



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Company Petition No. (IB)-302(ND)/2021**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016**

**In the matter of:**

The Modi Oil and General Mills  
Through its Partner Mr. Ashok Kumar Modi

.... Operational Creditor

**Vs.**

Tirupati Coatings Private Limited

.... Corporate Debtor

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**Order Delivered on: 12.07.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

The instant petition is filed by M/s. Modi Oil and General Mills through its partner Mr. Ashok Kumar Modi (hereinafter referred as 'Applicant'/ 'Operational Creditor') having registered office at Railway Godown Road, Mandi Gobindgarh Punjab- 147301 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Tirupati Coatings

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Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor').

2. The Respondent Company M/s. Tirupati Coatings Private Limited having CIN: U24222DL1999PTC103031 incorporated under the provisions of the provisions of the erstwhile Companies Act, 1956 having its registered office situated at G - 208, 2ND Floor, Satya Shanti Apartments Sector - 13, Rohini New Delhi - 110085. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. The details of transactions leading to the filing of this application as averred by the applicant are as follows:
  - a) The Modi Oil & General Mills ("Operational Creditor") had a running account with Tirupati Coatings Private Limited ("Corporate Debtor") since F.Y. 2017-2018 with respect to trading of alloyed steel bar, alloy round bar and alloy steel. As per the accepted trading practice since FY 2017-18 till date, all adjustments of previous payments towards the running account was being made on FIFO basis.
  - b) The modalities for clearing the due payments as against the unpaid invoices through the mutual understanding between the parties over the years have undisputedly been with the

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consideration of clearance within the period of 70 days by the Corporate Debtor to the Operational Creditor.

- c) The Corporate Debtor had made payments till as late as 15.01.2021 lastly for the goods supplied in December, 2020. Payments of the unpaid invoices were unilaterally stopped by the Corporate Debtor from the date the said invoices became due and payable. Upon adjustment of the same on FIFO basis the invoices ranging from 11.11.2020 to 17.01.2021 remained unpaid, which aggregated to total transaction value of Rs.1,15,32,155/-.
- d) No notice of dispute was ever raised by any mode and therefore the debt towards the said unpaid invoices fell due and payable as an undisputed debt in terms of the Code.
- e) The Operational Creditor sent a Demand Notice dated 17.05.2021 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post and E-mail.

4. The corporate debtor has filed its reply and the averments of the corporate debtor in the reply are stated below:-

- a) The respondent corporate debtor submits that all the properties of the respondent corporate debtor including the manufacturing unit of the respondent corporate debtor is sealed and in the custody of the receiver, duly appointed by the Learned DRT-III Delhi vide order dated 10/03/2021 in Original Petition No. 198 of 2021 filed by the HDFC Bank. Therefore, it is necessary to make the receiver a party in the present petition to secure the justice as present directors are not in the position to access the record of the corporate debtor.

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- b) The demand notice under section 8 of the IBC, 2016 allegedly issued on 17.05.2021 has not been received by the received by the respondent corporate debtor because the factory, administrative office and registered office of the respondent corporate debtor were all in **custodia legis** i.e., in possession of the court receiver from 17.03.2021. Therefore, the necessary qualification for maintaining an application under section 9 of the IBC has not been complied with.
- c) The invoices alleged by the applicant have to be verified with the records of the applicant which can only be possible after discharge of receiver. The claim of the applicant is unverified and unreliable.
- d) The applicant had annexed the present invoices for delivery of steel rounds. The respondent corporate debtor has always ordered 110MM ST-52 (Grade) but the applicant has produced records for delivery of steel run (wrong graded) which were not ordered. The applicant has neither received nor utilized the steel rounds (if any) delivered by the Applicant. The products allegedly supplied by the applicant do not conform to the products ordinarily ordered/ purchased by the respondent corporate debtor.
- e) The respondent corporate debtor owed no debt to the applicant in as much the provisions of the IBC would not applied at all. The applicant has raised the illegal demand against the respondent corporate debtor which cannot be admissible at all in the court of law.

5. The applicant filed the rejoinder to the reply submitted by the respondent corporate debtor. The submissions of the applicant in the rejoinder are stated herein in brief:-

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- a) The applicant submits that the DRT order renders a finding that an amount of Rs. 10.54 crores being due and payable to another Financial Creditor (HDFC), which makes it evidently clear that the respondent corporate debtor has defaulted in making payment not only to the applicant but also to the financial creditor and corporate insolvency resolution process shall be initiated under the code. Further, the DRT order dated 10/03/2021 granted interim relief considering that the respondent corporate debtor would not be in a position to “*compensate in terms of money*”, also supports the fact that the corporate debtor is insolvent.
- b) The applicant further submits that a perusal of the DRT order dated 10/03/2021 makes it evident that the receiver has not been conferred with any power to defend suits under the Recovery of Debts and Bankruptcy Act, 1993, therefore the respondent corporate debtor's prayer of impleading the receiver as a party to the proceedings cannot be made in the reply. Moreover vide the DRT order dated 10/03/2021, the respondent corporate debtor was directed to file a comprehensive affidavit of assets both movable and immovable, which shows the callous attitude of the respondent corporate debtor.
- c) The demand notice under section 8 of the IBC was well served on the registered office of the respondent corporate debtor in compliance of the IBC as it is well settled that the notice under section 8(1) of the IBC served in the registered office or on the corporate office of the corporate debtor should be treated as valid service of the notice.
- d) The goods were delivered by the applicant by way of e way to the respondent corporate debtor and the same is evident from the GST Return as GSTR-1 has been filed and all the sale bills are reflected in Respondent's GST R-2A. Moreover, as a matter of fact the respondent corporate debtor had ordered the steel rounds of the same specifications in the past also.



6. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, rejoinder and written submission filed by the parties.
7. On perusal of the Part-IV of Form V giving particulars of the operational debt claimed and the supporting documents submitted by the applicant, we observe that a total of 16 invoices ranging from 11.11.2020 to 17.01.2021 remained unpaid, which aggregated to total transaction value of Rs.1,15,32,155/- and as per the case of the applicant the modality for clearing the due payments as against the unpaid invoices through the mutual understanding between the parties have undisputedly been with the consideration of clearance within the period of 70 days by the Corporate Debtor to the Operational Creditor. However, the applicant have not provided the date of default in Part IV of Form V of the instant petition. On perusal of the demand notice, we find that date of default claimed by the applicant in pt. 3 and 5 of Form 3 (Demand Notice) dated 17.05.2021 for the outstanding debt is 28.03.2021 (70 days from 17.01.2021).
8. We cannot agree that the date of default for the outstanding debt is 28.03.2021 (70 days from 17.01.2021) as claimed by the applicant in pt. 3 and 5 of Form 3 (Demand Notice) dated 17.05.2021.
9. At this juncture, we find it necessary to ascertain the correct date of default for the outstanding amount as claimed by the applicant. The

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details of the outstanding invoices ranging from 11.11.2020 to 17.01.2021 along with the date of default calculated on modality of clearance within the period of 70 days as claimed by the applicant is represented herein in tabular form:-

S.No.	Date of Invoice	Amount Outstanding	Date of Default (70 days from the issue of Invoice as inferred by the applicant)
1	11-11-2020	61,782	20-01-2021
2	13-11-2020	1,48,173	22-01-2021
3	19-11-2020	9,01,601	28-01-2021
4	20-11-2020	11,59,010	29-01-2021
5	20-11-2020	10,11,842	29-01-2021
6	23-11-2020	8,05,107	01-02-2021
7	24-11-2020	8,20,202	02-02-2021
8	07-12-2020	10,21,608	15-02-2021
9	17-12-2020	12,59,185	25-02-2021
10	19-12-2020	7,48,817	27-02-2021
11	19-12-2020	5,49,373	27-02-2021
12	21-12-2020	3,97,506	01-03-2021
13	24-12-2020	6,13,825	04-03-2021
14	24-12-2020	6,95,982	04-03-2021
15	31-12-2020	4,82,406	11-03-2021
16	17-01-2021	8,55,737	28-03-2021
	<b>Total (Outstanding Amount)</b>	<b>1,15,32,156</b>	

10. Before embarking upon the detailed discussion on the facts of the case, it is relevant to examine the issue of maintainability of the present petition in the light of the provision of section 10A of the Code 2016. The provision of Section 10A is reproduced herein verbatim:-

*“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified<sup>2</sup> in this behalf: Provided that no application shall ever be filed for initiation of corporate*

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***insolvency resolution process of a corporate debtor for the said default occurring during the said period.***

*Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”*

11. Further going into the legislative intent and the proviso to Section 10A of the code, which stipulates that **“no application shall ever be filed”** for the initiation of the CIRP **“for the said default occurring during the said period”**, noticed that the expression **“shall ever be filed”** is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred during 25.03.2020 to 24.03.2021.
12. From the above discussion and relying on the petitioner’s case of modality for clearing the due payments as against the unpaid invoices, we inferred that the default with respect to 15 invoices dated 11-11-2020, 13-11-2020, 19-11-2020, 20-11-2020, 20-11-2020, 23-11-2020, 24-11-2020, 07-12-2020, 17-12-2020, 19-12-2020, 19-12-2020, 21-12-2020, 24-12-2020, 24-12-2020 and 31-12-2020 are barred by Section 10 A of the Code. Since, the instant petition has been filed on 14.06.2021 and the demand notice was issued on 17.05.2021, therefore the threshold limit of Rs. 1 crore of debt as stipulated under section 4 of the Code, will be applicable in the case before us.
13. Since the principal amount outstanding after considering the bar of Section 10 A of the Code is less than Rs. 1 crore i.e., minimum threshold requirement of Rs. 1 crore as stipulated under Section 4 of the IBC, 2016, the instant petition is not maintainable under Section 4 of the Code, 2016 .
14. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the applicant before



any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it is barred by the law, in view of insertion of Sec 10A of IBC 2016.

15. Resultantly, the present petition (Company Petition No. (IB)-302(ND)/2021) ***stands dismissed***. No order as to the costs.

Copy be given to the respective parties as per rules.

File be consigned to records.

**(BINOD KUMAR SINHA)**  
**MEMBER (T)**

**(DHARMINDER SINGH)**  
**MEMBER (J)**