh has been appointed as Whole time Director and Chief Operating Officer of Operational Creditor vide Board Resolution dated 26.03.2021 and Agreement dated 12.04.2021. Vide resolution of Board of Directors dated 23.04.2021 he was re-designated as Executive Vice President and Whole Time Director. Copies of the Board Resolution dated 26.03.2021, Agreement dated 12.04.2021, Board Resolution dated 23.04.2021 and Power of Attorney dated 05.08.2021. The total amount claimed to be due and payable as on 30.09.2021 is Rs. 2,14,71,017.1/- which includes principal amount of Rs. 1,49,04,757/- as well as interest of Rs. 65,66,260.07/- @ 24% per annum as on 30.09.2021.

4. **Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor**

- a) The Operational Creditor supplied steel products inter alia Precision Tubes and raised Tax invoices from time to time as per the supplies. The Operational Creditor supplied the said products from its separate units which maintain the separate accounts for the supplies made.
- b) As per the Ledger account maintained by the Operational Creditor, Rs. 1,49,04,757/- is outstanding towards the principal amount, the details of which are as under: -
- The outstanding amount from the unit with SAP Code 1000224 is Rs. 1,42,02,230/-. The last payment was made by the Corporate Debtor on 30.11.2019 and therefore, the interest is calculated w.e.f. 01.12.2019.
 - The outstanding amount from the unit with SAP Code 1000579 is Rs. 7,02,527/-. The last payment was made by the Corporate Debtor on 23.09.2019 and therefore, the interest is calculated w.e.f. 01.12.2019.
- c) The applicant had sent a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor demanding outstanding principal amount of Rs. 2,14,71,017.1 which was duly served upon the Corporate Debtor at its registered office.
- d) The applicant submits that the applicant has not received any payment from the Corporate Debtor. The Corporate Debtor issued a reply dated 13.10.2021 to the demand notice raising frivolous issues which do not amount to existence of any dispute.

5. **Reply on behalf of the Corporate Debtor/Respondent**

- a) It is submitted that the present application is not maintainable under section 4 of the Insolvency and Bankruptcy Code, 2016 since the principal amount of operational debt is less than 1 Crore. It is

further submitted that the applicant/operational creditor has claimed only Rs. 7,02,527/- as an outstanding amount.

- b) It is submitted that from a bare perusal of the memo of parties attached with the application, it is clear that the applicant/operational creditor had only arrayed the respondent/corporate debtor as a sole respondent in the present matter. In the present application the applicant/operational creditor has tried to hoodwink the Tribunal by making a deliberate attempt to seek relief against an entity which is not party herein so no cause of action had ever arisen in favour of the applicant against the corporate debtor at any point of time.
- c) It is submitted that the liability had already been discharged by the respondent/corporate debtor towards the applicant/operational creditor which is clearly evident from a bare perusal of the ledger account pertaining to the period commencing from 01.04.2016 to 31.03.2020 which is annexed with the application as well as from the perusal of email dated 06.09.2019. The same is annexed with the application.
- d) It is submitted that the alleged claim made by the applicant/operational creditor is directly hit by section 9(5)(ii)(b) and (d) of the Code because the invoices placed by the applicant on record do not have any concern with the respondent/corporate debtor except which are on pages 75 to 76 and pages 125 to 129 only, against which payments had already been made accordingly by the respondent/corporate debtor.
- e) It is submitted that there is no material record for the purpose of substantiating any liability of the respondent/corporate debtor and also there is no evidence on record to prove that the corporate debtor has defaulted in making payments in any point of time.
- f) It is submitted that the applicant has alleged that it commands good reputation among its customer, dealers and market at large which is absolutely and completely false because it has come to the knowledge of the respondent/corporate debtor that Bhushan Power

Steel had been prosecuted by various governmental agencies like the Enforcement Directorate and Central Bureau of Investigation for committing financial fraud of several thousand crore rupees against various national banks in India and also other financial institutions.

g) It is further submitted that due to misdeeds of the applicant/operational creditor the supply chain of the material being supplied to the respondent/corporate debtor have been broken due to which the respondent/corporate debtor had suffered huge financial losses.

6. Rejoinder on behalf of Operational Creditor to the reply filed by the Corporate Debtor

a) It is submitted that the present application is maintainable under section 4 of IBC, 2016, as the total operational debt due is Rs. 2,14,71,017.1 as on 30.09.2021 which includes principal amount of Rs. 1,49,04,757/- as well as interest of Rs. 65,66,260.07 @ 24% per annum.

b) It is submitted that the ledger account attached by the Corporate Debtor with the reply does not contain the true picture of the transactions between the parties and the same has been manipulated by the corporate debtor.

c) It is submitted that the email dated 06.09.2019 was written by the Corporate Debtor itself and not by the operational creditor and the same, in no way, shows the stand of operational creditor.

d) It is pertinent to mention that the operational creditor has itself undergone CIR process and subsequent to the approval of resolution application by NCLT, the new management took over and there were a lot of mis-management and the complete records were not traceable. The earlier demand notice issued by the operational creditor and its reply by the corporate debtor has now been traced and the same are being filed. It is further submitted that the invoices which have been placed on record were also sent along with the earlier demand notice. Further the ledger account was also sent containing the details of transactions which are part of the present

petition. No such defense was raised by the corporate debtor in its reply to the earlier demand notice. Therefore, the provisions of Section 5(2)(b) & (d) of IBC, 2016 are not attracted as no dispute was ever raised prior to receipt of the demand notice.

Analysis and Findings

7. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, Rejoinder filed by the Operational Creditor and written submissions presented by both parties. Since the registered office of the Respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
8. The main issue before us in this application to be decided first is whether the said petition is maintainable in terms of Section 4 of the IBC, 2016.
9. The present application is filed by M/s Bhushan Power & Steel Limited claiming default of Rs. 2,14,71,017.1 which includes principal amount of Rs. 1,49,04,757/- along with interest calculated at 24% per annum i.e., 65,66,260.07/- against the M/s A.G. Pipes Pvt. Ltd. The date of default as mentioned in Part IV of Form No. 5 filed with the application is 30.09.2021.
10. The Learned Counsel for the Respondent opposed the application by stating that the present application is not maintainable as the invoices raised by the applicant pertains to the two different entities i.e., A.G. Pipes Pvt. Ltd., and A.G. Pipes.
11. Now the question arises before us whether A.G. Pipes Pvt. Ltd., and A.G. Pipes are the same entities or different entities. It is to be noted that this Adjudicating Authority vide its order dated 16.10.2023 directed the Operational Creditor and the Corporate Debtor to clarify

whether AG Pipes and AG Pipes Private Limited are one and same entity or different entity. The Corporate Debtor, in compliance of the said order dated 16.10.2023, filed an affidavit stating that M/s A.G. Pipes Pvt. Ltd. i.e., the Corporate Debtor herein and the A.G. Pipes, a sole proprietorship firm are both separate and independent entities. In support of his contention the Respondent/Corporate Debtor have attached the following documents are as follows:-

- i. GST Registration Certificate
- ii. Electricity Bill
- iii. License Fee paid to Directorate of Urban Local Bodies
- iv. UDYAM (MSME) Registration Certificate
- v. VAT Registration Certificate
- vi. Pan Card of the Proprietor
- vii. EPF Certificate
- viii. Central Excise Department Registration

Thus, it is made clear that M/s A.G. Pipes Pvt. Ltd. i.e., the Corporate Debtor herein and the A.G. Pipes, a sole proprietorship firm are both different entities.

12. On perusal of the documents available on records, it is observed that the applicant has attached all the invoices raised by it as Annexure-3 at Page Nos. 36-76, out of which only two invoices are in the name of A.G. Pipes Pvt. Ltd., and rest of all the invoices are in the name of A.G. Pipes which is not the party herein. The details of the invoice is reproduced hereunder:-

S.NO	DATE	INVOICE NO.	NAME	AMOUNT (INR)
1	08.12.2017	0601005385	A.G. PIPE	3,73,310/-
2	08.12.2017	0501005386	A.G. PIPE	1,23,180/-
3	12.12.2017	0601005539	A.G. PIPE	4,08,078/-
4	12.12.2017	0601005540	A.G. PIPE	1,32,573/-
5	14.12.2017	0601005607	A.G. PIPE	1,87,369/-
6	14.12.2017	0601005609	A.G. PIPE	92,422/-
7	15.12.2017	0601005017	A.G. PIPE	2,73,882/-

8	15.12.2017	0601005660	A.G. PIPE	1,85,602/-
9	18.12.2017	0601005726	A.G. PIPE	3,90,507/-
10	21.12.2017	0601005785	A.G. PIPE	8,09,849/-
11	21.12.2017	0601005823	A.G. PIPE	4,26,115/-
12	21.12.2017	0601005824	A.G. PIPE	1,50,414
13	21.12.2017	0601005825	A.G. PIPE	17,016/-
14	22.12.2017	0601005861	A.G. PIPE	1,26,440/-
15	22.12.2017	0601005862	A.G. PIPE	6,30,424/-
16	02.01.2018	0601006118	A.G. PIPE	4,26,746/-
17	02.01.2018	0601006119	A.G. PIPE	86,299/-
18	04.01.2018	0601006174	A.G. PIPE	5,47,721/-
19	08.01.2018	0601006274	A.G. PIPE	4,75,115/-
20	10.01.2018	0601006371	A.G. PIPE	7,79,449/-
21	15.01.2018	0601006476	A.G. PIPE	3,41,592/-
22	16.01.2018	0601006589	A.G. PIPE	3,29,106/-
23	16.01.2018	0601006591	A.G. PIPE	2,26,855/-
24	20.01.2018	0601006709	A.G. PIPE	4,35,355/-
25	22.01.2018	0601006780	A.G. PIPE	3,45,132/-
26	20.01.2018	0601006782	A.G. PIPE	1,11,333/-
27	20.01.2018	0601006783	A.G. PIPE	80,383/-
28	17.02.2018	0601007585	A.G. PIPE	4,53,816/-
29	28.03.2018	0601008603	A.G. PIPE	1,37,151/-
30	28.03.2018	0601008604	A.G. PIPE	2,67,340/-
31	28.03.2018	0601008605	A.G. PIPE	3,46,306/-
32	20.04.2018	0601000365	A.G. PIPE	4,51,088/-
33	20.04.2018	0601000366	A.G. PIPE	3,07,929/-
34	18.06.2018	0601001752	A.G. PIPE	7,47,872/-
35	19.06.2018	0601001789	A.G. PIPE	5,97,434
36	20.06.2018	0601001835	A.G. PIPE	6,79,692/-
37	23.06.2018	0601001885	A.G. PIPE	6,47,100/-
38	25.06.2018	0601001907	A.G. PIPE	6,04,809/-
39	19.09.2018	0601004114	A.G. PIPE	4,75,068/-

TOTAL AMOUNT				1,42,27,872/-
40	31.03.2018	0601008659	A.G. PIPE PVT. LTD	6,33,719/-
41	31.03.2018	0601008677	A.G. PIPE PVT. LTD	6,75,786/-
TOTAL AMOUNT				13,09,505/-

13. It is observed that the debt claimed in the Demand Notice dated 07.10.2021 on which the operational creditor is placing its reliance in the present petition as well is Rs. 2,14,71,017.1/-. However, as per the requirement of Section 4 of the Code, as it exists today after the amendment dated 24.03.2020 issued by the Ministry of Corporate Affairs came into force, to attract the pecuniary jurisdiction of this Adjudicating Authority and to trigger the CIRP against the Corporate Debtor, the minimum threshold limit of Rs. 1 Crore is to be met. However, in the present application, the invoices raised in the name of the Corporate Debtor i.e., A.G. Pipes Private Limited are of Rs. 13,09,505/- which falls below the pecuniary threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code.
14. At this juncture, it is pertinent to refer to the decision of the Hon'ble NCLAT in **Prafulla Purushottamrao Gadge Vs. Narayan Mangal & Anr. [Comp. App. (AT)(INS.) No. 498 of 2022]**, whereby, the Hon'ble NCLAT has observed as under:

"7. The submissions raised by the Counsel for the Appellant that the Application which has been filed on 25.06.2021 under Section 7 has to fulfill the requirements of threshold as introduced by Notification dated 24.03.2020 has substance. The Adjudicating Authority has not adverted to the said issue and has admitted the Application. The submission of the Counsel for the Respondent that Application dated 25.06.2021 is in continuation of the earlier Application cannot be accepted. After 13.12.2019, I.A. 1128/2020 for restoration was filed which was dismissed on 02.02.2021 by the Adjudicating Authority. Thus, the Adjudicating Authority has

refused to restore the earlier Section 7 Application which order has become final. Further, Learned Counsel for the Appellant has rightly referred to Clause 12 of the Settlement Agreement which was earlier filed in the earlier proceeding where it was mentioned that in event, any default is committed in the Settlement Agreement, there shall be liberty to initiate fresh legal proceedings under Section 7. We, thus, are of the view that the Application filed under Section 7 by the Respondent No. 1 not having fulfilling the threshold of Rupees One Crore ought not to have been entertained and the Adjudicating Authority committed error in admitting the Application. We, thus, allow the Appeal, set aside the order dated 04.042022 impugning this Appeal.

15. Also, reliance is placed upon the decision of the Hon'ble NCLAT in **Jumbo Paper Products Versus Hansraj Agrofresh Pvt. Ltd. [Company Appeal (AT)(INS) No. 813 of 2021]**, whereby, the Hon'ble NCLAT has observed as under:-

10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification dated 24.03.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed under section 7 or 9 on or after 24.03.2020 even if debt is of a date earlier than 24.03.2020. Since the application under Section 9 which is the subject matter of this appeal was filed on 13.09.2020, therefore the threshold limit of Rs. 1 Crore of debt will be applicable in the present case.

16. It is further observed that the minimum threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code is the statutory requirement which has to be mandatorily complied with and no person shall be entitled to have the privilege of not complying with the statutory requirements. The threshold limit was increased from Rs. 1 lakh to 1

crore vide notification dated 24.03.2020 and the present application was filed on 16.12.2021. Therefore, the present petition failed to meet the minimum threshold amount of Rs. 1 crore. Hence, the present petition is not maintainable and is liable to be dismissed on this ground alone.

17. In view of the observations made herein, and the judicial pronouncements, the instant application bearing **CP (IB) No. 277 of 2022** filed by M/s Bhushan Power & Steel Limited (Operational Creditor) under Section 9 of the Code read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s A.G. Pipes Pvt. Ltd., (Corporate Debtor)** is liable to be dismissed and is, **accordingly dismissed.**
18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)