

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.01

(IB) – 393(ND)/2022

IN THE MATTER OF:

M/s. SUNDER ENGINEERING WORKS

..... Operational Creditor

VERSUS

M/s. MAV STEELS PRIVATE LIMITED

..... Corporate Debtor

SECTION

U/s 9 of IBC, 2016

Order Pronounced On: 10.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Prachi Johri, (Adv.)

For the Respondent : ex-parte

ORDER

Order pronounced in open court vide separate sheets. **IB-393(ND)/2022** is **admitted.**

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

1. This Application has been filed by M/s. Sunder Engineering Works, the Applicant/Operational Creditor on 23.04.2022, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Mav Steels Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 1,35,67,217.44/- (Rupees One Crore Thirty Five Lakh Sixty Seven Thousand Two Hundred Seventeen and Forty Four Paise Only) further interest @ 18% p.a. also payable on the outstanding sum from the date of Invoice as per the terms and conditions mentioned in the invoice. The date of default in the present matter is 07.12.2021 (mentioned in the demand notice dated 16.12.2021).

2. **Submissions of the Applicant:**

i. The Total amount of debt due is Rs. 1,77,11,380.98/- which is the overall claim of the Operational Creditor. However, it is clarified that Rs. 41,44,163.54/- debt has arisen between 25.03.2020 and 24.03.2021 and hence excluded. Therefore, for the purposes of the present petition, the total debt due is Rs. 1,35,67,217.44/-.

Further interest @18% p.a. is also payable on the abovementioned principal sum from the date of invoice as per the terms and conditions mentioned in the invoice. The Operational creditor reserves its right to calculate and claim such interest.

ii. The Operational Creditor has supplied goods vis-a-vis M S Scrap, Runner Riser, Ingots, etc. to the Corporate Debtor. The Corporate Debtor used to make on account payments from time to time. The Corporate Debtor has never issued any emails or letters showing

any dispute with the material/goods supplied and has used and appropriated the goods. Therefore, the debt has fallen due and is payable by the Corporate Debtor. The debt fell due from the dates of various invoices between 10.12.2018 to 01.02.2020.

- iii. It is submitted that the present petition is within the limitation period. It may be noted that the Hon'ble Supreme Court of India in **Suo Motu Writ Petition (Civil) No(s). 3/2020, In Re: Cognizance for Extension of Limitation**, vide its Order dated 10.01.2022 held that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 upto 28.02.2022 shall stand excluded.
- iv. Further, the debt is a continuing one and accrues every day. Moreover, the Corporate Debtor by acknowledgement of liability has further extended the limitation period. It may be mentioned that an amount of Rs. 15,00,000/- was received by the Operational Creditor on 17.09.2020 and Rs. 5,00,000/- on 26.03.2021, from the Corporate Debtor as part payments. These payments constitute an admission of liability on the part of the Corporate Debtor. The receipt of this amount is reflected as received in the ledger for the period covered by Section 10A filed along with the application.
- v. Since no payment was received from the Corporate Debtor, the Operational Creditor on 18.02.2022 issued a demand notice under Section 8 of IBC, 2016 to the registered address of the Corporate Debtor as well as at the factory address of the Corporate Debtor by speed post seeking payment of the outstanding amount.
Despite the service of demand notice, no reply was received by the Operational Creditor and no notice of dispute was received.
- vi. It may be further clarified that the Operational Creditor had earlier issued a demand notice dated 16.12.2021 under Section 8 of IBC, 2016 to the Corporate Debtor and no reply was ever received by the Operational Creditor.

It is submitted by the Operational Creditor that the demand notice dated 16.12.2021 was discrepant and therefore was superseded by the demand notice dated 18.02.2022. This was categorically mentioned in the demand notice dated 18.02.2022.

3. In the present matter, the Corporate Debtor was proceeded ex-parte on 18.11.2022. Thereafter, the Corporate Debtor filed IA-932/2023 for setting aside the ex-parte order dated 18.11.2022. This Adjudicating Authority vide order dated 14.07.2023 allowed the IA-932/2023 and set aside the ex-parte order dated 18.11.2022 subject to the imposition of a Cost of Rs. 25,000/-. On 04.08.2023 the matter was listed for final arguments, but the order dated 14.07.2023 has not been duly complied by the Corporate Debtor. As a consequence, the present matter again proceeded ex-parte against the Corporate Debtor.

4. **Analysis and Findings**

- i. We have heard the Ld. Counsels for both parties and also perused the documents available on record.
- ii. The Operational Creditor issued several invoices during the period starting from 10.12.2018 to 01.02.2020. As per the invoices, there is no indication regarding the time span within which the outstanding amount of the invoice is to be paid. Therefore, the due date of each invoice can be treated as immediate. It is well settled that for the purposes of limitation as well as Section 10A of the Code due date or date of default of each invoice has to be taken into account. It is submitted by the Operational Creditor that Rs. 41,44,163.54/- debt has arisen between 25.03.2020 and 24.03.2021 and hence excluded. Therefore, for the purposes of the present petition, the total debt due is Rs. 1,35,67,217.44/-.

In this regard, reference can be made to **M/s Next Education India Private Limited vs M/s K12 Techno Services Private Limited** (Civil Appeal No. 1775 of 2021) wherein the Hon'ble

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Supreme Court held that in a case where several invoices are issued and some of the invoices are time-barred, then the court must consider the remaining invoices which are within the limitation and whether they cross the minimum threshold limit of Rs. 1,00,000/- or not.

Accordingly, it is evident that the eligibility of each invoice needs to be considered separately in order to determine the threshold limit of Rs. 1,00,000/-. In the instant case, if the due date of all the invoices are accessed separately and the invoices which fall within the period of 10A are excluded, the claimed amount of the remaining invoices clearly meets the threshold limit as envisaged in Section 4 of IBC, 2016.

- iii.** Further, the main dispute in this application is whether the present application is within the Limitation period to initiate the CIRP against the Corporate Debtor or not.
- iv.** The Corporate Debtor is stated to have paid a sum of Rs. 15,00,000/- and Rs. 5,00,000/- on 17.09.2020 and 26.03.2021 respectively in terms of Section 19 of the Limitation Act, 1963 which can enhance the limitation period to initiate the CIRP against the Corporate Debtor.

Article 137 of the Limitation Act, 1963 prescribes a limitation period of three years. Thus, if such period is calculated from the date of the last payment made, its limitation will expire on 25.03.2024, but the present application was filed on 23.04.2022. In view of the above, we are of the considered view that the present claim under Section 9 of the Code is not barred by the limitation period and is maintainable.

- v.** The scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment/re-payment, hence the application is filed.

We find that the debt arises out of the invoices raised by the Operational Creditor. In this regard, the Operational Creditor had raised invoices during the period starting from 10.12.2018 to

01.02.2020. The said amount is a debt disbursed against the consideration owned by the Operational Creditor, hence it is covered under the definition of "Operational Debt" as defined under Section 5(21) of IBC, 2016 and the Applicant will be treated as "Operational Creditor" as defined under Section 5(20) of IBC, 2016.

- vi.** Having considered the facts and circumstances of the case, we are of the considered view that the Operational Creditor has established that the debt is due and there is a default committed by the Corporate Debtor and there is no pre-existing dispute pending on the date when the Operational Creditor sent the demand notice under Section 8 of IBC, 2016.

Therefore, we are of the view that the present application under Section 9 of the IBC, 2016 ought to be **admitted**.

5. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- a)** The Application bearing **IB-393/ND/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- b)** We also declare a 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:
- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]”

- c) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

d) 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 the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Roshan Lal Jain, 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 is IBBI/IPA-001/IP-P00966/2017-2018/11587, the address of the IRP is AN-46B, Shalimar Bagh, North West, National Capital Territory of Delhi-110088 and the e-mail id of the IRP is roshanljain@yahoo.co.uk.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, Mr. Roshan Lal Jain is appointed as IRP.

- e)** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. 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 one week from the date of receipt of this order, in default of which

coercive steps will follow. There shall be no future opportunity given in this regard.

- g)** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h)** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- j)** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- k)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

No order as to costs.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

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