

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA
C.P (IB) No. 9/KB/2019
REST. A (IBC)/1/KB/2021**

In the matter of:

Rawmet Resources Private Limited (formerly Rawmet Commodities Private Limited),
having its registered office at 52, Syed Amir Ali Avenue, 3rd Floor, Kolkata -
700019 [CIN U74999WB2002PTC095215].

...Operational Creditor/ Applicant

And

The Durgapur Projects Limited, having Administrative Building, Durgapur, Burdwan-
713201 [CIN U40102WB1961SGC025250]

...Corporate Debtor

Date of Hearing: 01.04.2022

Date of Pronouncement: 22.04.2022

Coram:

Shri Rajasekhar V.K. : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through Video Conferencing)

For the Operational Creditor

: Ms. Manju Bhuteria, Advocate
: Mr. Shaubhik Chowdhury, Advocate
: Ms. Meenakshi Manot, Advocate
: Ms. Ayushmita Sinha, Advocate

For the Respondent

: Mr. Shaunak Mitra, Advocate
: Mr. Vishal Sinha, Advocate

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ORDER

Rajasekhar V.K., Member (Judicial)

Prologue

1. The Court convened *via* video conference.
2. This is a Restoration Application filed by Mr. Subhash Chandra Tiwary, Deputy General Manager of Rawmet Resources Private Limited (***‘Operational Creditor’***), authorized *vide* Board Resolution dated 15 January, 2021, *inter alia*, praying for the following reliefs;
 - a. For revival of the petition of the Operational Creditor being C.P. (IB) No.09/KB/2018 and to list the matter for urgent hearing.
3. The Operational Creditor had initiated a proceeding under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘Code’***) against the Durgapur Projects Limited (***‘Corporate Debtor’***) before this Adjudicating Authority. Affidavit-in-reply was also filed by the Corporate Debtor.
4. During the pendency of the proceedings, the Corporate Debtor admitted that a sum of Rs.2,62,85,211/- (Rupees Two Crore Sixty Two Lakh Eighty Five Thousand Two Hundred Eleven only) is due and payable by the Corporate Debtor to the Operational Creditor.
5. Further, the Corporate Debtor requested to waive a sum of Rs.49,65,768/- (Rupees Forty Nine Thousand Sixty Five Thousand Seven Hundred Sixty Eight only) because they are facing certain financial difficulties. The Corporate Debtor also represented that a sum of Rs.2,13,19,443/- (Rupees Two Crore Thirteen Lakh Nineteen Thousand Four Hundred Forty Three only) shall be paid by the Corporate Debtor to the Operational Creditor in six equal monthly instalment. Accordingly, terms of settlement were entered into between the parties.¹

¹ Annexure – B.

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6. *Submissions by the Ld. Counsel, Ms. Manju Bhuteria appearing on behalf of the Operational Creditor*

- 6.1 When the matter was taken on 05 April, 2018, the Advocate-on-record appearing on behalf of the Operational Creditor did not appear but the Counsel appearing on behalf of the Corporate Debtor appeared and submitted that the matter has been settled.
- 6.2 This Adjudicating Authority in its Order dated 05 April, 2018 recorded that *'Nobody represented from the side of the Operational Creditor. Ld. Counsel appearing for the Corporate Debtor submits that the matter was settled out of Tribunal. It is recorded. For want of prosecution by the Operational creditor the petition is dismissed.'*²
- 6.3 The Corporate Debtor failed to make the payment of the sixth instalment of a sum of Rs.35,53,240/- (Rupees Thirty Five Lakh Fifty Three Thousand Two Hundred Forty only).³ Payment for the fifth instalment was made on 17 July, 2018.⁴
- 6.4 On failure of payment of the sixth instalment the Operational Creditor issued a letter dated 04 July, 2019 to the Corporate Debtor but no response was received from the Corporate Debtor.
- 6.5 The Corporate Debtor is also liable to pay a sum of Rs.49,65,768/-(Rupees Forty Nine Thousand Sixty Five Thousand Seven Hundred Sixty Eight only), which was waived by the Operational Creditor. Hence, the Corporate Debtor is liable to pay a sum of Rs.85,19,008/- (Rupees Eighty Five Lakh Nineteen Thousand Eight only).

²Annexure – C.

³Refer to point no. 10 of the Petition.

⁴Refer to point no. 8 of the Petition.

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7.1 In the order dated 05 April, 2018, the Operational Creditor was not granted with the liberty to approach this Adjudicating Authority; neither were the settlement terms made a part of the order.

(a) The Corporate Debtor agreed to pay a sum of Rs.2,13,19,443/- to the Operational Creditor in six equal monthly instalments starting from the month of February 2018. It was also agreed between the parties that prior to payment of the second instalment, the Operational Creditor would withdraw the pending matter before this Adjudicating Authority

(c) At this juncture, it is pertinent to mention that the sum of Rs. 31,23,488/- was in respect of the proceedings before the Assistant Commissioner, CGST, Durgapur-III Division, Durgapur, arising out of a show cause-cum-demand notice dated 22 August 2017 for a sum of Rs. 34,80,412/- (of which Rs. 31,23,488/- relates to the Operational Creditor for the failure to provide STTG certificates).

(d) The repayment was subject to the outcome of these proceedings, and the parties expressly agreed that the Corporate Debtor would recover the amount of Rs. 31,23,488/- along with interest and penalty from the

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Applicant, only upon the crystallization of the amount payable to the Central Excise Authority.

- (e) On 13 July 2018, the Assistant Commissioner, CGST, Durgapur-III Division, Durgapur, passed an ex parte order, whereby he directed the Corporate Debtor to pay the sum of Rs.34,80,412 / - along with interest and 100% penalty. Aggrieved with the aforesaid ex parte order, the Corporate Debtor preferred an appeal therefrom before the Commissioner of CGST and Central Excise (Appeal) Siliguri, Appeal Commissionerate. *Vide* order dated 18 May 2020, the matter was remanded to the Assistant Commissioner, CGST, Durgapur-III Division, Durgapur for adjudicating the case afresh.⁵
- (f) The matter is pending adjudication before the Assistant Commissioner, CST, Durgapur-III Division, Durgapur till date. Therefore, in light of the aforesaid circumstances, unless the proceedings under the Central Excise Act, 1944 come to a logical conclusion, the amount payable to the Operational Creditor on account thereof, remains ambiguous, thus, no question arises of the Corporate Debtor having any current liability to pay.

7.3 There has been no breach of the settlement agreement by the Corporate Debtor. Further, all this time, the Applicant was aware of the pendency of the aforesaid proceedings before the Assistant Commissioner, CGST, Durgapur-III Division, Durgapur.

7.4 The retention of the sixth instalment is strictly in terms of the settlement agreement arrived at between the parties and recorded in the minutes of meeting dated 2 February 2018, as the same is to be adjusted against the amount to be imposed by the Assistant Commissioner, CGST, Durgapur-III Division.

⁵Annexure C and D of the Reply

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Durgapur. Hence, it is not open for the Applicant to claim the sixth instalment prior to the conclusion of proceedings pending before the Assistant Commissioner, CGST, Durgapur-III Division, Durgapur.

8. We have heard the learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the record.
9. Since the parties had entered into terms of settlement, any breach of the said terms of settlement would give rise to a different cause of action, and not the restoration of the underlying C.P (IB) No. 9/KB/2019 to file. The intention of the Code is not to enforce settlement, but to resolve insolvency of the Corporate Debtor. Hence, the **REST. A (IBC)/1/KB/2021** is **dismissed**. However, the Operational Creditor is at liberty to pursue other available remedy under the law .
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
11. Files be consigned to record.


Balraj Joshi
Member (Technical)


Rajasekhar V.K.
Member (Judicial)

22.04.2022

Safura A., LRA