

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V**

**C.P. (I.B) No. 1406/MB/2020**

**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*

**K. Amishkumar Trading Pvt. Ltd.**

316, Loha Bhavan P. D'Mello Road,  
Mumbai-400009  
(Maharashtra)

**.....Petitioner/Operational Creditor**

Vs

**KLT Automotive & Tubular Products Ltd.**

B-601, Elegant Business Park,  
M.I.D.C. Road No. 2, Andheri  
(East)Mumbai-400059, Maharashtra

**.....Corporate Debtor**

**Order Dated:21.12.2023**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)  
Madhu Sinha, Hon'ble Member(Technical)

**Appearances in Physical Mode:**

**For the Petitioner:** Adv. Shyam Kapadia

**For the Corporate Debtor:** Adv. Vikram Nankani a/w Adv. Rohan Agarwal a/w Adv Sujit Lahoti a/w Adv Shrushti Relekar, Adv. Shweta Pandey i/b Sujit Lahot & Associates

**ORDER**

*Per: Reeta Kohli, Member (Judicial)*

This Company Petition is filed by **K. Amishkumar Trading Pvt. Ltd.** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on **22.12.2020** seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **KLT Automotive & Tubular Products Ltd.** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 13,10,53,327.49/- (Rs. 9,58,41,443.67 on account of payment outstanding on the invoices raised plus Rs. 3,52,11,883.82 on account of interest on the aforementioned amount at the rate of 18% p.a. from 01.12.2018 till 14.12.2020).**

**Brief Facts and Submission by the Petitioner:-**

1. The present petition has been preferred by the Petitioner submitting that the claim amount of Rs. 9,58,41,443.63/- along with the interest @ 18 % making the total claim as Rs. 13,60,41,443.67/- is due and payable to it by the Corporate Debtor. The date of default in the present case is **10.05.2019**.
2. The case of the Operational Creditor is that the debt due is already established as an admitted debt not only on the strength of the invoices but also on the strength of account statements of the

Corporate Debtor along with Settlement Deed and Consent Terms of 2016 and 2018 respectively.

3. The Counsel for the Operational Creditor filed a Commercial Suit Numbered 193 of 2016 before the Hon'ble High Court of Bombay for an amount of Rs. 26,10,41,443.67/- which ultimately resulted into settlement arrived at between the parties. The said settlement was recorded in the Deed of Settlement Dated 22.09.2016. According to this Deed, the Corporate Debtor agreed to pay Rs. 21,00,00,000/- to the Petitioner. This Deed establishes the acknowledgement of the debt on the part of the Corporate Debtor.
4. The Petitioner further submitted that only Rs. 12,50,00,000/- had been paid against the said Deed and therefore the parties once again renegotiated and settled their case by virtue of the Consent Terms Dated 21.12.2018. The Corporate Debtor agreed to pay a sum of Rs. 7,50,00,000/-, as full and final settlement, to the Petitioner as per the Consent Terms. It is the case of the Petitioner that the said Consent Terms once again establishes the acknowledgement of debt on part of the Corporate Debtor. It is also pertinent to note that the Corporate Debtor had paid only Rs. 4,02,00,000/- in pursuance of the said Consent Terms and thus Demand Notice was issued by the Petitioner for the original outstanding Principal amount of Rs. 9,58,41,443.63/-.
5. The abovementioned Demand Notice was issued by the Petitioner to the Corporate Debtor on 17.02.2020. The Corporate Debtor had received the said notice which is substantiated by RPAD receipt and Acknowledgement Receipt as Annexures to this Petition. However, the Corporate Debtor failed to clear the outstanding amount and even neglected to reply to the said Demand Notice.

6. Thus, in view of the due acknowledgements on part of the Corporate Debtor from time to time, the debt stands crystallized and therefore the present petition deserves to be admitted and the Corporate Debtor be put to CIRP.
7. The Ld. Counsel further submitted that the settlement having been arrived at between the parties in the year 2016 and 2018 respectively has its genesis from all the pending invoices which were raised from time to time from the year 2014-2015 onwards. The settlement arrived at between the parties in the years 2016 and 2018 grants a fresh lease of life to the pending invoices. Thus, acknowledgement of debt by the Corporate Debtor from time to time itself added fresh life to the invoices pertaining to the financial year 2014-2015. Thus, the petition is well within the period of limitation.
8. The Learned Counsel referred to the judgement rendered by Hon'ble NCLT/NCLAT in **Priya Kantilal Patel v. IREP CREDIT Capital Pvt. Ltd. and Anr (2023 SCC OnLine NCLAT 51)** in which it was held that the existence of Consent Terms between the Corporate Debtor and Financial Creditor and subsequent breach thereof by the Corporate Debtor of the said Consent Terms does not bar the Financial Creditor from initiating a Section 7 Petition under the Code. A breach of the said Consent Terms does not wipe out the nature and character of the original financial debt.
9. It was categorically highlighted by the Learned Counsel for the Operational Creditor that although the abovementioned case relates to Section 7 of the Code yet it clears all ambiguities in relation to Settlement Deed and Consent Terms as attached to the Invoices vis a vis Section 9 of the Code. Meaning thereby, mere entering into settlement and subsequent breach of such

settlement does not take away the accrued rights of the Petitioner. He does not lose his right to file a Section 9 Petition under this Code as the basic nature of operational debt remains intact irrespective of subsequent settlement between the parties. The taking away of such accrued rights would mean giving premium to the Corporate Debtor who breached the terms of the Settlement Deed and Consent Terms in 2016 and 2018 respectively.

**Submissions by the Corporate Debtor:**

1. In response to the contentions of the Petitioner, the Counsel for the Corporate Debtor vehemently argued that the present petition is not maintainable as the above stated due amount does not fall within the definition of “operational debt” as defined under Section 5(21) of the Code. The main contention of the Counsel is that due amount on the strength of the Settlement Deed and Consent Terms cannot be categorised as Operational Debt. The petitioner may be a creditor who could file his claim before the Resolution Professional but the debt cannot be an Operational Debt. The petitioner had preferred the petition under section 9 of the Code and since the debt itself does not qualify to be an Operational Debt, the petition should be rejected on this very ground itself.
2. Upon dilation of arguments further, the Learned Senior Counsel contended that the entire frame of the Code was to make an attempt to allow the Corporate Debtor to derive strength from its own fate and not to allow recovery of debt. With that objective in mind the present Code is extremely limited thereby granting permission to file under section 9 only against the debt due qua the particular invoice/invoices.
3. The Ld. Counsel drew the attention of the Hon’ble Court to CIRP Regulations, 2016 while referring the Regulation 7 and Regulation 9. The arguments advanced were that the claim amount under

Section 9 of the Code has to be particularly accredited to the invoices but in the present case the Petitioner has come before the Hon'ble Court against non-compliance of the Consent Terms of 2018. Thus, he does not fall within the ambit of the Code.

4. The attention of the Tribunal was also drawn to the Demand Notice issued by the Petitioner wherein the Petitioner itself has referred to the debt in correspondence to the Settlement Deed entered in the year 2016 and also the Consent Terms entered in 2018. In addition, the Counsel also submitted that the perusal of the Settlement Deed arrived at between the parties in the year 2016 shows that from the due amount of Rs. 26,10,41,443.67/- the parties agreed to settle the issue to a mutually agreed amount of Rupees 21 Crores and thus the agreed sum was not against the pending invoices but a mere lump sum agreed amount between the parties in their own wisdom, meaning thereby, the settlement arrived at in the year 2016 was not on the strength of any invoices. Thus, on this basis also the petition is not maintainable as the debt does not flow from any invoices with respect to the supply of any goods and services rendered.
5. The Counsel for the Corporate Debtor had further submitted that the rejection of present petition is also justifiable on the ground that it is barred by limitation. The last invoice raised by the Petitioner could be paid up to 13.08.2015 and the present petition was filed on 22.12.2020 thereby clearly exceeding the maximum time limit of 3 years as provided in the Code and hence the Corporate Debtor prays for rejection of the present petition.
6. The Counsel further substantiated his arguments by referring to:-
  - **Amrit Kumar Agrawal v. Tempo Appliances Pvt. Ltd.** (2020 SCC OnLine NCLAT in which it was held that bouncing of cheques issued in discharge of obligation under a Settlement Agreement would not fall within the purview of

default in regard to financial debt and consequently seeking legal relief under Section 7 of the Code would not be permitted.

- **Delhi Control Devices (P) Ltd. v. Fedders Electric and Engineering Ltd. (2019 SCC OnLine NCLT 8030)** in which it was held that the unpaid instalment as per the settlement agreement cannot be treated as operational debt as per section 5(21) of the Code. The failure or breach of settlement agreement between the parties cannot be a ground to trigger CIRP against Corporate Debtor under the provision of the Code and remedy may lie elsewhere not necessarily before the Adjudicating Authority.

### **Findings**

1. On close perusal of the Pleadings of both the parties, and particularly in light of all the invoices issued by the Petitioner on the Corporate Debtor it is a clear and uncontested fact that the debt in question in the present case is originally an Operational Debt as per Section 5(21) of the Code.
2. In order to address the contention that whether the Deed of Settlement dated 22.09.2016 and Consent Terms dated 21.12.2018 and subsequent breach thereof would change the nature of debt from an “Operational Debt” to a mere “Debt”, we are of the considered opinion that the settlement entered into between the parties were primarily based on the invoices themselves. The amount agreed upon may be a lump sum amount based on the wisdom of both the parties but that does not in any way change the substance and nature of the Operational Debt as it had originally existed between the parties. Additionally, Hon’ble

NCLAT in **Priya Kantilal Patel v. IREP CREDIT Capital Pvt. Ltd. and Anr (2023 SCC OnLine NCLAT 51)** held that the existence of Consent Terms between the Corporate Debtor and Financial Creditor and subsequent breach thereof by the Corporate Debtor of the said Consent Terms does not bar the Financial Creditor from initiating a Section 7 Petition under the Code. A breach of the said Consent Terms does not wipe out the nature and character of the original financial debt. Although the said judgement categorically relates to Section 7 of the Code, it however removes all doubts and ambiguities in relation to Section 9 of the Code as well. Thus in view of the peculiar facts and circumstances of the present case and the settled law, we are of the considered opinion that the debt continues to remain an Operational Debt under Section 5(21) of the Code and the Petitioner is entitled to invoke Section 9 of the Code given the fact that he still remains an Operational Creditor. Just for the sake of testing the arguments advanced, if we were to hold otherwise stating that after the breach of the settlement terms the operational/financial debt would no longer retain its original cover and would merely become a debt, the same would allow all the unscrupulous elements to first enter into a Settlement Agreement and after paying one/two Instalments, default on the same, taking a plea that on non-adherence to the Settlement Terms, the operational/financial debt is no longer there and in absence thereof Petition is not maintainable. In fact the Invoices, Account Statements, Deed of Settlement dated 22.09.2016 and Consent Terms dated 21.12.2018 form a concrete evidence signifying the admittance of liability on part of the Corporate Debtor. Therefore, the existence of **“Operational Debt”**, which is a mandatory ingredient for a Section 9 Petition stands

established. Mere fact of non-payment/breach of the Consent Terms establishes “**Default**”.

3. In order to address the contention of limitation, it is pertinent to note that the date of default in the present case is 10.05.2019 which is the date of breach of the Consent Terms and the present petition was filed on 22.12.2020. The last date for payment of the last invoice was 13.08.2015, however this date has become irrelevant by the conduct of the Operational Creditor as time and again a fresh lease of life was granted to the Operational Debt by virtue of the settlement having been arrived at between the parties, first by way of the Deed of Settlement and second by way of the Consent Terms. Since the present petition is filed well within the maximum limit of 3 years it is specifically **not barred by limitation**.
4. Thus, in view of the above stated facts and the settled law, we are of the considered opinion that the Respondent is very much a Corporate Debtor and the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor along with absence of any pre-existing dispute between the parties in consonance with the relevant provisions of the Code. Thus, it is concluded that the Company Petition satisfies all legal requirements for admission. Considering the above facts, we are of the considered view that this Petition deserves to be **admitted** under Section 9 of the Code.

### **ORDER**

- a. In view of the aforesaid findings, the above Company Petition No. 1406/IBC/MB/2020 is hereby **admitted** and thereby initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against KLT Automotive & Tubular Products Ltd..

- b. Since there is no proposal for the name of Interim Resolution Professional by the Petitioner, Deepti Ami Thite having Registration Number IBBI/IPA- 002/IP- N01087/2021-2022/13629 is appointed as the Interim Resolution Professional from this Tribunal's Panel.
- c. The Petitioner shall deposit an amount of **Rs. 2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
- k. **Accordingly, CP 1406 of 2020 is admitted.**

**Sd/-**  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**REETA KOHLI**  
**MEMBER (JUDICIAL)**

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