

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**COURT- 5, MUMBAI BENCH**

C.P. No. 103/MB/I&B/2021

Under section 8 & 9 of the IBC, 2016

In the matter of

M/s. Sparc Industries,

Through its sole proprietor Mr. Sanjay Chowdhri,

Plot No. E-9, Addl. Patalganga, MIDC

Industrial Area, Village: Karade- Bundrak,

Panvel, District: Raigad 400005.

....Petitioner

v/s.

M/s. G L Engineering Industries Private  
Limited,

39-44, T V Chindambaram Road, Sonion East,

Mumbai-400022.

....Respondent

Order Reserved on: 01.12.2021

Order pronounced on: 20.01.2022

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Mr. Shyam Kapadia, Advocate a/w Ms. Aditi Hambarde,  
Advocates for the Petitioner.

For the Respondent: Mr. Nausher Kohli, Advocate a/w Mr. Devesh Juvekar  
and Mr. Ashish Parwani, Advocates for the Respondent.

*Per: Suchitra Kanuparthi, Member (Technical)*

**ORDER**

1. This Company Petition is filed by M/s. Sparc Industries, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s. G L Engineering Industries Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment to the extent of Rs. 64,87,952/- which is inclusive of interest @ 2% p.m. by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (AAA) Rules, 2016.
  
2. In the requisite Form-5, under the head "Particulars of Operational Debt" the amount claimed to be in default to the extent of Rs. 64,87,952/- which is inclusive of interest. The summary of amounts under default are as follows:

<b>Particulars</b>	<b>Amount (in Rs)</b>
Principal Amount	45,87,556/-
Interest	16,97,396/-
<b>Total Outstanding Amount</b>	<b>64,87,952/-</b>

**Contentions of Petitioner:**

3. The Petitioner submits that Invoice No. 003 was raised on the Corporate Debtor on 23.08.2018 for an amount of Rs. 45,87,556/-. An E-way Bill dated 28.08.2018 was also generated evidencing that the goods were delivered to the Corporate Debtor. The Corporate Debtor accepted the goods and till the date of demand notice no objections has been raised by the Corporate Debtor on the quality of the goods.

4. The Petitioner issued Statutory Demand notice dated 18.02.2020 demanding the payment of Rs. 62,02,372/- in respect of an unpaid operational debt.
5. After the receipt of the Statutory Demand notice, the Corporate Debtor raised objection on the quality of the goods. The Corporate Debtor has filed letter of rejection dated 22.09.2018 on the quality of goods. The Corporate Debtor filed a reply dated 25.02.2020 to the Demand notice and objected to the amount claimed by the Petitioner on the basis of quality of goods, the same cannot be a defense to the claim under Section 8 of the Code. The Corporate Debtor neither pointed out nor is there any prior suit or claim filed for the same.
6. The Petitioner further states that as per the balance sheet filed by the Corporate debtor with MCA, the inventory mentioned is “nil” for the FY 2018-19 which clearly shows that the material supplied by the Petitioner has been sold and in no way is in stock and rejected.
7. The listed documents filed by the Petitioner are as follows:
  - i. Particulars of claim.
  - ii. Master Data of the Corporate Debtor.
  - iii. Invoice No. 003 dated 23<sup>rd</sup> August 2018 amounting to Rs. 45,87,556/-.
  - iv. E-way Bill dated 28<sup>th</sup> August 2018.
  - v. Statutory Demand Notice dated 18<sup>th</sup> February, 2020 demanding payment of Rs. 62,02,372/- as on that date delivered on 19<sup>th</sup> February 2020.
  - vi. Letter for inspection by the Corporate Debtor’s advocate dated 20<sup>th</sup> February 2020.
  - vii. Reply dated 25<sup>th</sup> February 2020 of the Corporate Debtor to the demand notice dated 18<sup>th</sup> February 2020.
  - viii. Rejoinder dated 9<sup>th</sup> March 2020 to the reply dated 25<sup>th</sup> February 2020.

8. The Petitioner filed a rejoinder dated 09.03.2020 objecting to the letter of rejection of goods was recorded wherein the following were the important points addressed to the Corporate Debtor:

*“With reference to para 2 of your letter under reply, while we have indeed given inspection of original of two documents names (i) invoice and (ii) e-way bill, we deny that our Advocate confirmed that no further documents were relied upon. Rather it was indicated that for the purposes of the subject demand notice dated 18<sup>th</sup> February 2020 only these two documents were relied upon by our client and nothing else.*

*Instead of dealing with the remaining para wise replies by your client, and while our client denies each and singular the claims and contentions of your client, or client denies having received the purported, forged and fabricated letter dated 22<sup>nd</sup> September 2018. Admittedly, the said purported letter bears no mention of the fact that how such letter, if at all, was sent in the first place and therefore admittedly there is no acknowledgement thereon by our client. There is no question of therefore, or even otherwise, dealing with the contents of the alleged inspection report dated 20<sup>th</sup> September 2018 inter alia for the other reason that the said report bears no mention of whether the goods inspected, if at all, were those supplied by our client. These contentions are of course taken by our client without prejudice to the facts that neither of these documents were ever received by our client, the same are forged and fabricated to create false record and hence do not deserve to be dealt with, even in law in addition to the fact that the subject goods have in fact been received by your client without any default or demur as alleged or at all.”*

Reply of the Corporate Debtor:

9. The Corporate debtor contended that the Petitioner has concealed various relevant facts, documents and correspondence issued by the Petitioner.

The Petition is vexatious, frivolous and baseless and misconceived in law. The Petition is liable to be dismissed as it is not maintainable in law and is an abuse of the process of law.

10. The Corporate Debtor agreed to received the Profile Steel Bars as per the drawings and specifications shared on the strict condition that payments, if any, would only be made after a quantity and quality test of the Profile Steel Bards by an independent party. At the time of delivery of the said Profile Steel bars, the Corporate Debtor's employees conducted a preliminary check of the Profile Steel Bars for their dimensions, etc. It was found that Profile Steel Bars were not as per the specifications of the Profile Steel Bars required by the Corporate Debtor.
11. After the preliminary check, it was intimated to the Petitioner that the Profile Steel Bars do not meet the dimensions as agreed between the parties. The fact that the Profile Steel Bars are rejected for not meeting the specifications was recorded in the tax invoice dated 23.08.2018 while accepting the delivery.
12. The Corporate Debtor on the insistence of Petitioner agreed to get the Profile Steel Bars tested from Institute of Design of Electrical Measuring Instruments (IDEMI). After the detailed testing, IDEMI submitted its detailed report on 20.09.2018, which reiterated that the Profile Steel Bars were in clear variation with the dimensions provided by the Corporate Debtor. Even before the filing of this Petition, the corporate debtor had made it clear that it has rejected the supplied Profile Steel Bars since they were found to be defective and could not meet the standards and specifications set by the Corporate Debtor. Thus, vide a letter dated 22.09.2018 addressed to the Petitioner, accompanied by a test inspection report of IDEMI, the Corporate Debtor refused to pay the Petitioner for the defective Profile Steel bars. Th said letter was returned with remark "gate closed". It appears that at that relevant time the Petitioner had sublet his premises and was not in the occupation of the same.

13. The Corporate Debtor further submits that they have filed Commercial Suit in the City Civil Court, Mumbai and Mediation Application No. 402 of 2020 for the adjudication and declaration that the Petitioner's claim is nil in view of the rejection of defective steel bars in toto.
14. It is apparent that the Corporate Debtor is not liable to pay any dues relating to the present transaction. The demand notice issued by the Petitioner was duly responded by the Corporate Debtor. The Corporate Debtor has issued a Sur-rejoinder dated 14.03.2020 in response to the Rejoinder issued by the Petitioner categorically allowing the Petitioner to take inspection of the defective Profile Steel Bars. However, the Petitioner neither responded nor scheduled an appointment to inspect the defective Profile Steel Bars.

Findings:

15. The legal issue for consideration is whether there is a preexisting dispute between the parties with regard to the quality of steel bars as claimed by the Corporate Debtor.
16. Heard the counsel for the Petitioner and for the Corporate Debtor and pursued the records. It is clear that the Petitioner had supplied profile steel bars vide invoice dated 23.08.2018, the E-bill was generated on 28.08.2018. the Petitioner issued demand notice dated 18.02.2020 to the Corporate Debtor seeking payment of the entire dues as per invoice no. 003 dated 23.08.2018 for Rs. 45,87,556/-. The Corporate Debtor vide letter dated 25.02.2020 have replied to the demand notice and have pointed out that the steel bars rejected by them post inspection of Institute of Design and Electrical Measuring Instrument, Mumbai (IDEMI) and inspection report submitted by IDEMI. The Corporate Debtor vide letter dated 22.09.2018 have intimated the Petitioner about the rejection of goods. The Corporate Debtor also pointed out despite several reminders the Petitioner's failed to lift the rejected goods from their custody. The Corporate Debtor further pointed out that they had filed Suit No. 402 of

2020 before City Civil Court, Mumbai for adjudication and declaration of the Petitioner's claim as nil. The Petitioner had further responded to the reply of the Corporate Debtor vide letter dated 09.03.2020.

17. The Corporate Debtor filed reply denying the averments in the Petition and stated that the Petitioner had concealed relevant facts, documents and correspondence issued by the Petitioner. At the time of delivery of profile steel bars, on 29.08.2018, at the primary check it was found the profile bars are not as per specification and thus the rejection was recorded in the tax invoice dated 23.08.2018 while accepting steel bars. Further, the Corporate Debtor conducted a test from central government organization namely Institute of Design and Electrical Measuring Instrument, Mumbai (IDEMI). The report of IDEMI reiterated that the profile steel bars were in clear variation with the dimensions provided by the Corporate Debtor and the said steel bars were found to be defective and could not meet the standards and specifications set by the Corporate Debtor. The letter of IDEMI and report is as below:

**G. L. ENGINEERING INDUSTRIES PVT. LTD.** 18  
CIN : U28920MH1981PTC023662/GSTIN:27AAACG2419C125  
Mfrs. : Bright Steel Bars

REGD OFF. :  
39/44, T.V. Chidambaram Road,  
SION (E), Mumbai-400022.  
MUMBAI-400 022.

TEL : 2407 3423 / 2409 2578  
EMAIL : glenmail22@gmail.com

To,  
Sparc Industries,  
Plot No.E-9, Addl. Patalganga MIDC Indl. Area,  
Village Karade-Budruk,  
Taluka- Parvel,  
Raigad-410206.

22/09/2018

Ref:- Your Invoice No. 003, dated 23/08/2018, for Rs. 45,87,556.00 for supply of 23.28MT profile Steel Bars.

Dear Sir,

As informed to you earlier your material under reference is rejected due to various defects. On your insistence and for your satisfaction, we have also got the material checked and tested by a Central Govt. Institute, Institute for Design of Electrical Measuring Instruments, Mumbai (IDEMI).



We are enclosing herewith the test report, which clearly gives variations in the dimensions. If you refer to our drawing given to you, you will observe that various dimensions are beyond the permissible tolerances.

We hence again requested you to please take back delivery of your above rejected material lying with us at Sion.

Thanking you,

Yours faithfully,  
FOR G L ENGG. IND. PVT.LTD.  
For G. L. ENGG. IND. PVT. LTD.  
DIRECTOR  
DIRECTOR

FOR G. L. ENGG. IND. PVT. LTD.  
DIRECTOR


**वैद्युतिक मापन उपकरण अभिकल्प संस्थान, मुंबई-४०० ०२२.**  
**INSTITUTE FOR DESIGN OF ELECTRICAL MEASURING INSTRUMENTS, MUMBAI - 400 022.**


Government of India Society  
 Ministry of Micro, Small & Medium Enterprises

**DIMENSIONAL METROLOGY LABORATORY**  
**INSPECTION REPORT**

Work Order No. : 18M58033		Page : 1 of 1			
Name of the component : PROFILE Bar Sample		Date : 20/09/2018			
IR/DML/055/18-19					
Drg No. : PART DRAWING					
Name of the customer: M/S. G. L. ENGINEERING, SION, MUMBAI-400022					
Sr. No.	OBSERVED DIMENSION IN mm				
	SAMPLE 1	SAMPLE 2	SAMPLE 3	SAMPLE 4	
1	ø6.385	ø6.36	ø6.37	ø6.32	
2	3.9	3.95	3.95	3.88	
3	2.43	2.425	2.51	2.44	
4	3.91	3.86	3.87	3.90	
5	R0.4	R0.4	R0.45	R0.55	
6	R0.6	R0.6	R0.6	R0.6	not uniform matching <i>Required 0.25</i>
7	R3.17	R3.18	R3.175	R3.165	
8	6.335	6.37	6.33	6.32	
9	9.48	9.45	9.49	9.45	
10	3.17	3.18	3.175	3.165	
11	R0.5	R0.6	R0.2	R0.62	
12	1.35	1.5	1.45	1.45	
13	19.675	19.725	19.665	19.67	
14	0.59	0.54	0.61	0.62	
15	R0.5	R0.45	R0.65	R0.7	
16	17°	17°	17°	17°	
17	45.25°	45°	45°	45°	
18	R2.32	R2.16	R2.34	R2.42	

Remark: 6.35 flat edge was setting reference

Checked By : *[Signature]* Inspected By : *[Signature]*

For G. L. ENGG. IND. PVT. LTD,  
*[Signature]*  
 DIRECTOR

18. The certificate / report of IDEMI is dated 22.09.2018 is issued by the central government organization namely Institute of Design and Electrical Measuring Instrument, Mumbai (IDEMI), which is prior to the issuance of

demand notice dated 18.02.2020 under Section 8 of the Code. the Corporate Debtor claimed to have intimated about the rejection of the goods on the invoice at the point of entry and also by way of a letter dated 22.09.2018 which was returned back with endorsement "gate closed". Hence, the Bench has no hesitation to conclude that there is a preexisting dispute pending between the parties with regard to the quality of profile steel bars as delivered by the Petitioner. Further, the said dispute with regard to the inspection report of IDEMI/ quality of goods, is required to be decided / adjudicated by a regular Civil Court by way of a trial and evidence to be led by both the parties.

19. Hence, the Petition is **dismissed** without any cost.

SD/-

Anuradha Sanjay Bhatia  
Member (Technical)

SD/-

Suchitra Kanuparthi  
Member (Judicial)