



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 83/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

**Guangzhou Huajing Machine
Manufacture Company Limited**

...Operational Creditor/Applicant

V/s

Safetech Trailer Parts LLP

[LLPIN- AAE-1138]

...Corporate Debtor

Order Dated:10.08.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Krupa Parekh, Advocate.
For the Corporate Debtor(s) : None Present.

ORDER

Per: Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 83/MB/C-IV/2021 filed on 17.03.2021 by Mr. Shashank Naresh Jangra of Guangzhou



Huajing Machine Manufacture Company Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Safetech Trailer Parts LLP, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

1.1 The Operational Creditor has filed Board Resolution dated 23.05.2020 in support of authorization in favour of Mr. Shashank Naresh Jangra of the Operational Creditor authorising him to file the present company application on behalf of the Operational Creditor.

1.2 The total amount of debt claimed by the Operational Creditor in the Part IV of the Company Petition is \$ 727,818.48/- (Seven Hundred Twenty Seven thousand Eight Hundred and Eighteen Dollars and Forty-Eight Cents) viz Rs. 5,41,71,529.46/- (Rupees Five Crore Forty One Lakhs Seventy One Thousand Five Hundred and Twenty Nine Rupees and Four Six Paise) (INR calculated as on 02.11.2020) is the total amount of debt out of which \$433,286.25/- (Four Hundred Thirty-Three Thousand Two Hundred Eighty-Six Dollars and Twenty-Five Cents) is the principal amount due for the period of 09.03.2016 to 04.07.2016 and \$294,532.23/- (Two Hundred Ninety-Four Thousand Five Hundred Thirty-Two Dollars and Twenty-



Three Cents) is the interest claimed, as fell due from 2015 to 28/05/2020 and further interest @24% p.a. from the date of default to till the date of realization. The date of default as mentioned in the Part IV of the Application is 21.02.2020.

2. The Operational Creditor entered into an Exclusive Agency Agreement dated 26.09.2015 valid from 01.10.2015 to 30.09.2018 whereby the Corporate Debtor was appointed to market the products of the Operational Creditor within territory of India. Article 5 of the said agreement provides the payment terms stating that payment and balance are according to the payment agreement, forming part of this Agreement. In accordance with this agreement, the Operational creditor supplied goods to the Corporate Debtor from time to time under cover of invoice and bill of lading, evidencing dispatch of goods. Both the parties signed a Supplemental Agreement also for trade purpose which states about the pricing and payment.

- 2.1 The Operational Creditor supplied the goods from October 2015 to June 2016 on various dates. The amount claimed unpaid under 12 invoices out of the total invoices raised by the Operational creditor became due for payment starting from 14.07.2016 to 06.10.2016.



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- 2.2 The Operational Creditor on 01.08.2016, sent an email reminder to the Corporator Debtor to clear the dues in commercial invoices and Proforma invoices.
- 2.3 Despite having promised to pay the outstanding dues between 05.08.2016 - 10.08.2016, the Corporate Debtor did not clear any outstanding dues sent reply on 06.09.2016 to the Operational Creditor regarding the payments which have been delayed by the Corporator Debtor.
- 2.4 The Operational Creditor on 09.12.2019 sent an email to the Corporate Debtor for an invitation to ITC Dwarka (New Delhi) to settle the dues and one Mr. Yadav, the Director of the Corporate Debtor had confirmed the emails and accepted the invitation and attend the meeting.
- 2.5 The Operational Creditor states that on 10.12.2019, the Corporate Debtor had sent an email after giving an acceptance to the outstanding dues and asked for bank account details to transfer the outstanding amount and the Operational Creditor had sent a reminder email on 12.12.2019 to make good the promise made on 09.12.2019 in the Meeting held at ITC Dwarka (New Delhi).



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- 2.6 The Operational Creditor on 24.12.2019 sent an email regarding the outstanding dues and the discount and the detailed agreed terms and conditions to which the Corporate Debtor replied on 05.01.2020 vide email.
- 2.7 The Operational Creditor again sent a reminder vide email dated 16.01.2020 informing about the expiry date for the payment of debt at discounted rate being 22.01.2020 to which the Corporate Debtor replied asking for an extension of 30 more days for the repayment and the Operational Creditor granted the same vide email dated 22.01.2020 and therefore the last date for payment at discounted rate was 21.02.2020.
- 2.8 The Operational Creditor states that it sent another reminder vide email dated 17.02.2020 giving reminder that the payments were due in 5 days and if not paid in the time limit given, then the discount will not be applicable. The Corporate Debtor did not reply to the said email. Hence, according to the Operational Creditor, the cause of action arose on 21.02.2020.
- 2.9 The Operational Creditor issued a notice under Form 3 and Form 4 on the registered address of the company vide post.



3. The Corporate Debtor was set ex-parte on 15.03.2022 vide the order of this Bench as it failed to appear on several occasions despite paper publication made by the Operational Creditor on 15.01.2022.
4. The Operational Creditor vide an Affidavit filed on 04.07.2023, put on record the ledger account prepared by the Operational Creditor that is confirmed by the Corporate Debtor and promised to pay the outstanding principal amount by 01.03.2019.
5. We have perused the documents and pleadings available on record and considered the arguments of both the sides.
 - 5.1 We find that there is no dispute as regard existence of debt and default in payment thereof. The Corporate Debtor has also not raised any dispute. No reply has been filed by the Corporate Debtor.
 - 5.2 It is also noticed that the invoices payment claimed to be in default became due for payment starting from 14.07.2016 to 06.10.2016. Further, the email communications dated 28.07.2016 from the Operational Creditor acknowledges the payment due in relation to 5 invoices, and remaining invoices had fallen due subsequently.



5.3 The email communications forming part of Petition further evidences that the Corporate Debtor had confirmed the meeting at Delhi vide its email dated 09.12.2019. This email is in response to the email of even date informing the Corporate debtor about outstanding of USD 4,33,286.25/-. Further, the Corporate Debtor vide email dated 12.10.2019 asked the Operational Creditor *to send a detailed email about all discussion of the total settled amount and transfer of account of our market outstanding, and also asked the Operational Creditor to confirm.* The Operational creditor had confirmed the settlement terms vide email dated 24.12.2019, which was acknowledged by the Corporate Debtor vide email dated 05.01.2020. On perusal of email dated 24.12.2019, from the Operational Creditor it is noticed that the Operational creditor clearly mentioned that “ *in case of any breach, we will cancel the settlement and will claim full amount of USD 4,33,286.25/- from the company and its promoters/directors.*”. Accordingly, this Bench feels that a settlement came into existence and the settlement amount is still claimed as unpaid.

5.4 On perusal of email dated 16.01.2020 from the Operational creditor to the Corporate debtor, it is noticed that the amount of debt claimed i.e. USD 433286.25/- was settled for (i) USD



65,000/- payable on or before 20.01.2020, and (b) USD 60,000/- which are receivables from the Corporate Debtor's debtors. This email also notified the Corporate Debtor that the said due date is about to expire on 22.01.2020. It is also noticed that the Corporate Debtor had not disputed the contents of this email in its email dated 18.01.2020. On the contrary, the Corporate Debtor sought extension of time of another 30 days. In view of the these facts, this Bench feels that there is no dispute that settlement came to be arrived at between the parties and the said settlement came to be breached on 21.02.2020.

5.5 In Part IV of the petition, the Operational creditor has claimed the date of default as 21.02.2020, which is date by which payment of USD 65,000 was to be made, failing which the Corporate Debtor was liable to pay whole of the original amount. The Applicant has claimed the full amount of debt to be in default, which indicates that Operational creditor is seeking filing of this Application for whole of the debt amount by stating the date of default to be the date on which the Corporate debtor failed to pay USD 65,000/- in terms of said settlement.



5.6 The question is whether this date can be taken as the fresh date of default for whole of the debt claimed in the petition? This Bench is of the considered view that the Breach of settlement, having been taken place on 22.02.2020, was only in relation to settlement amount of USD 65,000/-, and breach in such terms of settlement has the effect of restoration of original debt amount. This Bench feels that this settlement can only extend the period of limitation. Accordingly, only USD 65,000/- can be said to be in default as on 22.02.2020, and the remaining the remaining USD 60,000/- was payable as and when received from the Debtors of the Corporate Debtor. However, the original debt had become due and in default on various dates falling during 14.07.2016 to 06.10.2016. The Operational creditor also relied upon voice recordings to make out a case that the Corporate debtor has consistently acknowledged the date till the date settlement was arrived, however veracity of these voice recordings may require examination for admission thereof, hence, this Bench didn't ask the Applicant to produce the same. It is not in dispute that there have been series of communication between both the parties, and the meeting taken place on 09.12.2019 was in series of those communications. This Bench finds that the claim under the last



invoices gets time barred on 05.10.2019, and there is nothing on record to evidence acknowledgement of debt prior to 09.12.2019. The series of e-mails forming part of this Petition pertains to period thereafter only.

- 5.7 It is a settled law that the date of default in a petition filed under section 9 of the code, cannot change. The Applicant has issued a demand notice u/s. 8 stating date of default to be 22.02.2020, and Part IV of the Application also specifies the same. Accordingly, the case of the Applicant rests on this date of default. As concluded in the preceding para that this date of default is only in relation to settlement amount of USD 65,000/-, and breach in such terms of settlement has the effect of restoration of original debt amount. The remaining USD 60,000/- was payable upon realisation from the debtors under the settlement, and the Applicant has not pleaded that any of sum out of such USD 60,000/- has been realised by the Corporate Debtor so as to make it due for payment. USD 60,000/- converted into INR at current rate of Rs. 82/- per USD (tentative) comes to Rs. 49,20,000/-, which is less than the threshold limit of Rs. 1 crore as applicable as on date of filing of the present petition i.e. 17.03.2021. Accordingly, this petition is barred u/s. 4 of the Code.



5.8 Even if this Bench considers that the original debt stands restored on 22.02.2020, this petition is barred by limitation qua original debt, as this Bench has arrived at finding that the claim under the last invoices gets time barred on 05.10.2019, and there is nothing on record to evidence acknowledgement of debt prior to 09.12.2019, which is the date on which parties agreed to settle.

6. In view of the aforesaid discussion, this petition is dismissed as non-maintainable.

ORDER

This Application being C.P. (IB) No. 83/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Guangzhou Huajing Machine Manufacture Company Limited, Operational Creditor/ Applicant against Safetech Trailer Parts LLP, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-
Prabhat Kumar
Member (Technical)
//LRA-Akshata Shah//

Sd/-
Kishore Vemulapalli
Member (Judicial)