



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II

C.P. (IB)- 4384 (MB)/ 2018

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

Bhagwati Ferro Metal Private Limited,

Having its registered office at: Unit No. 601-A, 6th Floor, Western Edge-1, Kanakia Spaces, Dattapad Road, Off Western Express Highway, Borivali (E), Mumbai-400 066 (Maharashtra)

.....Operational Creditor

Vs

Shree Sukharta Developers Private Limited,

(CIN No.: U45200MH2013PTC245154)

Having its Registered Office at: 10, 1st Floor, Ruparel Iris, Nair Mahal, Senapati Bapat Marg, Mahim West, Mumbai – 400 016 (Maharashtra).

.....Corporate Debtor

Order delivered on: 16.06.2023

Coram:

Hon'ble Member (Technical)

Shri Shyam Babu Gautam

Hon'ble Member (Judicial)

Shri Kuldip Kumar Kareer

Appearances:

For the Operational Creditor : Adv. Aditya Sarangarajan
For the Corporate Debtor : Adv. Ishani Khanwilkar

ORDER

Per : Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by *Bhagwati Ferro Metal Private Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Shree Sukhkarta Developers Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an aggregate sum of **Rs.55,24,915/-** (Rupees Fifty-Five Lakhs Twenty-Four Thousand Nine Hundred Fifteen Only) together with interest at the rate of **24%** from the due date until the date of realization of dues amounting to **Rs. 21,31,341/-** (Rupees Twenty-One Lakhs Thirty-One Thousand Three Hundred and Forty-One only).
3. The Corporate Debtor approached the Operational Creditor for purchasing certain goods and issued Purchase Orders bearing Nos. (i) SSIR/299, (ii) ELV/072 and (iii) SSIR/304, for the demand of goods from the Operational Creditor. The Operational Creditor supplied the goods and raised various invoices upon the Corporate Debtor. The Corporate Debtor

accepted the goods without any demur. Copies of the Purchase Orders along with the invoices have been duly attached to this Petition. The details of the Invoices have been summarized and tabulated as follows:

Sr. No.	Purchase Order No.	Invoice Date	Invoice Number	Invoice Amount (Rs.)
1.	SSIR/299	7 th July 2017	GST/0021	9,32,219/-
2.	SSIR/299	7 th July 2017	GST/0022	9,25,614/-
3.	ELV/072	7 th July 2017	GST/0023	9,90,785/-
4.	SSIR/304	11 th July 2017	GST/0062	8,78,884/-
5.	SSIR/304	11 th July 2017	GST/0069	9,26,110/-
6.	SSIR/304	11 th July 2017	GST/0070	8,71,303/-
TOTAL				55,24,915/-

The Operational Creditor sent a **Demand Notice dated 17th September 2018** calling upon the Corporate Debtor to pay a total sum of Rs.55,24,915/- (hereinafter referred to as “outstanding amount”) to which the Corporate Debtor did not respond. Since no payments were made thereafter, this **Petition was filed on 16th November 2018**.

4. The Corporate Debtor filed a **Reply to this Petition on 24th November 2022** and admitted that the entire outstanding amount was due and payable. It is submitted that soon after the Demand Notice was sent, the Operational Creditor initiated settlement talks with the Corporate Debtor and the parties even arrived at an amicable settlement on or about 25th November

2018 whereby it was agreed that the Corporate Debtor would make payment of the outstanding amount in full and final settlement of all dues in the following manner:

- (i) Rs. 40,00,000/- (Rupees Fifty Lakhs only) on or before 1st December 2018; and
- (ii) Balance amount of Rs. 15,24,915/- to be paid in installments as mutually agreed between the parties.
- (iii) It was further agreed that on payment of the first installment of Rs. 40 Lakhs, the Operational Creditor would withdraw the Petition.

5. Pursuant to these terms, the Corporate Debtor made a payment of Rs. 40 Lakhs to the Operational Creditor on **30th November 2018** by RTGS and also made the payment of the balance amount of Rs. 15,24,915/- by **3rd January 2019**. Copies of the Ledger Statements reflecting these payments have been duly annexed to this Petition. Subsequently, the Corporate Debtor requested the Operational Creditor to withdraw the Petition as agreed between them but the Operational Creditor denied the terms of settlement and called upon the Corporate Debtor to pay up the interest portion amounting to **Rs. 21,31,341/- only**. Copies of the letters exchanged between the parties have been attached to the Reply. During the course of hearing, the Operational Creditor has admitted the receipt of the outstanding amount and states that the interest portion remains unpaid till date. The Corporate Debtor, on the other hand, submits that the Petition is no longer maintainable as the entire outstanding amount stands paid and the Operational Creditor cannot claim

solely the interest portion under a Petition filed under Section 9 of the Code.

FINDINGS

6. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. Based on the averments made by both the parties, it is noted that an operational debt of Rs.55,24,915/- was due and payable and the Corporate Debtor admits its liability to make the said payment. It is evident from the Ledger records and Financial Statements of the Corporate Debtor that the entire outstanding amount constituting the operational debt has been paid in two installments and only the interest portion remains unpaid. The Operational Creditor also confirms the same and is pursuing the instant Petition for the interest component amounting to Rs. 21,31,341/- only.

7. However, it is now settled by various judgments of the Hon'ble NCLAT that a Petition under Section 9 is not maintainable solely for the realisation of the interest component. This was duly enunciated in *S.S. Polymers vs. Kanodia Technoplast Limited (2019 SCC OnLine NCLAT 1310)* in the following words:

“Admittedly, before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent



(to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code."

This principle has been restated by the Hon'ble NCLAT more recently in the matter of *Amsons Communication Pvt. Ltd. vs. ATS Estates Pvt. Ltd. (2022 SCC OnLine NCLAT 1115)* in the following words:

"The provisions of Code cannot be allowed as a recovery mechanism or to recover the claim of interest by Operational Creditor. The Application under Section 9 cannot be converted into proceedings for recovery of interest by Operational Creditor on delayed payment, that is not the object of IBC."

8. Similarly, in the present case, the Corporate Debtor has already paid the entire outstanding amount forming the operational debt before the admission of the instant Petition. It is further reiterated that this Tribunal is neither a forum for recovery of debt nor for claiming other unpaid sums such as interest dues. The object of the Code is to facilitate the resolution of the insolvency of the Corporate Debtor in a structured and time-bound manner. Therefore, since the Operational Creditor now pursues this Petition under Section 9 of the Code solely for realisation of the interest component of the operational debt, it cannot be maintained.

9. In view of the foregoing reasons, the instant Company Petition is liable to be dismissed, and accordingly, C.P. (IB) No. 4384(MB) of 2018 is dismissed without costs.

The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**

Anusha
16.06.2023