

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

**C.P. (I.B) No. 573/MB/2023**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Jaldhi Overseas Pte. Ltd.**

Having its registered address at 101, Cecil Street, #25-06, Tong Eng Building Singapore -069533.

**... Operational Creditor**

Vs

**RR Metalmakers India Limited**

*(Formerly known as Shree Surgovind Tradelink Ltd.)*

B-001 & B-002, Ground Floor, Antop Hill Warehousing Complex Ltd., Barkat Ali Naka, Salt Pan Rd., Wadala (E) Mumbai, - 400037, Maharashtra, India

**... Corporate Debtor**

**Order Dated: 22.04.2024**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

**Appearances: Physical/ VC**

For the Petitioner: Rishi Murarka (PH)

For the Respondent: Mr. Gautam Ankheed (PH)

## **ORDER**

1. This Company Petition is filed by Jaldhi Overseas Pte. Ltd. (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against RR Metalmakers India Limited (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of USD 523,141.45 (INR 4,31,95,789.5 @ INR 82.57 per USD).

### **Brief Facts :-**

2. It is submitted that the Operational Creditor provided its vessel ‘MV AETOLIA’ to the Corporate Debtor for carriage of cargo under Charter Party dated 15.03.2017 for a voyage from Port Redi to China.
3. Pursuant to above, the Operational Creditor raised an Invoice dated 18.04.2017 for an amount of USD 653,312 towards freight and on 25.05.2017 raised an invoice of USD 22,942.74 towards Address Commission earned.
4. The Corporate Debtor on 04.08.2017 made a part payment of USD 350,000/- towards freight invoice. Thereafter, a Debit Note dated 27.12.2017 of USD 242,772.19 was raised upon the Corporate Debtor for demurrage dues. However, no further payment was made by the Corporate Debtor towards the outstanding amount of USD 523,141.45/-.

5. Subsequently, the Operational Creditor raised a demand notice dated 25.02.2020 under Section 8 of the IBC, 2016 and **the Corporate Debtor in response to the Demand Notice vide letter dated 09.03.2020 admitted their liability without disputing the debt.**
6. Keeping in view the response to the Demand notice by the CD wherein it has admitted its liability to pay, the Operational Creditor vide email dated 19.03.2020 called upon Corporate Debtor to make the full payment **as the Corporate Debtor has admitted its liability vide letter dated 09.03.2020.** However, the Corporate Debtor vide email dated 19.03.2020 responded to the Operational Creditor that their office was shut down by the Municipal Commissioner on account of COVID-19 and the topic of payment will be discussed once their office is re-opened.
7. Thereafter, the Operational Creditor through its advocates issued a legal notice dated 11.10.2022 upon the Corporate Debtor to make payment of the outstanding amount. However, the corporate Debtor vide letter dated 17.10.2022 submitted that (i) the records have been seized by the Enforcement Directorate (ED), (ii) the outstanding payment have been made to one Samruddha Resources Ltd./Samruddha Resources BST(HK) Ltd. and have never entered into any agreements with the Operational Creditor and (iii) they require time to take up the matter with ED and Samruddha Resources Ltd.
8. In response to the above, the Operational Creditor vide letter dated 08.11.2022 denied all contents of the Corporate Debtor's letter dated 17.10.2022 and demanded the outstanding payment. However, the Corporate Debtor vide letter dated 19.11.2022 stated the same reasons that they require more time and they are trying to obtain more information from Samruddha Resource.

9. It is further submitted that the Operational Creditor re-served the Demand Notice in Form -3 dated 25.02.2020 via email ID on 19.12.2022 and via hand delivery on 30.12.2022. It is submitted that in response to above, the Corporate Debtor vide letter dated 10.01.2023 raised defences against the Operational Creditor's claim. The Operational Creditor further in response vide letter dated 08.02.2023 called upon the Corporate Debtor to make payment of the Outstanding Amount. However, neither response nor payment received from the Corporate Debtor. Hence this Petition.

### **Reply of Respondent**

10. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") dated 05.10.2023 and has denied each and every statement, contention and allegation made by the Petitioner.
11. It is submitted that trigger point for limitation in Section 7 or Section 9 petition is the date of default. In the present case, the date of default is 18th April 2017, while the Petition is filed after 6 years i.e, on 6th March 2023. Therefore, the present Petition is ex facie time-barred and is not maintainable. The relevant dates for computing the period of limitation are as under:

<b>Sr. No.</b>	<b>Date</b>	<b>Particulars</b>
1.	<b>18.04.2017</b>	<b>Date of Default.</b>
2.	25.02.2020	Date of service of Form 3 Notice.

3.	18.04.2020	Limitation in normal course ends [Art.137 of Limitation Act].
4.	30.05.2022	Keeping in mind Covid <i>suo motu</i> extension order passed by the Supreme Court, limitation ends and claim gets time barred.
5.	<b>06.03.2023</b>	<b>Date of filing the present Petition</b>

In this regard, the Ld. Counsel for the Corporate Debtor has relied on the Judgement of **Hon'ble Supreme court in Sabarmati Gas Ltd. v. Shah Alloys Ltd. (2023)3 SCC 229 (#38, 39)** that it will be 3 years from the date of default or when the right to apply accrues as provided in Article 137 of the Limitation Act, 1963. The relevant portion is extracted as under:

*“35. The decision in B.K. Educational Services would thus reveal that Articles 137 and 5 of the Limitation Act, 1963 are applicable to applications filed under Sections 7 and 9 IBC. It be so, the position is that the period of limitation is three years from the right to apply accrues but the delay is condonable on sufficient grounds. It is to be noted that the third column in Article 137 of the Limitation Act posits that time runs when the “right to apply accrues”. In the decision in Babulal Vardharji Gurjar v. Veer Gurjar*

*Aluminium Industries (P) Ltd this Court considered the question as to when “right to apply would accrue?”*

*36. Para 32 of Babulal Vardharji Gurjar case, insofar as it is relevant for the purpose of this case reads thus : (SCC pp. 49-50)*

*“32. When Section 238-A of the Code is read with the above noted consistent decisions of this Court in Innoventive Industries, B.K. Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave and Sagar Sharma respectively, the following basics undoubtedly come to the fore:*

*(a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;*

*(b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor;*

*(c) that intention of the Code is not to give a new lease of life to debts which are time-barred;*

*(d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;*

*(e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that*

*is to say, that the right to apply under the Code accrues on the date when default occurs;*

*(f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable; and*

*(g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned;*

*38. The abovementioned positions settled with respect to Section 7 IBC will proprio vigore apply to Section 9 IBC. In short, as relates an application under Section 9 IBC the date of coming into force of IBC viz. 1-12-2016 would not form the trigger point of limitation and the period of limitation for an application for initiating of CIRP under Section 9 IBC would be three years from the date when the right to apply accrues as provided by Article 137 of the Limitation Act and further that the right to apply under the IBC would accrue on the date when default occurs and it is extendable only by application of Section 5 of the Limitation Act. ...*

*39. When the limitation period for initiating CIRP under Section 9 IBC is to be reckoned from the date of default, as opposed to the date of commencement of IBC and the period prescribed therefor, is three years as provided by Section 137 of the Limitation Act, 1963 and the same*

*would commence from the date of default and is extendable only by application of Section 5 of the Limitation Act, 1963 it is incumbent on the adjudicating authority to consider the claim for condonation of the delay when once the proceeding concerned is found filed beyond the period of limitation.”*

Therefore, the Petition deserves to be dismissed.

12. It is further submitted that the transaction was executed in the year 2017 and the vessel '**MV Aetolia**' was chartered by one Samruddha Resources Ltd ("**Samruddha**"), for the export of cargo to BST (HK) LTD ("**BST**") and the vessel agent was Globe Chart Ltd ("**Globe Chart**"). The entire transaction was negotiated by Samruddha with the Operational Creditor, BST and Globe Chart. Samruddha directed the Corporate Debtor to remit US\$3,50,000 to the Operational Creditor and accordingly the Corporate Debtor remitted the said amount to the Operational Creditor.
  
13. Further, in terms of the negotiations between the Operational Creditor and Samruddha, the Operational Creditor had given the Corporate Debtor credit for US\$44,568.05 against their bills. The Operational Creditor had issued Credit Note dated 03.08.2017 for an amount of US\$1,22,446 to the Corporate Debtor in relation to the payment received from BST (HK) Ltd. The Corporate Debtor had also received a debit note from Samruddha for US\$1,36,298.41 for the amount paid to the Operational Creditor. In view of the above, It is submitted that nothing is due and payable by the Corporate Debtor to the Operational Creditor in relation to the invoice. Therefore, the present petition is nothing but an abuse of the process of law and have been filed to extract undue amount.

14. It is further submitted that Operational Creditor has deliberately not disclosed the fact that Samruddha had arrangement with BST and Globe Chart and the Operational Creditor. The Operational Creditor was receiving the business from Samruddha and business of export was a running business. Apart from the above, the Operational Creditor was always paid by Globe Chart and BST. Further, the Corporate Debtor understand that the Operational Creditor had running account with Samruddha and the material exported from India was as per Samruddha's instructions. Further, BST was releasing freight to Globe Chart and in turn Globe Chart was paying the Operational Creditor. The entire transaction was negotiated by the Operational Creditor with Samruddha and BST. The Corporate Debtor was not concerned with the same.
15. It is submitted that the Petitioner served the Demand Notice dated 25.02.2020 without any prior intimation for pending dues and no commercial party wait for 3 years to raise a legitimate demand. Therefore, the claim of the Operational Creditor under the Invoice dated 18.04.2017 and 27.12.2017 are time barred.
16. Ld. Counsel for the Corporate Debtor submitted that there seem some issued between Samruddha and the Operational Creditor in their transaction and therefore the Operational Creditor sent the Demand Notice dated 25.02.2020 to the Corporate Debtor. The emails and the Correspondence exchanged between the parties reflects that the claim of the Operational Creditor was disputed by the Corporate Debtor even before receipt of Demand Notice dated 25.02.2020.
17. Therefore, the Petition deserves to be rejected.

### **Findings**

18. We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
19. The present petition reveals that under a Charter Party agreement dated 15.03.2017, the Petitioner has provided its vessel '**MV AETOLIA**' to the Respondent for carriage of cargo under a voyage from Port Redi to China. On completion of voyage, the Petitioner raised invoices dated 18.04.2017 having Invoice Ref No. F2017-0296 for an amount of USD 653,312/- towards freight. On 25.05.2017 the Corporate Debtor raised an invoice for USD 22,942.74 towards Address Commission earned. Thereafter, the Petitioner raised a Debit Note dated 27.12.2017 for an amount of USD 242,772.19 towards demurrage dues (Ref No. M2017-0257) relating to the vessel '**MV AETOLIA**'. The laytime calculations (in support of the demurrage dues) were confirmed by the Corporate Debtor's broker *vide* email dated 11.10.2017. The dispatch of USD 21,625.31 earned by the Respondent had been factored into the Debit Note.
20. The contention raised by the Ld. counsel for the Respondent is that the present Petition is *ex facie* time-barred and is not maintainable since the date of default is 18.04.2017 and the Petition is filed after 6 years i.e, on 6th March 2023. In response to the above, the submission of the Ld. Counsel for the Petitioner is that it has raised a demand notice dated 25.02.2020 under Section 8 of the IBC, 2016 and **the Respondent vide letter dated 09.03.2020 has admitted its liability without disputing the debt.** The relevant extract of the letter is as under:-

Dear Sir,

With reference to the above subject, it was very disappointed, to receive such type of notices without any prior intimation for pending dues. Vessel freight is payable by us & we have paid the partial amount, for balance amount, you have to raise a debit note, as per RBI guidelines. We require the payment debit note as per shipping bill, which is accepted by our C.A. under the section 15CB. The bank requires the charter accountant certificates. Requesting you to please send the proper debit note as per shipping bill.

We and Broker have not confirmed the demurrage. In this regard, please arrange meeting & settle the issue.

Notice should be sent only after dispute arise in the meeting, but the sending demand notice to us is utterly disappointing act from your end. A well establish party doing business & paying the freight & other charges regularly still you send demand notice is not correct.

According to the above letter, the Respondent has admitted the freight charges and has claimed that the partial freight amount has also been paid to the Petitioner. Therefore, this bench is of the considered view that the **letter dated 09.03.2020** reveals that the Respondent has admitted its liability by remitting a sum of USD 350,000 on 04 August 2017 towards the “*partial payment*” of freight and admitting to pay the outstanding freight. The relevant extract quote of letter dated 09.03.2020 that “***Vessel freight is payable by us and we have paid the partial amount...***”

The Respondent further, vide letter dated 09.03.2020, has not confirmed the claim of Demurrage charges of USD.242772.19/- since the Demand Notice dated 25.02.2020 was sent without any prior intimation for pending dues and contented that Section 9 petition for Demurrage is not maintainable and has to be proved by leading evidence in civil courts. The relevant portion is quoted as under :-

**“We and Broker have not confirmed the demurrage. In this regard, please arrange meeting & settle the issue....”**

With respect to above contention of the denial of Demurrage charges are concerned, this Bench observes that the Respondent itself has

issued Invoice dated 25.05.2017 having Invoice No. ADC/01/16-17 annexed as 'Exhibit C-1' of the Company Petition, to the Petitioner/ Jaldi Overseas Pte. Ltd. claiming and receiving the credit for Address Commissions on both freight and demurrage, which is tabulated below:

<u>ADCOM ON</u>	<u>ADCOM@2.5%</u>
Freight of USD 653,312	USD 16,332.80
Demurrage of USD 264,397.50.	USD 6,609.94
Total	USD 22,942.74

The relevant extract of the Invoice dated 25.05.2017 issued by Respondent to the Petitioner is as under:-

**INVOICE**

Date: 25<sup>th</sup> May, 2017.

Invoice Number: ADC/01/16-17

To:

Jaldi Overseas Pte. Ltd.  
1 Coleman Street,  
#09-11 The Adelphi  
Singapore 179803

Description	Amount
Vessel Name: MV Aetolia C/P Date: 15 March, 2017.	
Address Commission earned on Freight	USD 16,332.80
Address Commission earned on Demurrage	USD 6,609.94
<b>Total</b>	<b>USD 22,942.74</b>

Amount in words: Twenty two thousand nine hundred and forty two and seventy four cents.

FOR SHREE SURGOVIND TRADELINK LTD.

  
(AUTHORISED SIGNATORY)

Therefore, considering the facts and circumstances in the present case, this bench is of the considered view that on the one hand the Respondent vide letter dated 09.03.2020 has denied the claim of Demurrage charges of USD.242772.19/-, whereas on the other hand Respondent has claimed and received the commission of USD 22,942.74/- on the freight and demurrage charges vide its Invoice dated 25.05.2017. Further, this bench after observing the relevant portion quoted by the Respondent in its letter dated 09.03.2020 that:-

**“We and Broker have not confirmed the demurrage.** *In this regard, please arrange meeting & settle the issue....”*

is of the considered view that via the above statement also the Respondent has admitted that there exists a demurrage charges to be paid to the Petitioner however the same needs to be confirmed after arranging a meeting since the Respondent was disappointed with the receipt of Demand notice. The relevant portion quoted by the Respondent in its letter dated 09.03.2020 is as under:-

*“A well establish party doing business & paying the freight & other charges regularly still you send demand notice is not correct”*

Additionally, this bench is of the considered view that the part payment of the freight invoice by the Respondent of USD 350,000 on 04 August 2017 towards the “*partial payment*” of the total USD 653,312/- is considered, the remaining freight charges as admitted by the Respondent of USD 3,03,312 (USD 653,312 - USD 350,000) at the rate of INR 82.57 per USD (as per Part IV of the Company

Petition) is Rs. 2,50,44,471/- is above the threshold limit as prescribed under the Insolvency and Bankruptcy Code, 2016. The Respondent has admitted its liability. Therefore, the contention of the Respondent that Section 9 Petition is not maintainable does not survive.

21. The third contention raised by the counsel for Respondent is that the claim contained in the Demand notice and in the Petition is frivolous since in the entire transaction several parties were involved and the same is foisted on the Corporate Debtor. The Respondent vide letter dated 17.10.2022 in response to the letter dated 11.10.2022 of the Petitioner (Demand of outstanding payment) has further raised contentions that the delay in payment has taken place due to their record with ED (Enforcement Directorate) and that they have applied for the extract of Petitioner's A/c and further making a statement that they have never negotiated any business with Jaldhi Overseas Pte Ltd., and not executed a single charter party agreement with the Petitioner. After considering the above contentions of the Respondent, this bench considers it appropriate to reproduce the relevant extract of the letter date 17.10.2022: -



## RR METALMAKERS INDIA LIMITED

Date: 17/10/2022

To,  
Mr. Ashwin Shanker  
Advocate & Arbitrator,  
415, Vardhman Chambers,  
17 Cawasji Patel Street,  
Fort, Mumbai-400001.  
Contact No: 9821371075  
E-Mail: [ashwin@georgerebello.com](mailto:ashwin@georgerebello.com)

CC: 1) Samruddha Resources Ltd.  
Mr. Vinay Patil, Mob. No: 9769111231  
E-Mail ID: [vinay\\_patil@samruddha.net](mailto:vinay_patil@samruddha.net)  
2) BST (HK) LTD.  
E-Mail ID: [kitty.poon@bsthk.com](mailto:kitty.poon@bsthk.com)  
3) Jaldhi Overseas PTE Ltd.  
E-Mail ID: [mohnish@bulkchart.co.in](mailto:mohnish@bulkchart.co.in)  
Mr. Mohnish, Mob. No: 9986883283

Sub: Reply against E-Mail Dated: 11/10/2022

Dear Sir,

We have received your E-Mail Dated: 11/10/2022 & we want to reply you but delay has been taken place due to our record with ED (Enforcement Directorate) & we have apply for you're A/c extract.

We also inform to Samruddha Resources Ltd. & BST (HK) LTD., for this outstanding payment & as per our knowledge, payment has already made by Samruddha Resources Ltd., against our credit with Samruddha Resources Ltd. BST (HK) LTD. & Samruddha Resources Ltd., both are handling Iron Ore-A/c & the vessel payment.

We are doing the mining activity & material export from Redi Port to China but Steamer booking, freight negotiation & payment of the vessel all activities are handled by Samruddha Resources Ltd., Mr. Vinay Patil. Jaldhi Overseas PTE Ltd., is having a good business relation activity swith Samruddha Resources Ltd. We never negotiated any business with Jaldhi Overseas PTE Ltd., & not a single charter party agreement is executed by us.

We request you to please give us some time, we will take up the matter with Enforcement Directorate & Samruddha Resources Ltd. & will give you the fact situation which is available with us.

Thanking you,  
Yours Faithfully,  
For RR METALMAKERS INDIA LTD.



With reference to contention of the Respondent that the Petition is foisted on the Corporate Debtor, this bench has observed that the Charter Party agreement dated 15.03.2017 annexed as 'Annexure A' to the Company Petition was executed between Jaldhi Overseas Pte. Ltd (**Petitioner**) and Shree Surgovind Tradelink Ltd. (now renamed as RR Metalmakers India Limited/**Respondent**). The relevant extract of the Charter Party dated 15.03.2017 is as under :-

Shipbroker 1. BULK-CHART, BANGALORE, INDIA.	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994) (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON" Part I
	Place and date of Charter Party: BANGALORE, INDIA - 15 MARCH, 2017.
3. Owners / Place of business (Cl.1) JALDIH OVERSEAS PTE LTD. 1 COLEMAN STREET, #09-11 THE ADELPHI, SINGAPORE 179803	4. Charterers/Place of business (Cl.1) SHREE SURGOVIND TRADELINK LTD. 2 <sup>ND</sup> FLOOR, SUGAR HOUSE, 93/95 KAZI SAYED STREET, MASJID BUNDER MUMBAI 400 003 INDIA
5. Vessel's name and Flag - MV AETOLIA	6. GT/NT (Cl.1) 32210 / 19405
7. DWT all told on summer load line in metric tons (abt.) (Cl. 1) 58,106 MT ON 12.826 M SSW DRAFT	8. Present position (Cl. 1) NOW TRADING
9. Expected ready to load (abt.) (Cl.1) 0001 HOURS LOCAL TIME ON 19 MARCH, 2017	
10. Loading port or place (Cl.1) ISP 1-2SA PORT REDI WCI AAAAA	11. Discharging port or place (Cl. 4) 1-2 SP ISB CHINA PORT. AAAAA. DISCHARGE PORT/S IN CHARTERERS OPTION AND THE SAME TO BE DECLARED WITHIN 24 HOURS OF VESSEL PASSING/SAILING SINGAPORE.
12. Cargo (also state quantity and margin in Owner's option, if agreed; if full and complete cargo not agreed state "part cargo" (Cl. 1) 55,000 MT 10 PCT MORE OR LESS AT OWNERS OPTION BULK HARMLESS IRON ORE (FINES OR LUMPS IN CHARTERERS OPTION). (REF CLAUSE 59)	14. Freight payment state currency and method of payment; also

The relevant extract of the Charter Party dated 15.03.2017 clearly reflects that charter of the vessel 'MV AETOLIA', has been executed by Shree Surgovind Tradelink Ltd. (now renamed as RR Metalmakers India Limited/**Respondent**) and the Petitioner has provided its vessel 'MV AETOLIA' to the Respondent for carriage of cargo under a voyage from Port Redi to China. Therefore, in view of this Bench the contention of the Respondent that they have not executed a single charter party agreement and was not involved with any payments or negotiations with Petitioner is factually incorrect and untenable.

Additionally, Address Commission is a reimbursement to the charterer for costs incurred in relation to the chartering of the vessel either through third party brokers (i.e., a vessel chartering broker) or by the charterer's shipping department. In the Present case, the parties i.e. the Petitioner and the Respondent, used the services of Bulk Chart (Shipbroker) as the vessel chartering broker. However, this engagement of Bulk Chart and the remaining 1.25% out of the 3.75% payment of Address Commission to Bulk Chart according to the clause 4 of the Charter Party agreement, reaffirms that the Respondent is being directly privy to and bound by Charter Party

agreement. Therefore, the contention of the Respondent that the Petition is foisted on the Corporate Debtor and the claim of the Petitioner in the Petition and the Demand notice is frivolous since several parties were involved, is dubious and cannot be entertained.

22. Further with Respect to the contention of the Corporate Debtor during the oral submission that the letter reply dated 09 March 2020 is not an admission of liability, this bench observes that even after the letter dated 09.03.2020, the Petitioner vide letter dated 19.03.2020 has intimated the Respondent that the Petitioner has considered the Respondent's reply via letter dated 09.03.2020 as an admission of liability. The Respondent did not disputed this position in any of its letters dated 19.03.2020, 17.10.2022, and 19.11.2022 but raised the same during the oral submission and while filing its reply to the Present Petition. Therefore, the contention of the Respondent that letter dated 09.03.2020 is not an admission of liability is vexatious and feeble defense.
23. After considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of "**operational debt**" which was due & payable and there is a "**default**" committed by the Corporate Debtor. The Respondent vide letter dated 09.03.2020 has admitted its liability without disputing the debt and the Petition is filed on 06.03.2023 therefore, the Petition is well with in the period of Limitation.
24. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
25. The Operational Creditor has not proposed the Resolution Professional in Part III of the Company Petition.

26. Accordingly, the above Company Petition is '**admitted**' with the following:

**ORDER**

- a. The above Company Petition No. 573/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **RR Metalmakers India Limited**.
- b. **Vikas Gopichand Khiyani**, having registration No. IBBI/IPA-001/IP-P-02738/2022-2023/14194, having email Id- cavikas.khiyani@gmail.com, having address Flat no. 103, 1st Floor, Palm Acre CHS Ltd, Sunder Nagar, Kolkalyan Village, Kalina, Santacruz East, Mumbai Suburban, Maharashtra -400098, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, CP 573 of 2023 is **admitted**.

**SD/-**

**Madhu Sinha**

**Member (Technical)**

/Abhay/

**SD/-**

**Reeta Kohli**

**Member (Judicial)**