

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) 1188/MB /2023

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Deep Star Alloys & Steel Pvt. Ltd.

229, Sant Tukaram road, Opposite Sant Tukaram
Mandir, Camac Bunder, Masjid (East), Mumbai-
400009.

...Operational Creditor/Applicant

Versus

Navmi steel Traders Pvt.Ltd.

Office No.8, Kusum Vijay House,174/180
Modi street ,2nd Floor, Fort, Mumbai-400001

...Corporate Debtor/Respondent

Order Delivered on 12.03.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Rohit Giri,Adv i/b
Ms.Deepti Jaiswar, Adv

For the Corporate Debtor : *Ex parte*

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ORDER

Per: Justice V.G Bisht (Retd.)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by M/S **Deep Star Alloys and Steels Pvt Ltd. (“Operational Creditor”)**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/S **Navmi Steel Traders Pvt. Ltd. ("Corporate Debtor ")**.
2. *The* Corporate Debtor is incorporated on 16.07.2002 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U51420MH2002PTC136512. The Corporate Debtor’s registered office is situated at Office No.8, Kusum Vijay House, 174/180 Modi Street, 2nd Floor, Fort, Mumbai-400001 Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Present Petition is filed as the Corporate Debtor owes to the Operational Creditor an amount of Rs.**9,79,73,994/-** (Rupees Nine Crore Seventy-Nine Lakhs Seventy-Three Thousand Nine Hundred and Ninety-Four only) including GST against the Invoices raised pursuant to various Purchase Orders and the Corporate Debtor is not able to pay its dues to the Operational Creditor. The payment of last tax invoice had fallen due on 16.04.2018 and thereafter the same has remained unpaid till date by the Corporate Debtor. The last payment was received by the operational creditor on 22.09.2020.

Submissions made by the Petitioner:

4. The Operational Creditor is Engaged in the Business of Steel and H R Coils. Corporate Debtor is a company who is leading manufacturer of High-Quality Stainless Steel and other materials.

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5. The corporate Debtor submits that they sold H.R coil to the Corporate Debtor and there are total 23 invoices raised by the Operational Creditor. The Operational creditor had supplied huge quantities of H.R Coils and other materials as mentioned in the Invoices raised by the Operational Creditor.
6. The Operational creditor approached the Corporate Debtor several times to settle the outstanding payment which is due, the Operational Creditor also provided part payment option, so the repayment process will be convenient for the Corporate Debtor, but the Corporate Debtor didn't pay any heap to the Operational Creditor's proposal.
7. That on 17.10.2023 the Operational Creditor at the last resort left with no other option further approached his Advocate to dispatch a demand notice to the Corporate Debtor's registered office in Form 3 Under Rule 5 of the Code. The Same demand notice was undelivered reason mentioned as "Item Returned Addressee Moved". Thereafter the Operational Creditor served Demand Notice on the Corporate office of Corporate Debtor and the same was delivered to the Corporate Debtor on 21.10.2023.

Findings:

8. Heard learned Counsel. Perused the records.
9. From the perusal of records, it is noticed that the Corporate Debtor has not made any appearance before this Tribunal. The Registry was also directed to serve notice on the Corporate Debtor for his appearance as well as for filing the reply vide order dated 21.12.2023. Despite several notices to the Corporate Debtor by the Operational Creditor and by this Tribunal, the Corporate Debtor chose not to appear as the service was duly effective on Corporate Debtor. It is also noted that there has been no appearance on the part of 'Corporate Debtor' since the petition for

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initiating CIRP has been filed by the 'Operational Creditor' therefore, the Corporate Debtor was set *ex-parte* vide order dated **01.02.2024**.

10. The Operational Creditor issued a Demand Notice Form 3 rule 5 on 17.10.2023, to the Corporate Debtor for an amount of **9,79,73,994/-** (Rupees Nine Crore Seventy-Nine Lakhs Seventy-Three Thousand Nine Hundred and Ninety-Four only) towards the balance outstanding against the Invoices raised in respect to various Purchase Orders under the provision of the Insolvency and Bankruptcy Code, 2016, and the petition was filed on 29.11.2023. The total number of invoices raised by the Applicant is 23.
11. The last tax invoice was issued on 16.04.2018 and the last payment is to have received from the Corporate Debtor on 22.09.2020 and the petition was filed on 29.11.2023. 23 invoices claimed in the petition, out of which only Rs.1,06,65,619 is paid by the Corporate Debtor and Rs. **9,79,73,994/-** is outstanding till date. It is trite law that the default date for each invoice is to be taken into consideration and limitation with reference to each date of default is to be ascertained for the purpose of Limitation aspect. Details of transactions on account of which debt fell due as H.R Coil was sold to Corporate Debtor and invoices were raised by the Operational Creditor:

Invoice Bearing No.	Invoice Date	Amount (Rs.)
1.	10.04.2018	34,50,925/-
2.	10.04.2018	62,04,586/-

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3.	11.04.2018	63,87,370/-
4.	11.04.2018	36,71,829/-
5.	11.04.2018	47,11,815/-
6.	11.04.2018	40,91,282/-
7.	11.04.2018	38,30,266/-
8.	11.04.2018	44,22,197/-
9.	11.04.2018	23,12,285/-
10.	11.04.2018	36,26,140/-
11.	11.04.2018	60,21,540/-
12.	11.04.2018	35,73,483/-
12.	11.04.2018	35,73,483/-
13.	13.04.2018	40,80,821/-
14.	13.04.2018	51,54,047/-
15.	13.04.2018	39,21,850/-
16.	13.04.2018	37,54,654/-
17.	14.04.2018	44,27,203/-
18.	14.04.2018	57,00,282/-

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19.	16.04.2018	52,18,223/-
20.	16.04.2018	62,13,000/-
21.	16.04.2018	55,41,439/-
22.	16.04.2018	54,64,886/-
23.	16.04.2018	57,79,454/-

12. The Hon'ble Supreme Court in **SUO MOTU WRIT PETITION**. In addition to above, it is also pertinent to state that on account of Covid-19 pandemic, Vide Order Dated 10.01.2022 in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, the Hon'ble Supreme Court held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of Limitation as may be prescribed under any general or special laws in respect of all Judicial or Quasi-Judicial proceedings. In view of this, we find that the present petition is within limitation.
13. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-Judicial proceedings.
14. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

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15. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, outstanding the actual balance period of limitation remaining, all persons shall have a limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.
16. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act,2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act,1881 and any other laws, which prescribed period(s) of limitation for instituting proceedings, outer limits(within which the court or tribunal can condone delay) and termination of proceedings.
17. In the View of above, the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or Quasi-Judicial proceedings. The Petition has been filed on 29.11.2023. In case period from 15.03.2020 till 28.02.2022 is excluded, the petition is within time.
18. This Petition is complete in all respect. There exists debt of more than one crore and the same is in default. In the absence of any reply from the corporate debtor, the question of dispute doesn't arise and survive on this ground also.

Order

- a. In the above circumstances the petition bearing **CP(IB) 1188/MB/C-I/2023** filed by **Deep Star Alloys and steels Pvt Ltd**, the Operational

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Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/S Navmi Steel Traders Pvt. Ltd**, the Corporate Debtor, is **admitted**.

b. This Bench hereby **appoints Mr. Arun Nandlal Agrawal, Registration No: IBBI/IPA-003/IPA-N000282/2020-2021/13234 as the Interim Resolution Professional** having email: - iparub@gmail.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. There shall be a moratorium under section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

d. Notwithstanding the above, during the period of moratorium: -

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- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the
- Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor 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.

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- i. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by speed post and email immediately, and in any case, not later than two days from the date of this Order.

- j. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Sh. PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G BISHT
Member (Judicial)