



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-557/(ND)/2022

*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 M IRON & STEELS

(through its Partner Mr. Yogesh Sethi)

Office: Shop No. 248, Loha Mandi, Naraina

Delhi - 110028

Email: mmironandsteell6@gmail.com

...Petitioner/Operational Creditor

Versus

ASPG INFRASTRUCTURE PRIVATE LIMITED

Office At: F-93A, Ground Floor, Gali No.7,
Jagatpuri, New Delhi-110051.

Also At:

Plot No. 130011, Gogal Road, Partapur,

Near Parag Milk Plant, Meerut,

Uttar Pradesh-250103

Email: anjul@aspgindia.com

...Respondent/Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)



PRESENT

For the Respondent/CD

:Mr. Mohit Nandwani, Adv.

ORDER

PER – RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 12.09.2024

1. The present application has been filed by the Petitioner i.e. M M Iron & Steels (hereinafter referred to as the Operational Creditor) to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent i.e., ASPG Infrastructures Private Limited (hereinafter referred to as the Corporate Debtor) for the alleged default on the part of the Respondent in clearing the debt of INR 3,16,57,141/-.
2. The particulars of transactions leading to the filing of the present application as averred by the Applicant/Operational Creditor are as under –

“M M IRON & STEELS” (Operational Creditor) is in the business of providing goods to ASPG Infrastructure Pvt. Ltd. (Corporate Debtor) and payments are made on the basis of invoices. The present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 6 (Application to Adjudicating Authority) of the Insolvency and Bankruptcy Rules, 2016, has been filed by the Operational Creditor for initiation of Corporate Insolvency Resolution Process against



M/s ASPG Infrastructures Private Limited (hereinafter referred to as 'Corporate Debtor') for default in payment of the total outstanding debt Rs.3,16,57,141 (Rupees Three Crore Sixteen Lakhs Fifty Seven Thousand One Hundred Forty One Only) along with applicable interest. That as per the demand, requirement and specification of the Corporate debtor, the Operational Creditor had provided goods along with respective invoices to the Corporate debtor, at such addresses as provided by the Corporate Debtor and same were duly received by the Corporate Debtor. The Operational Creditor and the Corporate debtor had an open and running account for the transactions of goods supplied by the Operational Creditor to the Corporate debtor and as per the account books maintained by the Operational Creditor in its regular course of business, a consolidated amount of Rs. 3,16,57,141/- is outstanding against the Corporate Debtor towards the invoices issued for supply of goods to the Corporate Debtor along with applicable interest. Thereafter, Operational Creditor approached the Corporate Debtor on the above-mentioned addressees through various modes of communication. That despite several reminders to the Corporate Debtor by the Operational Creditor and false assurances made by the Corporate Debtor, the Corporate Debtor has failed to clear the balance outstanding to the Operational Creditor of Rs. 3,16,57,141/- (Rupees Three Crore Sixteen Lakhs Fifty Seven Thousand One Hundred Forty One Only) along with applicable interest. The said amount is still outstanding which has resulted into wrongful gain to the Corporate Debtor and wrongful loss



to the Financial Creditor even after receiving the Legal notice dated 11.05.2022 and also a statutory demand notice dated 11.05.2022 under Section 8 of the Code read with Rule 5 (Demand Notice by operational creditor) of the Insolvency and Bankruptcy Rules, 2016. Therefore, the Operational Creditor is left with no other option than to approach this Hon'ble Tribunal. Hence the present Application.

The Operational Creditor through his advocate issued a statutory Demand Notice dated 11.05.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 calling upon the Corporate Debtor at the registered office address through Speed-Post to repay the unpaid Operational Debt. The Corporate Debtor has not responded to the said Demand Notice within the stipulated period and has not raised any dispute regarding the unpaid Operational Debt within the stipulated period. The Corporate Debtor has sent a belated reply vide email dated 01.06.2022 where the Corporate Debtor has plainly denied the liability, while they have themselves admitted the same in the past email communications.

3. The Corporate Debtor has filed its reply and made following averments –

- I. That the present application under Section 9 of the Code is not maintainable as the Applicant is not an 'operational creditor' as envisaged under the Code. Fact is that the goods were not sent to the Respondent and there is no document to show any receipt. That the Petitioner has failed to prove the delivery of the purported invoices and goods to the Respondent. The application is devoid of any



purchase order, transportation documents, delivery receipts, invoice receipts etc. and hence there is no question of any operational debt payable to the applicant on behalf of the respondent. That the invoices are fabricated and fictitious and no supply was ever made.

- II. That the amounts claimed by the Applicant in the present petition is disputed and is contrary to the amounts claimed by the Applicant in its own email dated 24.08.2020. As per the said email, the complete accounts were shared with the respondent and after receipt of cheques, the outstanding balance was Rs. 3,57,33,75/- as on 24.08.2020. Thereafter, admittedly, the Applicant has received payments of Rs. 7,00,000/- thereafter and hence an outstanding amount of Rs. 28,73,375/- is left which is less than the statutory limit of Rs. 1 Cr as per Section 4 of the Code and hence the present application is not maintainable. Further, the amounts mentioned in the said email dated 24.08.2020 do not reconcile with the amounts claimed in the ledger annexed with the present application.
- III. That for malicious reasons, the Applicant has refrained from filing the annexures of the email dated 24.08.2020 which will clearly show the real nature of the transaction between the parties and would specifically prove that no goods were supplied by the applicant. The annexures which are being annexed by the Respondent show that it was not a transaction of supply of goods, but it was a routing transaction on which interest was payable. The interest outstanding



on 24.08.2020, as per the documents annexed with the said email is Rs. 2.68 Cr approximately allegedly payable to the Applicant which for mala fide reasons has not been claimed in the present application and is nothing short of perjury.

- IV. That without prejudice to the aforesaid objections, the Applicant cannot file the present petition being an unregistered partnership firm. Even otherwise, the Applicant firm has no cause of action to file a Section 9 application since no goods were supplied by the Applicant firm to the Respondent.
- V. That the contents of Part-IV are disputed and denied. There is no operational debt owed by the Respondent. The specific date of default is also missing and, on this ground, alone the application deserves to be dismissed.

4. The Petitioner has filed its rejoinder and made the following averments -

- I. That only moon shine /illusory defences have been raised by the Corporate Debtor in the reply to the Company Petition merely to wriggle out of the consequences of nonpayment of operational debt as enumerated under the IBC 2016. The Corporate Debtor has not come with clean hands and has deliberately concealed documents and is therefore misleading this Hon'ble Tribunal.
- II. That the Operational Debt is an admitted liability, duly reflecting in the balance sheet of the Corporate Debtor. The Corporate Debtor has not only received all goods for the invoices enclosed by the Operational



Creditor but have also availed GST input for the same. The Corporate Debtor has failed to place their GST returns in support of allegations of no goods delivered or GST input availed.

- III. That the Corporate Debtor is trying to mislead this Hon'ble Tribunal by ignoring the actual ledger and focusing on rough calculation blowing a typographical error out of proportion. If the contents of the email dated 24.08.2020 are read in totality, the Operational Creditor had claimed total balance as Rs. 5,09,33,375/- and had acknowledged receipt of four postdated cheques for total amount of Rs. 1,52,00,000/. Thereby, the balance amount due and payable stood at Rs. 3,57,33,375/- and that too subject to encashment of cheques. However, inadvertently the Operational Creditor had mentioned a balance amount of Rs. 35,73,375/- due to omission of a "3" in total figure. The Corporate Debtor without any application of mind or verifying the computation, has based their entire reply on an erroneous figure and while ignoring the amount mentioned in statutory demand notice. It is also important to mention here that the post dated cheques were never encashed as the Corporate Debtor repeatedly requested the Operational Creditor not to present the cheque. Thus, the amount of admitted debt in the form of post-dated cheques itself is Rs. 1,52,00,000/- which the Corporate Debtor has defaulted to pay. This itself is more than the threshold limit. The Corporate Debtor on its part has failed to enclose any bank statements to establish that the post



dated cheques of total amount of Rs. 1,52,00,000/- were actually encashed and amounts were paid to the Operational Creditor.

- IV. That as per Annexure-I of the Reply by Corporate Debtor, there is an outstanding amount of Rs. 3,47,24,400/- as per the ledger, which clearly mentions terms such as Sales and Return of Goods. In addition, there are certain hand written notes computations based on discussions between the parties towards interest on account of delay of payment by Corporate Debtor. It is important to mention here that amounts mentioned in the handwritten notes have not been included in the ledgers nor claimed through the present petition. As per Balance Sheet provided by the Corporate Debtor to Operational Creditor vide email dated 11.05.2022 (Page 67, 86 of the Company Petition) there is an admitted debt of Rs. 3,18,10,086.60/- towards Operational Creditor. This entire amount is towards supply of goods. If there would have been any outstanding towards payment of interest, the Corporate Debtor was obligated to deduct TDS and issue appropriate TDS Certificates towards expense of payment of interest. However, no such TDS Certificates have been placed on record by the Corporate Debtor.
- V. That the Operational Creditor has already submitted a compliance affidavit on 30.09.2022 to address the issue as to whether an unregistered partnership can initiate proceedings under IBC. The Operational Creditor is relying on Judgement/Order passed by the coordinate bench of this Hon'ble Tribunal in the case of M/s. G. L.



Shoes Vs Mls. Action Udhog Private Limited, CP No. (IB)-345(ND)2020 (Order dated 06.06.2022) where it was held that the Application filed by the Unregistered Partnership firm is maintainable. The Operational Creditor is also relying on Judgement/Order passed by Hon'ble NCLT Mumbai Bench in the case of M/s Shree Dev Chemicals Corporation Vs. Gammon India Limited in CP (IB) No.3637/MB.IV/2018 (Order dated 16.07.2020) where it was held that Applications filed under the IBC are not 'suits' but only proceedings, and therefore, the bar in terms of section 69(2) of the Indian Partnership Act, 1932, would not apply to applications filed under the IBC.

- VI. As per ledger provided by the Corporate Debtor to Operational Creditor vide email dated 16.08.2019, there is an outstanding balance of Rs. 3,40,85,085.60/- towards the Operational Creditor as on 26.02.2019. And the Ledger maintained by Corporate Debtor clearly mentions the word "Purchase" towards each purchase entry. As per Balance Sheet provided by the Corporate Debtor to Operational Creditor vide email dated 11.05.2022 (Page 67, 86 of the Company Petition) there is an admitted debt of Rs. 3,18,10,086.60/- towards Operational Creditor. Similarly, there is admitted debt to the tune of Rs. 1,52,00,000/- in the form of post-dated cheques which the Corporate Debtor had issued and yet defaulted to pay. In addition, the Operational Creditor has placed on record the invoices, ledgers and email communication in



support of existence of 'operational debt" and "default" on the part of Corporate Debtor.

- VII. The Operational Creditor is referring to the ledger (Annexure C of the Petition) read with invoices (Annexure D of the Petition) for date when operational debt was due and there was default on the part of the Corporate Debtor. The Corporate Debtor had initially defaulted in partial discharge of operational debt, when the post-dated cheques issued by Corporate Debtor for amounts of Rs. 40,00,000/- on 08.10.2020, Rs. 35,00,000/- on 12.10.2020, Rs. 35,00,000/- on 15.10.2020 and Rs. 42,00,000/- on 11.11.2020 could not be encashed on the request of the Corporate Debtor. Finally, as per the said ledger, it is evident that the last part payment was received by the Operational Creditor from Corporate Debtor on 01.12.2021 and since then the Corporate Debtor has continued to default in payment of operational debt of Rs. 3,18,07,141/-. Thus, the date of default is 01.12.2021.
- VIII. In view of the aforementioned submissions, it is admitted position of fact that an amount is due by the Corporate Debtor to the Operational Creditor. It is further clear that there is default by the Corporate Debtor in payment of outstanding dues of the Operational Creditor and therefore in view of the same Corporate Insolvency Process ought to be initiated against the Corporate Debtor.



ANALYSIS AND FINDINGS

5. We have heard the Counsel for the Petitioner and the Respondent and have perused the documents available on record.
6. The case of the Operational Creditor is that it had supplied goods to the Corporate Debtor and the Corporate Debtor has defaulted in payment of the outstanding amount of Rs. 3,16,57,141/-. Therefore, this is a case of operational debt and default by the Corporate Debtor and since the Corporate Debtor is unable to pay the same Corporate Insolvency Resolution Process (CIRP) should be initiated against him.
7. The Corporate Debtor in his defense has submitted that the goods were never sent to him and that there is no document to show any receipt of the goods, that the invoices are fabricated and fictitious and no supply was ever made. However, at the same time, the Corporate Debtor is also stating that the amounts claimed by the Petitioner in the present petition are contrary to the amounts claimed by the petitioner in his own email dated 24.8.2020. Corporate Debtor has also admitted that there was outstanding balance of Rs. 35,73,375/- as on 24.08.2020 and that thereafter the Petitioner received payment of Rs. 7,00,000/- and hence only Rs. 28,73,375 remains as outstanding. He claimed that this amount is less than the statutory threshold and, therefore, the application is not maintainable. The submission of the Corporate Debtor on the one hand that he has not



received any goods from the Operational Creditor and hence is not liable for any payment to the Operational Creditor while on the other hand he has stated that a certain amount has been paid by him and also mentioned the amount of balance remaining are contrary to each other. Besides, the Corporate Debtor also issued postdated cheques of Rs. 1,52,00,000 in favour of the Operational Creditor. These go to show that the contention of the Corporate Debtor that it did not receive any goods for which payment was to be made is not reliable.

8. It is also seen that the Balance-Sheet of the Corporate Debtor reflects the liability to the Operational Creditor as submitted by the Operational Creditor. He has also availed GST input for the same.

9. On perusal of the correspondence between the Corporate Debtor and the Operational Creditor, it is apparent that even by correspondence dated 24.08.2020, the Operational Creditor has informed the Corporate Debtor of the total balance of Rs. 5,09,33,375/- and that in settlement of which they have given 4 cheques of total amount Rs. 1,52,00,000/- and sought the balance amount from the CD of Rs. 3,57,33,375/- at their meeting on 1st September 2020. It was also requested by the Operational Creditor to the Corporate Debtor that whatever postdated cheques they provide should be honoured. The said email is reproduced below:



11/07/2022, 11:42

Gmail - Fwd: COMPLETE ACCOUNT STATEMENT TILL DATE

66



Jeetender Gupta <guptajeetender@gmail.com>

Fwd: COMPLETE ACCOUNT STATEMENT TILL DATE

Message

mmiron& steel <mmironandsteel16@gmail.com>
To: guptajeetender@gmail.com

26 January 2022 at 14:17

----- Forwarded message -----

From: **mmiron& steel** <mmironandsteel16@gmail.com>
Date: Mon, 24 Aug 2020, 4:47 pm
Subject: COMPLETE ACCOUNT STATEMENT TILL DATE
To: <anjul@aspgindia.com>

Dear Sir,

I have sent you all the statement with interest account please check if there is any mismatch and please send your statement as discussed in the last meeting

Sir my total balance is Rs 50933375/-, in which you have given the cheque amount of Rs 15200000/- (four cheques of amount Rs40Lac dt 8-10-2020 cheque no. 000299 , Rs 35Lac dt 12-10-2020 cheque no. 000297, Rs35Lac dt15-10-2020 cheque no.000298, Rs42Lac dt 11-11-2020 cheque no.000300). as discussed with you in the meeting we will meet on 1st september2020 and you will handover the balance amount cheques please make all the cheques of my balance amount and my balance amount is Rs3573375/-, sir please assure us that whatever post dated cheques you are giving should be honoured.

Awaiting for your reply

Warm Regards
Yogesh Sethi

2 attachments

- CamScanner 08-24-2020 15.08.23 (1).pdf 6091K
- Ledger Vouchers.pdf JAN 2020.pdf 687K

TRUE COPY

For M MIRON & STEEL

PARTNER

Further, it is noteworthy that the postdated cheques of Rs. 1,52,00,000/- were not encashed since the Corporate Debtor requested Operational Creditor not to present the cheques. This is also in a way admission by the Corporate Debtor of the debt. As regards the amount stated to be the outstanding amount by the Corporate Debtor as Rs. 35,73,375/- we would agree that the amount mentioned by the Financial Creditor in the email dated 24.08.2020 is actually Rs. 3,57,33,375/- and not Rs. 35,73,375/-



due to omission of a “3” in the total figure since it matches with the calculation shown in the said email. Hence, this is a clear case of debt and default by the Corporate Debtor.

10. The Corporate Debtor has also stated that the transaction between the parties was a routing transaction and that no goods were supplied by the applicant. However, from the records and the ledger accounts, it is clear that the Corporate Debtor was under obligation to pay to the Operational Creditor for goods which were sold to him whether to be further routed to some other entity or not. Hence, it is clear that the Corporate Debtor was responsible for the payment of the same to the Operational Creditor.

11. An objection has been raised by the Corporate Debtor that the Petitioner is ineligible to file the present petition under provisions of the Indian Partnership Act, 1932. However, the same has been clarified in various judgments that the Section 69 (2) of the Indian Partnership Act, 1932 is with regard to ‘suits’ which cannot be filed by the unregistered partnership. However, the petition filed under IBC are not ‘suits’ but only ‘proceedings’ and, therefore, the bar to file does not apply to the Operational Creditor in this case. The same has been held in orders passed by the coordinate benches of this Tribunal in case of M/s. G. L. Shoes Vs. M/s. Action Udhog Private Limited, CP No. (IB)-345(ND)2020 (Order dated 06.06.2022) and



M/s. Shree Dev Chemicals Corporation Vs. Gammon India Limited in CP (IB) No. 3637/MB.IV/2018 (Order dated 16.07.2020).

12. In the light of the above, we are of the view that the Operational Creditor has provided a debt to the Corporate Debtor who has defaulted on the same. The requirements under Section 9 IBC are met, therefore, this Adjudicating Authority initiates Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (ASPG Infrastructure Pvt. Ltd.).

13. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- I. The Application bearing IB-557/ND/2022, filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- II. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - i. “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;



- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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;
- iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor. [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”



- III. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- IV. The Operational Creditor has not proposed any name for the Interim Resolution Professional (“IRP”) and requested this Adjudicating Authority to appoint an IRP. Therefore, we appoint Mr. Niraj Kumar as Interim Resolution Professional (“IRP”), from the Panel of Insolvency Professional via reference letter IP-12011/1/2020-IBBI/343/351 received from Insolvency and Bankruptcy Board of India valid for the period 1st July - 31st December 2024. His Email id is njhaandco@gmail.com and Contact No. is 98187-27408. His registration number is IBBI/IPA-001/IP-P-02368/2021-2022/13586. The IRP is directed to file a valid Authorization for Assignment (AFA) along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.



- V. In pursuance of Section 13(2) of the Code, we direct the IRP, to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VI. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- VII. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- VIII. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment



by the Committee of Creditors, as accounted for by IRP, and shall be paid back to the Operational Creditor.

- IX. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.
- I. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record, and email to the appointed Resolution Professional for the information.
- X. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)