

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

Company Petition No. (IB)-86(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:

M/s. M. M. Metacraft Private Limited

.... Operational Creditor

Vs.

M/s. R.M. Controls Private Limited

.... Corporate Debtor

CORAM:

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

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

Order Delivered on: 21.07.2022

ORDER

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

This instant petition is filed by M/s. M. M. Metacraft Private Limited ('applicant'/ 'Operational Creditor') bearing CIN: U7900DL2008PTC184312, having registered office at Shop no. 2F-201, 2nd Floor, Plot No.1 &2 LSC, Block G, Kondli, Gharoli, Mayur Vihar Phase-III, Delhi-110096 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 for initiation of Corporate Insolvency Resolution Process in respect of M/s. R.M.

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Controls Private Limited ('respondent'/'corporate debtor'), claimed to be the corporate debtor.

2. The respondent company M/s. R.M. Controls Private Limited having CIN: U74899DL1980PTC010528 incorporated under the provisions of the provisions of the erstwhile Companies Act, 1956 having its registered office situated at X 6B, First Floor, Hauz Khas, New Delhi 110016. 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 brief facts of the case leading to the filing of this petition as averred by the applicant are as follows:
 - a) The applicant submits that applicant is engaged in the manufacturing and selling of wide range of aluminum extrusion profiles etc. and the corporate debtor had placed purchase order no. RMCPL/MMM/19-20/01 dated 09.04.2019 and RMCPL/MMM/19-02/02 dated 20.04.2019 for the supply of aluminum extruded bars, Rods, profiles of different sizes and length, on credit basis on the payment terms that "100% payment by RTGS at the time of delivery".
 - b) The applicant submits that in satisfaction of the said purchase orders, applicant manufactured and supplied the goods required as per specifications provided to the corporate debtor. Further, the applicant submits that the mentioned products were rightly delivered and received by the respondent corporate debtor without any hesitation or concern.

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- c) The applicant submits that pursuant to the delivery of goods, applicant raised two tax invoices amounting Rs. 24,16,370/- and Rs. 5,02,898/- dated 09.05.2019 and 14.05.2019 respectively aggregating to Rs. 29,19,268/-.
- d) The applicant submits that the corporate debtor acknowledged the liability towards the tax invoices, and the respondent corporate debtor made a part payment of Rs. 14,57,264/- including the credit adjustments, in and against the tax invoices dated 09.05.2019 and 14.05.2019.
- e) The applicant submits that for the payment of the remaining outstanding amount of Rs.14,62,264/-, the applicant had persistently chased the respondent corporate debtor. The applicant further submits that the respondent corporate debtor issued cheque bearing cheque number "857349" dated 30.05.2019 for the sum of Rs.9,51,797/- , however, when the said cheque was deposited by the Applicant/ Operational Creditor the cheque was returned on 31.05.2019 with the remark "payment stopped by drawer".
- f) The applicant submits that being constrained by the fact that the respondent corporate debtor had not honored the oral promises and failed to meet the payment obligations towards tax invoices dated 09.05.2019 and 14.05.2019, the applicant had issued a demand notice dated 04.02.2020 under section 8 of the Code demanding a sum of Rs. 16,37,736/- including interest @ 18% on the outstanding principal amount.
- g) The applicant submits that that applicant had received no reply to the demand notice dated 04.02.2020 from the corporate debtor and further submits that neither the payment has been made by the respondent corporate debtor nor any notice regarding the pendency of any suit or arbitration proceeding was served to the applicant.

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

- a) The corporate debtor submits that the alleged demand notice dated 09.05.2019 was never served to the corporate debtor. Further, the corporate debtor submits that as per section 8 of the IBC, 2016 read with Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, it is incumbent upon the Operational Creditor to serve the demand notice at the registered office of the operational creditor. It was further submitted that the said requirement was not fulfilled by the applicant as the demand notice and tracking report clearly shows that the Notice was served to some other address not at the Registered office Address of the Corporate Debtor.
- b) The corporate debtor submits that the present Application is barred by law in light of Section 4 of the Insolvency and Bankruptcy Code, 2016 as the Pecuniary Jurisdiction/ threshold amount has been increased from Rs. 1 lakh to Rs.1 Crore vide MCA Notification No. S.O. 1205(E) dated 24.03.2020.
- c) The corporate debtor submits that the material supplied was of inferior quality and the dispute regarding the same was very well conveyed to the operational creditor through various Emails. The corporate debtor further submits that the corporate debtor got the material inspected through a private lab, where it was found that the material supplied was not of the standard quality as promised by the applicant.

5. The applicant filed rejoinder to the reply submitted by the corporate debtor.

The submissions of the applicant in the rejoinder are stated herein in brief:-

- a) The applicant submits that the demand notice was served to the corporate debtor at its registered office address available at the

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MCA website and the service of the demand notice is also confirmed by the tracking reports annexed with the petition. The applicant further submits that the copy of the demand notice was served at the Faridabad address of the corporate debtor in addition to its registered office as the Faridabad address was also mentioned on the concerned purchase orders issued by the corporate debtor.

- b) The applicant submits that the increase in pecuniary limit of section 4 of the IBC, 2016 is prospective in nature and does not apply to the present case. The applicant had placed its reliance on case of Madhusudan Tantia vs. Amit Choraria & Anr. [Company Appeal (AT) (Insolvency) No. 557/2020], wherein the Hon'ble NCLAT has unerringly held that the notification dated 24.03.2020 issued by MCA whereby and whereunder the minimum amount of default was specified as Rs. 1 Crore is only prospective in nature and not retrospective. The applicant further submits that in the present case, the demand notice was served on 04.02.2020, therefore, the same is excluded from the mandate of MCA notification No. 1205(E) dated 24.03.2020.
- c) The applicant submits that corporate debtor is raising baseless allegations with regard to 'pre-existing' dispute. The applicant submits that the corporate debtor through its e-mail dated 03.06.2019, raised a dispute about the quality of the goods, however, the applicant promptly within hours had replied to the mail and had sent a truck to pick up the defective goods, issued a debit note and made the payment adjustments accordingly.

6. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and rejoinder filed by the parties. Before embarking upon the detailed discussion on the facts of the case, it is necessary to examine whether the said petition is maintainable in terms of

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Section 4 of the IBC, 2016. As per the averments made in Pt.1 & Pt.2 of Part IV of Form 5 of the instant petition, the total amount of debt claimed by the applicant from the corporate debtor is Rs. 17,91,274/- which includes Rs. 14,62,264/- as the unpaid operational debt and Rs.3,29,010/- as interest computed @18% p.a.. The Applicant had issued the demand notice to the corporate debtor on 04.02.2020 demanding outstanding operational debt amounting Rs.16,37,698 wherein Rs.14,62,264/- is the unpaid operational debt and Rs.1,75,434/- as interest computed @18 on the outstanding principle amount. However, the applicant had filed the instant petition on 18.09.2020.

7. With reference to the reliance placed by the applicant in case **Madhusudan Tantia vs. Amit Choraria & Anr. [Company Appeal (AT) (Insolvency) No. 557/2020]**, wherein the Hon'ble NCLAT has held that the notification dated 24.03.2020 issued by MCA whereby and where under the minimum amount of default was specified as Rs. 1 Crore is only prospective in nature and not retrospective. We are of the view that the date of filing the petition has to be considered to determine the applicability of threshold limit of Rs.1 Crore as stipulated under section 4 of the Code, 2016 and the date of issue of demand notice or date of default are irrelevant in determining the applicability of threshold limit of Rs.1 Crore as stipulated under section 4 of the Code, 2016. The intent of legislation to fix the threshold limit was to save the Companies from being rotted to NCLT for initiation of CIRP proceedings, due to COIVD-19 effect. The said notification was always prospective in nature but having retrospective repercussion also.

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8. At this juncture, we refer to the Judgement of Hon'ble High Court of Kerala passed in the matter of **M/s. Tharakan Web Innovations Pvt. Ltd. Vs. National Company Law Tribunal Kochi Bench and Anr. in WP(C) NO. 27636 OF 2020 & 14158 of 2021 dated 01.02.2022.**

"24. In Ext.P9 order, the Tribunal has held that the notification dated 24.03.2020 is prospective in nature and it is not retrospective or retro-active in nature. It is further stated by the Tribunal that notification will not apply to pending applications before the concerned Adjudicating Authority under the IBC prior to the issuance of the aforesaid notification. Ext.P9 was an order of the Tribunal at New Delhi and the issue was concerning an application which had been filed and was pending before the Tribunal. The order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Ins) No.813 of 2021 was placed before the Court in which the order Ext.P9 was also considered. The Appellate Tribunal found that on facts, in the case considered in Ext.P9 demand notice under Section 8 was issued on 31.7.2019 and the application under Section 9 was filed on 5.9.2019 which were both before 24.3.2020, on which date the threshold limit was increased to Rs.1 Crore. The Tribunal hence found that the said decision cannot be relied upon to decide whether a petition can be maintained for an amount of less than Rs.1 Crore after 24.3.2020. The Appellate Tribunal went on to hold that the threshold limit will be applicable for applications filed under Section 7 or Section 9 on or after 24.3.2020, even if the debt is on a date earlier than 24.3.2020. The above view of the Tribunal is in consonance with the decision of the Hon'ble Supreme Court in Manish Kumar (supra).

25. Even otherwise, the Tribunal has in my opinion, gone wrong in its interpretation of Section 4 of the Act. Section 4, after amendment on 24.3.2020 clearly says that Part II of the IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where



the minimum amount of default is Rs.1 Crore. As per Section 3(12) of the IBC, "default" means nonpayment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. What is to be noted is that Corporate debtors who are in default of less than Rs.1 lakh prior to the amendment and Rs.1 Crore after the amendment, also are defaulters. However, whether a proceeding for insolvency or liquidation of such corporate debtor should be initiated would depend on the amount in default. It is only if the Corporate debtor has incurred a default of at least the minimum amount stated in Section 4 that a proceeding under the provisions of the IBC under Part II can be initiated. The minimum amount of default is statutorily fixed, with power available to the Government to re-fix, upto a sum of Rs.1 Crore. Once the Government has exercised the said power by issuance of a notification fixing the minimum amount of default as Rs.1 Crore, the Section will have to be read by replacing the words "one lakh rupees" by "rupees one crore". As such, from the date of amendment, Part II of the IBC can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 Crore. (emphasis supplied). Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore. By application of Section 10A, even in cases where the default is more than Rs.1 Crore, an application cannot be filed for a period of six months from 24.3.2020. There can be no other understanding of the statutory provisions, as there is no ambiguity in the language. It is well settled that the grammatical and ordinary sense of the words of the Statute should be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the provisions of the statute. In the words of Viscount Simon L.C. "The golden rule is that the words of a statute must prima facie be given their ordinary



meaning..... Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction” (see **Nokes v. Doncaster Amalgamated Collieries Ltd.**, [(1940) AC 1014 (HL)], **Chandvarkar Sita Ratna Rao v. Ashalata S. Guram** [(1986) 4 SCC 447] and **B. Parmanand v. Mohan Koikal** [(2011) 4 SCC 266]). The above observations are fully supported by the judgment of the Apex Court in **Manish Kumar (supra)**, wherein the Hon'ble Supreme Court categorically held that the litmus test is whether there exists a default as defined in Section 4 of IBC, on the date of the application....”

9. Further, reference can be made to the Judgment of Hon'ble NCLAT in the matter of **Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021)** wherein it was held that the any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification of MCA dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered will be Rs. 1 crore. *This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if the debt is of date earlier than 24.03.2020.*
10. In the light of the reasons quoted above, when we consider the case in hand, we find that in the present application the Operational Creditor demanded outstanding operational debt amounting Rs.17,91,274/- and the said

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amount is much below the threshold limit of Rs.1 crore as envisaged under section 4 of the Code, 2016 as the date of the filing of the instant petition i.e., 18.09.2020 has to be considered and not the date of the demand notice i.e. 04.02.2020 to be considered. Hence, even if the amount was due prior to 24.03.2020 and the demand notice was send prior to 24.03.2020, the petition under section 9 of the Code cannot be filed against the Corporate Debtor if the amount of unpaid operational debt is less than the threshold limit of Rs. 1crore as stipulated under section 4 of the Code, 2016. Henceforth, for the above-mentioned reasons, the present petition cannot be admitted.

11. Accordingly, the instant petition **(CP.No.(IB)-86(ND)/2021)** stands dismissed being not maintainable with no order to costs.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(DR.BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)