



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 5
(IB)-601(PB)/2022

IN THE MATTER OF:

M/s. Sarvottam Rolling Mills Private Limited Petitioner/Applicant
v.
M/s. Rathi Industries Limited Respondent

Order Under Section 9 of Insolvency & Bankruptcy Code (IBC), 2016

Order delivered on 10.04.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Mr. Vasu Gopal, Adv
For the Respondent : Mr. Febin M. Varghese, Adv

ORDER

Per: Oral: Chief Justice (Retd). Ramalingam Sudhakar (President)

1. This petition has been filed under Section 9 of IBC, 2016 by M/s. Sarvottam Rolling Mills Private Limited. The Petitioner is in the business of manufacturing TMT Bars situated at Muzaffarnagar, Uttar Pradesh. The Respondent/Corporate Debtor i.e. M/s. Rathi Industries Limited is also in the business of manufacturing TMT Bars and allied products situated at GuatamBudh Nagar, Uttar Pradesh. Since both the parties are of the same trade and in order to support the Corporate Debtor in its business, based on oral purchase



- orders, the Petitioner has supplied TMT Bars from time to time to the Corporate Debtor. This is a running account and payments have been made. Both parties state that therein no written agreement in respect of sale and purchase of the above goods.
2. The supply of TMT Bars, it is pleaded, were made from 27.01.2022 and goods supplied were supported by invoices, for which GST is stated to have been duly paid. These goods are supplied on the basis of corresponding E-way bills to show proof of delivery alongwith delivery order receipts. The goods that were supplied under various invoices, are from January, 2022 upto May 15, 2022. In this around 17 invoices it is alleged to have remained unpaid. The details are at Annexure-1 (Page 22-85 of petition). In terms of the ledger account referred to, two payments were made; one on 04.06.2022 for a sum of Rs. 15,00,000/- (Rupees Fifteen Lakh only) and other on 06.06.2022 for a sum of Rs. 15,00,000/- (Rupees Fifteen Lakh only). The balance is not paid and defaulted.
3. According to the Operational Creditor, these payments as above were made despite the claim made by the Corporate Debtor that they have raised a debit note for a sum of Rs. 5,14,88,460/- (Rupees Five Crore Fourteen Lakh Eighty Eight

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Thousand Four Hundred Sixty only) on 04.06.2022 which was sent to the Petitioner by email dated 07.06.2022 (Page 12 & 17 of the reply).

4. Thereafter, on 10.06.2022, Petitioner/Operational Creditor issued a demand notice on the Corporate Debtor in terms of Section 8 of the IBC, 2016 (page 94-101 of the petition) in which an amount of Rs. 1,73,30,765/- (Rupees One Crore Seventy Three Lakh Thirty Thousand Seven Hundred Sixty Five only) was claimed as outstanding as on 06.06.2022 alongwith interest @ 18% per annum. The interest of 18% is claimed based on the terms & conditions contained in the invoices.
5. According to the Petitioner the goods which were supplied from January, 2022 include the 17 unpaid invoices as on the date of demand notice. There was no issue raised about the quality or quantity of the goods supplied. Therefore, there is no justification for the Corporate Debtor for not paying the amount. Hence, there is a clear case of admitted debt and default in respect of goods sold and delivered.
6. Since the balance amount was not paid within the period of 7 days as stipulated in the invoices and also on the date of Section 8 notice dated 10.06.2022, therefore, there is an

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admitted debt and default and the petition should be admitted.

7. A notice was issued by this Tribunal and the Corporate Debtor has filed its reply affidavit on 05.12.2022. The Corporate Debtor *inter alia* refers to the debit note of Rs. 5,14,88,460/- (Rupees Five Crore Fourteen Lakh Eighty Eight Thousand Four Hundred Sixty only) (page 12 of the reply) and states that it was sent to the Petitioner through Email dated 07.06.2022 (page 17 of the reply itself). On the various defences raised by the Corporate Debtor, on 23.01.2023, this Tribunal observed as follows:-

The Corporate Debtor has opposed the admission of the captioned petition saliently on the ground that a debit note for an amount of Rs. 5,14,88,460/- (at page 17 of the Paper Book) was raised against the Operational Creditor, much before the service of default notice upon the Corporate Debtor. He could draw our attention to the Debit Note (Page 12 of the reply of the Corporate Debtor) as also the report of the courier service thereof (page 13 of the reply). Neither in the reply nor in the Debit Note, there is elaborate details/particulars of the amount referred to in Debit Note (ibid) i.e. how and in what

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circumstances such loss was caused to the Corporate Debtor on account of any action or inaction of the Corporate Debtor.

Let the detailed affidavit be filed within 1 week. Normally before considering the matter/petition for admission, we follow the Principle of Natural Justice and issue notice to the Corporate Debtor. However as in the present matter the Corporate Debtor has already filed its reply and the same is before us, we do not feel that there is any need to issue/serve notice upon the Corporate Debtor at this stage. List the matter for consideration on admission on 17.02.2023.

On the basis of the abovesaid order, an affidavit has been filed by the Operational Creditor which is dated 14.02.2023.

8. As could be seen from the defence, one of the grounds raised by the Ld. Counsel for the Corporate Debtor is that in respect of many invoices which are disputed, Corporate Debtor has already paid. This could be verified from the ledger account and the bank statements. Ld. Counsel for the Corporate Debtor also relied upon his reply dated 22.06.2022 in response to the demand notice dated 10.06.2022. The Counsel for the Corporate Debtor relied upon the following paras of the reply:-



4. As a regular practice in steel business verbal rate contract of a particular quantity of supply is decided between seller and buyer and the seller has to complete the 'Sauda' in specific time period.
5. Whereas, in the period of Ist and IInd Quarter of 2022, there was heavy fluctuation in the market rates of TMT Bar. M/s Sarvottam Rolling Mills Pvt. Ltd. accepted huge orders to supply TMT Bar to Rathi Industries Ltd. between the rate span of Rs. 48,000/- to 58,000/- per met. ton, but due to sharp rise in the market rate of TMT Bar, Sarvottam Rolling Mills Pvt. Ltd. failed to supply the material as committed. In second qtrs of 2022 rates of TMT Bar reached up to Rs. 75 per kg. M/s Rathi Industries Ltd. had to honour its rate contacts with its buyers and bound to supply the material in old rates to its buyers and Institutional buyers.
6. Whereas a settlement meeting was fixed in first week of June 2022 between both the parties. In the settlement meeting between Mr. Sanjay Jain, Director, Sarvottam Rolling Mill P. Ltd. and Mr. Vinay Rathi, Director Rathi Industries Ltd. It was decided to settle all the pending "Sauda' and raise a debit note to Sarvottam Rolling Mills (P) Ltd. As per settlement Rathi Industries Ltd. raised a debit note no. RIL/2022-23/56 dated 04-06-2022 for rupees 5,14,88,460/- (Five Crore, Fourteen Lacs, Eighty Eight Thousand, Four hundred Sixty only) and the same has been sent to Sarvottam Rolling Mills

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(P) Ltd. on 07-06-2022. (Copy of debit note and acknowledgement slip enclosed)

7. That, after seeing the deterrence amount in said debit note, you changed your mind and are now trying to escape from your liabilities. As an after thought, after receiving the debit note on 07-06-2022, you send a false notice on 10-06-2022 through you Advocate to Rathi Industries Ltd. which shows your malafide intentions.
8. The undersigned request you, to immediately repay to M/s Rathi Industries Ltd. the out standing balance of Rupees. Rs. 3,43,07,152.33/- (Three Crore, Forty Three Lakh, Seven Thousand, One Hundred Fifty Two and Thirty Three Paise only) with in 15 days after receive of this notice through cheque/RTGS and take 'NOC' from my client, failing which my clients will have no other option but to initiate a corporate insolvency regulation process against Sarvottam Rolling Mills (P) Ltd.
9. The defence that has been taken is that the Petitioner/Operational Creditor has not supplied the huge quantity of goods as per the terms & conditions of the supply order given. In the meanwhile, there was a sharp rise in the market price of TMT Bars, and the higher cost had fallen to the account of the Corporate Debtor. Hence, to make good the loss the debit note was raised against the Petitioner by Corporate Debtor to compensate the loss suffered by the Corporate Debtor due to the failure of Petitioner/Operational Creditor by not supplying the goods.
10. This contention which is now raised by the Corporate Debtor is not based on records and is not supported by any transaction

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document between the parties except the debit note which is dated 07.06.2022. In fact, the proceedings of this Tribunal dated 23.01.2023 clearly addresses the issue of vagueness in the debit note recording that there is no details or particulars as to how this amount has been arrived at. Even the reply affidavit dated 05.12.2022 does not give full particulars as to how this amount of Rs. 5,14,88,460/- (Rupees Five Crore Fourteen Lakh Eighty Eight Thousand Four Hundred Sixty only) has been arrived. These details are now sought to be explained by the Corporate Debtor as to how Rs. 5,14,88,460/- (Rupees Five Crore Fourteen Lakh Eighty Eight Thousand Four Hundred Sixty only) has been arrived, is reflected in the reply affidavit dated 14.02.2023. However, on 07.06.2022 when the Email alongwith the debit note was sent to Petitioner, no such details or particulars have been specified or enclosed. This appears to be an afterthought only for the purpose to avoid a claim. This is the only defence taken.

11. Be that as it may. We find that in respect of good sold and delivered, the claim for Rs. 1,73,30,765/- (Rupees One Crore Seventy Three Lakh Thirty Thousand Seven Hundred Sixty Five only) remains unpaid. The defence of the Corporate Debtor appears to be a ruse to avoid the payment by raising a debit note. From the reply dated 22.06.2022 to the demand notice at paragraph no. 8 which we have recorded above we find that after

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raising the debit note of Rs. 5,14,88,460/- (Rupees Five Crore Fourteen Lakh Eighty Eight Thousand Four Hundred Sixty only) on the Petitioner, Corporate Debtor stated that the balance amount of Rs. 3,43,07,152/- (Rupees Three Crore Forty Three Lakh Seven Thousand One Hundred Fifty Two only) has to be paid implying that Corporate Debtor acknowledges the debt of Rs. 1,73,30,765/- (Rupees One Crore Seventy Three Lakh Thirty Thousand Seven Hundred Sixty Five only). This is the debt amount for which Section 9 application is filed. This makes it clear that the plea of paying up all pending bills long time ago is not correct. The Corporate Debtor's intention appears to avoid the payment of Rs. 1,73,30,765/- (Rupees One Crore Seventy Three Lakh Thirty Thousand Seven Hundred Sixty Five only) by raising a debit note for a higher amount and making a counter claim in a sum of Rs. 3,43,07,152/- (Rupees Three Crore Forty Three Lakh Seven Thousand One Hundred Fifty Two only). This debit note as observed is bereft of details and vague without material particulars. The debit note cannot be sustained in the vacuum. In any event payments have been made after the debit note was raised and issued.

12. This apparently shows the intention of the Corporate Debtor is not to make payment for the goods sold, delivered and supplied which has been duly acknowledged by the Corporate Debtor.

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Hence, we find no reason to accept the Respondents plea that there is a dispute raised prior to the Section 8 IBC notice.

13. The decision of the Hon'ble NCLAT relied upon by the Corporate Debtor namely **Power2SME Pvt. Ltd Vs. PSR Aqua and Engineers Pvt. Ltd.** more particularly para 13 refers to the debit note, we find that this decision was not rendered only on the issue of debit note but on the facts which are culled out in para 11, 12, 14, 15 & 16, where there are several correspondences prior to the debit note which clearly raises an issue on pre-existing dispute. In the present case, there is absolutely no issue raised by the Corporate Debtor either on short supply/non-supply of TMT Bars. The explanation in the reply affidavit is of no avail. No other legally tenable issue is raised to support the debit note for a sum of Rs. 5,14,88,460/- (Rupees Five Crore Fourteen Lakh Eighty Eight Thousand Four Hundred Sixty only). Hence, the decision of the Hon'ble NCLAT does not apply to the facts of the present case.

14. Having regard to the conspectus of facts of the present case, this Adjudicating Authority is of the considered view that the Corporate Debtor is in default of payment of the outstanding operational debt owed to the applicant. The essential and mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied.

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Order

- i.** The present company application (C.P. No. (IB)-601 (PB)/2022) stands admitted and the CIRP is hereby initiated against M/s. Rathi Industries Limited.
- ii.** Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the resolution professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of resolution professional. Therefore, this Adjudicating Authority appoint **Ms. Veenu Drall**, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of resolution professionals as maintained by IBBI. The registration number of the IRP being **IBBI/IPA-001/IP-P-02504/2021-2022/13816** and email id **veenudrall25@gmail.com**.
- iii.** We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Veenu Drall to meet out the expense to perform the functions assigned to her in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be

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done within one week from the date of receipt of this order by the Operational Creditor.

- iv.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a)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;

(b)Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c)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;

(d)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)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority



constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

- v. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further

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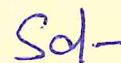
made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under section 19 of the code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

- vi.** A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties. 



(RAMALINGAM SUDHAKAR)
PRESIDENT



(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

10.04.2023
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