IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 314/KB/2022

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Mr. Sanjay Sharma, Partner of M/s. Ma Jagadamba Enterprises
… Operational Creditor/ Applicant.

Verses

M/s. Super Iron Foundry Private Limited
[CIN: U27310WB1988PTC044810] … Corporate Debtor/ Respondent.

Date of Hearing: November 22, 2023.
Date of Pronouncement: November 30, 2023.

CORAM:
SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
SHRI. ARVIND DEVANATHAN, MEMBER (TECHNICAL)

Appearance:
For the Applicant: Mr. Arai Guha, Adv.

ORDER

Per Arvind Devanathan, Member (Technical):

1. This Court is congregated through hybrid mode.

2. Heard the Learned Counsels for both parties.

Factual Background:

3. This instant application is filed under Section 9 of the Insolvency and Bankruptcy Code, for brevity **"I&B Code"**, read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by **"Mr. Sanjay Sharma, Partner of Ma Jagadamba Enterprises",** registered office at 212 Girish Ghosh Road, Howrah, Kolkata – 711202, hereinafter referred to as **"Operational Creditor" ("Applicant"/ "OC")** against **"Super Iron Foundry Private Limited",** registered office at 7, Rabindra Sarani, Kolkata – 700007, hereinafter referred to as "**Corporate Debtor" ("Respondent"/ "CD")** seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process (for brevity "CIRP") in respect of the Corporate Debtor.

4. The Corporate Debtor Company is a private limited company, incorporated on July 15, 1988, having the Authorized Share Capital of Rs. 16,50,00,000/- only and the Paid-up Capital of Rs. 16,49,94,730/- only. **(The MCA Master Data of the Corporate Debtor is annexed at Pages 46-47 as Annexure "IV" to the Application).**

5. It is claimed that the Rs. **97,94,279/-** along with the interest at the rate of 24% from the date of payment becomes due and interest amount being **Rs. 6,50,322.61/-**, amounting to a total of <u>**Rs. 1,04,44,601.60/-**</u> which is effective from <u>**March 25, 2022**</u> (claimed as the **"Date of Default").**

Applicant's Submissions:

6. The Learned Counsel for the Applicant submits that the Operational Creditor is involved in the business of chemical products and the Corporate Debtor had taken advance from the operational creditor to supply all kinds of carbon raiser, polymer, silicon etc.

7. It is claimed that as on 25.03.2022, various invoices were placed by the Corporate Debtor for the amount of Rs. 97,94,279/- along with the interest at the rate of 24% per annum from the date of payment, i.e., the interest amount being Rs. 6,50,322.61/-, amounting to a total of **Rs. 1,04,44,601.60/-** is become due and payable.

8. Further, it is submitted that the Applicant herein issued a demand notice under Section 8 of the I&B Code, 2016 on 16.08.2022 to claim the outstanding payment due and defaulted by speed post which was delivered and served upon the Corporate Debtor on 18.08.2022.

In Reply Affidavit, submission made by the Respondent, per contra:

9. The Learned Counsel for the Corporate Debtor has alleged that claiming the interest rate of 24% per annum was not agreed upon. The Learned Counsel for the Corporate Debtor has relied upon the "Common Invoice" of the Operational Creditor, annexed at Page 17 as Annexure "C" to the Reply Affidavit, in which, in the "Terms & Conditions" clause, it is mentioned that: "*3. Interest will be charged @ 2% per annum if bill is not paid within 7 days*". The Operational Creditor has tempered the copy of invoices which is annexed at Pages 56 – 67 as Annexure "2" to the Application by interpolation and overwriting and it appears like: "*3. Interest will be charged @ 2**4**% per annum if bill is not paid within **30** days*".

10. The Learned Counsel for the Respondent further alleged that on 16.08.2022, the Corporate Debtor paid Rs. 10 Lakh to the Operational Creditor. The Demand Notice was received on the same day. Therefore, after adjusting the amount received by the Applicant, between 25.03.2022 and 18.08.2022, the debt due to the Operational Creditor is less than the threshold financial limit as prescribed under Section 4 of the I&B Code.

11. Further, it is alleged that to hide the payment of Rs. 10 Lakh by the Corporate Debtor, the Applicant deliberately furnished the Bank Statements up to 08.08.2022 having the intention to mislead this Adjudicating Authority.

Counter Submissions of the Applicant in Rejoinder:

12. It is claimed that the Demand Notice was issued on 16.08.2022 and after issuing the notice, on the same day, the Corporate Debtor has paid Rs. 10 Lakh intentionally to claim the default amount is under the threshold financial limit and to prove that the case is not maintainable under the I&B Code. However, after payment of that Rs. 10 Lakh, not a single penny was paid to the Operational Creditor.

13. Further, it is claimed that to substantiate the claim of the interest at the rate of 2% and not 24%, the Corporate Debtor needs to furnish strong evidence.

Analysis and Findings of this Adjudicating Authority:

14. It is evident from the invoices filed with this application by the Operational Creditor, annexed at Pages 56 – 67 as Annexure "2" that the Operational Creditor has claimed the interest at the rate of 24% per annum if the bill is not paid within 30 days. It very clearly appears at the bottom of the invoices under the "Terms & Conditions" clause in para 3 that one "4" has been inserted by pen later after "2" thus "2%" can be read as "24%". Further, it is evident that the "7" days were overwritten by pen as "30" days. The same fact has rightly been raised by the Ld. Counsel for the Corporate Debtor in its reply affidavit as well as in the reply to the demand notice dated 16.08.2022 in para 12.

15. Further, it is evident from the Indian Post Track Consignment, annexed with the Demand Notice dated 16.08.2022 at Page 19-20 to the Application that the demand notice was issued on 16.08.2022 at 06:37 PM and delivered to the Corporate Debtor on 18.08.2022 at 03:16 PM. It is admitted that on 16.08.2022, the Corporate Debtor has paid Rs. 10 Lakh to the Applicant at 08:19 PM. Thus, the averment made by the Applicant that the Respondent has intentionally transferred the money of Rs. 10 Lakh after receiving the Demand Notice to reduce the threshold financial limit as prescribed under Section 4 of the I&B Code is bald and has no merits. Further mere mention in invoices about the interest component is not sufficient to hold that interest is payable by the Corporate Debtor. To fortify the view, we would reply upon the decision passed by the Learned NCLT, New Delhi Bench in the case of ***Rohit & Company* v. *Twenty First Century Wire Rods Ltd.*** order dated **14.09.2023,** reported in **(2023) ibclaw.in 627 NCLT** that:

> ***"7.*** *... it is observed that merely citing the interest rate in the invoices by itself wouldn't render it legally binding for the Corporate Debtor*, **..."**
>
> **(Emphasis Added)**

16. Hence, we are of the view that the Operational Creditor, having a frivolous or vexatious intention, has filed this application with tempered documents by claiming 12 times more interest rate with the principal amount to reach the threshold financial limit as prescribed under Section 4 of the I&B Code. Further, the Operational Creditor deliberately did not bring the payment of Rs. 10 Lakh before filing this application on record. It is evident that the payment of 10 Lakh was made on 16.08.2022 by the Corporate Debtor before the receipt of demand notice under Section 8 of the I&B Code and the Applicant filed this application with the Registry of this Adjudicating Authority on 14.09.2022. Thus, we are of the view that this is a fit case to invoke the provision of Section 65 of the I&B Code, 2016.

17. In terms of the view above, we **dismiss** this application being **C.P. (IB) No. 314/KB/2022** with a cost of **Rs. Five Lakh** as penalty upon the Applicant. The Applicant is directed to the **"National Defence Fund" (NDF)** within ten (10) days, delaying payment of the penalty amount beyond ten (10) days shall carry a rate of 10% per annum from the date of pronouncement to the date of payment. The Affidavit of Compliance shall be filed within seven (7) days upon the payment of penalty amounts with the Registry of this Adjudicating Authority. The Registry is directed to consign the Affidavit of Compliance to the record.

18. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 30th Day of November, 2023.

Bose R K [LRA]/ VT [LRA]