

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI
CP (IB) No. 4375/MB/2019

*[Under Section 9 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

MOHIT MINERALS LIMITED

(Erstwhile Mohit Minerals Private Limited)

[CIN- U14292DL2004PLC127951]

Registered Office: 7/23

Kirti Nagar Industrial Area,

New Delhi-110015.

...Operational Creditor

V/s

TAKUMA ENERGY INDIA PRIVATE LIMITED

(Erstwhile Takuma Glass Fibre India Private Limited)

[CIN- U36991PN2014PTC152776]

Registered Office: C3-32, S. No. 208/206

Solitaire Business Hub, Wakad,

Pune- 411057, Maharashtra.

...Corporate Debtor

Pronounced: 21.03.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv. Sumit Kumar

Corporate Debtor: Adv. Uma Chatterjee i/b Adv. Yahya Batatawala

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. Background

- 1.1. This Company Petition bearing C.P. (IB) No. 4375/MB/2019 (Application) was filed on 14.11.2019 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 (AA Rules) by Mohit Minerals Limited, the Operational Creditor (OC), through Mr. Rahul Agrawal, Chief Financial Officer (CFO), authorised *vide* Board Resolution dated 05.11.2019 for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Takuma Energy India Private Limited, the Corporate Debtor (CD).
- 1.2. The total amount of default involved is Rs. 1,73,94,760/- (One Crore Seventy-Three Lakhs Ninety-Four Thousand Seven Hundred Sixty Rupees) comprising of the principal amount of Rs. 98,65,343/- along with the interest of Rs. 75,29,417/- calculated at the rate of 24% per annum from 21.08.2016 till 31.10.2019, which is based on the unpaid invoices issued to the CD by the OC for supply of coal during the period of December, 2015 to August, 2016.
- 1.3. The date of default as mentioned in the Part IV of the Application is 21.08.2016, i.e., the date on which the period of 60 (sixty) days from the date of first unpaid invoice bearing No. MMPL/MH/16-17/0365

dated 22.06.2016 for payment had expired as per the agreed terms of payment.

2. CONTENTIONS OF OC

- 2.1. The OC submits that it is engaged in the business of coal trading while the CD's business involved manufacturing of glass products. For the purpose of supplying coal of Indonesian Origin (Material), the OC entered into a sale-purchase arrangement with the CD under which the OC sold and delivered the material worth Rs. 6,75,65,343/- to the CD during the period from December, 2015 to August, 2016.
- 2.2. It is submitted by the Counsel for the OC that, according to the aforesaid sale-purchase arrangement, the CD used to telephonically place orders from time to time for supplying the material at CD's designated site through CD's trucks and in lieu of such supply, the OC raised various invoices against each supply as accepted by the CD without raising any complaint over its quality or quantity.
- 2.3. The OC further submitted that it was mutually agreed between the parties that the payments shall be made in terms of invoices from time to time and the CD was liable to pay the same within sixty (60) days from the date mentioned in the respective invoices and the next date after the expiry of sixty days from the date of invoice would be considered as the date of default for each unpaid invoice and the

CD was also liable to pay the outstanding amount along with the interest at the rate of 24% per annum.

- 2.4. During the period of the aforesaid arrangement between December, 2015 and August, 2016, the OC had sold and delivered the material worth Rs. 6,75,65,343/- to the CD under various invoices on a running account basis. However, the CD started delaying its payments and paid only Rs. 5,77,00,000/- for the supplied material. Despite the OC's attempts to contact the CD for ensuring timely payments, the CD failed to make payments for the following invoices, forcing the OC to stop the supply of materials to the CD. The outstanding invoices for the year of 2016 are as follows:

| Sl. No. | Invoice Details | Date of Invoice | Invoice Amount (In Rs.) | Outstanding Invoice Amount (In Rs.) |
|--------------------------|--------------------|-----------------|-------------------------|-------------------------------------|
| 1. | MMPL/MH/16-17/0365 | 22.06.2016 | 91,59,741/- | 67,84,017/- |
| 2. | MMPL/MH/16-17/0391 | 30.06.2016 | 23,05,343/- | 23,05,343/- |
| 3. | MMPL/MH/16-17/0409 | 11.07.2016 | 3,69,781/- | 3,69,781/- |
| 4. | MMPL/MH/16-17/0477 | 16.08.2016 | 1,51,318/- | 1,51,318/- |
| 5. | MMPL/MH/16-17/0518 | 31.08.2016 | 2,54,884/- | 2,54,884/- |
| Total Outstanding Amount | | | | 98,65,343/- |

- 2.5. It was further submitted by the Ld. Counsel for the OC that, *vide* its email dated 04.11.2016 (04:44 PM), the OC shared the account ledger for the financial year 2016-17 with the CD, following which the CD confirmed and accepted the same by its email dated 04.11.2016 (04:49 PM). After the confirmation of accounts, the OC contacted the CD to make immediate payments and the CD made

the payment of Rs. 65,00,000/- in several tranches against the total admitted outstanding claim of Rs. 1,63,65,343/- in the following manner:

| Sr. No. | Date of Payment | Amount (In Rs.) |
|---------------------|------------------------|------------------------|
| 1. | 18.05.2017 | 15,00,000/- |
| 2. | 23.05.2017 | 5,00,000/- |
| 3. | 04.01.2018 | 15,00,000/- |
| 4. | 13.03.2018 | 15,00,000/- |
| 5. | 18.07.2018 | 15,00,000/- |
| Total Amount | | 65,00,000/- |

- 2.6. The CD made the last payment of Rs. 15,00,000/- on 18.07.2018, which was partly adjusted against the OC's invoice No. MMPL/MH/16-17/0365, raised on 22.06.2016 for Rs. 91,59,741/-. Following this, the OC sent email dated 15.12.2018 as well as reminder email dated 19.12.2018 to the CD for confirming the outstanding amount.
- 2.7. The OC requested the CD through telephonic calls and personal visits to the CD's offices during the period of July, 2018 to May, 2019 to make payments but the OC only received oral assurance and no payment was received during the aforesaid period.
- 2.8. In view of the above events, the OC issued a Demand Notice under Section 8 of the IBC on 02.07.2019 to the CD seeking payment of Rs. 98,65,343/- along with interest calculated at 24% per annum. In the reply dated 16.07.2019, the CD refuted the OC's claims on the ground of pre-existing dispute over quality of materials supplied to it.

- 2.9. The OC submitted that it had provided the record of default of the CD to the Information Utility on 30.11.2019, which clearly mentioned the date of default as 21.08.2016 and the default amount as Rs. 98,65,343/-.

3. CONTENTIONS OF CD

- 3.1. The CD, in its reply, submits that the present Application is defective since the OC had not only failed to provide the affidavit under Section 9(3)(b) of the IBC about no notice given by the CD over dispute of the unpaid operational debt but also hidden the material fact regarding dispute over unpaid operational debt claimed by the OC.
- 3.2. The Ld. Counsel for the CD submitted that the application filed under Section 9 of the IBC by the OC cannot be sustained since there was pre-existing dispute between the parties over quality of supplied material. The sale-purchase arrangement between the OC and the CD was for supplying prime quality of coal with low moisture and high Gross Calorific Value (GCV) to the CD but the supplied material was of poor quality with high moisture and low GCV. To substantiate the contention, the CD relied upon its reply dated 16.07.2019 to the OC's demand notice dated 02.07.2019 as well as CD's WhatsApp communications dated 26.06.2019 with the OC.
- 3.3. It is further submitted that, due to poor quality of material supplied by the OC, the CD received complaints from its clients, namely Anax Industries Private Limited and Pudumjee Paper Products Limited,

and the OC allegedly approached the CD's clients for supply of coal in an unethical manner which caused harm to the CD's business to the extent of Rs. 5,00,00,000/-.

- 3.4. The CD further submits that it has demonstrated its strong financial position by already paying the amount of Rs. 5,77,00,000/- to the OC in lieu of supplied material and was not bound to pay the alleged outstanding amount of Rs. 98,65,343/- and interest as there is breach of sale-purchase arrangement by the OC.
- 3.5. The Ld. Counsel for the CD argued that the issuance of OC's demand notice under Section 8 of the IBC dated 02.07.2019 is defective as it was issued by the OC's advocates without having any authorisation and there is discrepancy between the date of default mentioned in Part IV of the Application and that of the demand notice dated 02.07.2019.

4. REJOINDER BY OC

- 4.1. The OC stated that the production of affidavit under Section 9(3)(b) of IBC is not mandatory for the OC since the CD had already issued its reply to the OC's demand notice.
- 4.2. The OC stated that the CD has taken a spurious defence of pre-existing dispute merely to wriggle out of its liability to pay the aforesaid outstanding claims to the OC and has raised the issue of poor quality of material for the first time through its reply dated 16.07.2019. It is further submitted that the CD received the last batch of material in August, 2016 and the CD continued to make

payment till July, 2018 without making any complaint over the quality of supplied material.

- 4.3. The Ld. Counsel for the OC submitted that the CD failed to provide any prior communication with the OC regarding dispute over quality of material and the CD's WhatsApp communication dated 26.06.2019 not only failed to disclose the parties in a proper manner but also the CD itself admitted its liability by the following statement "but in coming time definitely compensate your losses" in the said WhatsApp communication.
- 4.4. The OC stated that it supplied the coal to the CD as per the specifications provided by the CD and the claim of CD's clients through notice dated 15.02.2017 was solely against the CD and there is neither mention of the OC in such notice nor ever the CD gave any information to the OC about notice dated 15.02.2017 at any point of time.
- 4.5. It is submitted that the terms and conditions mentioned in OC's invoices do not indicate quality of coal which was evident from the statement mentioned in the OC's invoice- "Material has been loaded as per your instruction, we will not be responsible for any dispute regarding quality" and the CD accepted the material supplied by the OC without any dispute.

5. ANALYSIS AND FINDINGS

- 5.1. We have heard both the Ld. Counsel for the OC and the CD and have also carefully gone through all the pleadings and submissions by the parties.
- 5.2. The date of default mentioned in Part IV of the Application is 21.08.2016. The CD disputed this date saying that in the demand notice, the date mentioned was 22.06.2019. But the Ld. Counsel for the OC submitted that it was only a typographic error. The OC has stated in paragraph 7 of 'Factual Matrix' attached with the Application that the amount was payable by the CD after 60 days from the date of invoice raised by the OC. The first unpaid invoice bearing No. MMPL/MH/16-17/0365 is dated 22.06.2016. Hence, we hold that the date of default is 21.08.2016. Although the Application was filed only on 14.11.2019, we find that the CD had acknowledged the outstanding claims of the OC. The OC vide its email dated 04.11.2016 (04:44 PM) sent account ledger to the CD for the financial year 2016-17 and was immediately acknowledged by the CD by saying that "reconcile & found ok" by return email dated 04.11.2016 (04:49 PM) by confirming the balance of Rs.6,21,65,343/- as on 31.03.2017, which is claimed by the OC as default in Para IV of the Application. Hence, we find that the default is admitted by the CD on 04.11.2016. Records reveal that the CD, in partial discharge of the claims of the OC, made payments to the extent of Rs. 1,83,00,000/- during the period between November, 2016 to July, 2018. The last date of payment by the CD to the OC's

account is on 18.07.2018 as reflected in the OC's Ledger Account. This is nothing but acknowledgment of the debt within the limitation period which leads to applicability of Section 18 of the Limitation Act, 1963. Further, the Ledger Account of the OC also indicates a closing balance of Rs.98,65,343/- in the account of the CD as on 01.04.2019. Considering these aspects, we find that the present application filed under Section 9 of IBC is filed within limitation and is hence, maintainable to be adjudicated by us under Section 238A r/w Article 137 of the Limitation Act, 1963.

5.3. The next challenge to this Application by the CD is that there existed dispute as to the quality of coal supplied by the OC in that the moisture content in coal was above the desired limit and its GCV was low. The CD has produced certain WhatsApp chat dated 26.06.2019 with some person to prove this point. On perusal of the chats, it is seen that it talks about huge losses sustained due to poor and substandard material, etc. However, there is no proof to connect these chats with anyone connected with the OC. Further, the CD has produced a legal notice from one of the clients of the CD, viz., 'Anax Industries Pvt. Ltd.' dated 15.02.2017 alleging that the coal supplied to them by the CD was of poor quality. Para 5 of the said legal notice mentions that Mr. Santosh Jha, Director of the CD visited their plant and found the coal was not up to the mark. The CD has not sent any reply to the said legal notice from its client. It has come out in evidence that the CD used to pick up the material in its own trucks at the designated sites. It is therefore, unbelievable

that such quality issue was never taken up by the CD with the OC. There was yet another client of the CD, Pudumjee Paper Products Ltd., which debited certain amount payable to the CD on account of poor quality of coal supplied by the CD to it. However, there is nothing to prove that the CD supplied the same coal provided to it by the OC, which is alleged to have been found of inferior quality. In any case, no dispute was ever raised with the OC prior to receipt of the demand notice under Section 8 of the IBC regarding quality of coal supplied by the OC. Hence, the contention of the CD as regards pre-existing dispute is thus unfounded.

- 5.4. The Ld. Counsel for the CD argued that the OC in the Application, attached a Part VI containing Factual Matrix, which is not provided under the AA Rules. On perusal of the said Paragraph VI, we find that this part explains in detail the submission of the OC and also contains a part regarding 'Prayer' and a 'Declaration' by the OC. We do not think that adding such additional averments would make the Application liable to rejection. The Ld. Counsel for the CD has also argued on maintainability of the Application for want of affidavit required under Section 9(3)(b) of the IBC, saying that the one provided is general in character and no separate affidavit has been provided by the OC stating that no notice was given by the CD relating to dispute of unpaid operational debt. However, we find that para 3 of the affidavit states as under:

“3. I say that the contents of the Application are not repeated herein to avoid prolixity and the same be read as part and parcel of the present Affidavit.”

The OC has already stated in the Application that the CD had not raised any dispute as regards quality of the materials supplied. In view of the above, we hold that this is sufficient compliance of Section 9(3)(b) of the IBC. Moreover, the Hon’ble Supreme Court in *Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd.*, [Civil (A) Nos. 15135,15481 and 15447 of 2017], in paragraph 13 observed that where a corporate debtor replies to the statutory notice under Section 8 of the IBC raising disputes, such an affidavit cannot be given. Thus, this issue is decided against the CD.

5.5. Upon perusal of documents, it is clear that the operational debt amounting to more than one lakh rupees under Section 4 of the IBC, as in force on the date of filing of this Application. The amount is due and payable by the CD to the OC and is not paid, and hence, defaulted by the CD within the definition of Section 5(21) of the IBC. Considering the facts and law as discussed above, this Bench is of the view that in such circumstances, it is imperative that CIRP is only to be initiated in respect of the CD. The Application is complete and has been filed under the proper form and deserves to be admitted.

ORDER

This Application bearing C.P. (IB) No. 4375/MB/2019 under Section 9 of the IBC, filed by M/s. Mohit Minerals Limited, the OC, for initiating CIRP in respect M/s. Takuma Energy India Private Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this

order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. The Operational Creditor has not proposed the name of any Insolvency Professional (IP) to act as Interim Resolution Professional (IRP). Hence, we appoint **Ms. Dipti Narayan Mundra**, a registered IP with Registration Number IBBI / IPA-001 / IP-P02845 / 2023-2024 / 14366 and email ip.dipti@gmail.com, as the IRP having her Authorisation for Assignment valid up to 03.12.2024, to carry out the functions under the IBC, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh

Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.
- X. A copy of this order may also be sent by the Registry to the IBBI for record.
- XI. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- XII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//Tanmay Jain//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)