

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

CP(IB) No. 1337 /KB/2019

In the matter of:

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Bharat Pipe Fitting Co. having its office at 40, Strand Road, 3rd Floor, Room No. 12/5, Kolkata- 700001, in the State of West Bengal.

.....Operational Creditor

-Versus-

Prowess International Private Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No- U27201JH2005PTC011197 and its registered office at A-18 Phase VI: Industrial Area, Adityapur, Jamshedpur -832108, in the State of Jharkhand.

.... Corporate Debtor

Date of Hearing : 17 May 2022

Date of pronouncing the order: 13 June 2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/ physical):

For Operational Creditor	:	Mr. Zeeshan Haque, Advocate Mr. Kaushik Banerjee, Advocate Mr. Sayak Chakraborty, Advocate
For Corporate Debtor	:	Mr. AK Shrivastava, Advocate Mr. Akash Sharma, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Bharat Pipe Fitting Co.** (Operational Creditor), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Prowess International Private Limited** (“Corporate Debtor”).

Submissions on behalf of the Operational Creditor:

3. The case of the Operational Creditor is that pursuant to various purchase orders placed by the Corporate Debtor between 23 July 2013 and 10 October 2015, it had supplied seamless pipes and seamless steel tubes. It was specifically written in the purchase orders that 100% payment will be made by the Corporate Debtor after receipt of the materials within thirty days.
4. During the transportation of the goods to the corporate debtor, the operational creditor had duly raised tax invoice, challan and consignor copy through the transporter, Akal Roadways of 147/1B, Mahatma Gandhi Road, Kolkata - 700007. The materials were duly delivered from time to time and as such the said tax invoice, challan and consignor copy was raised by the operational creditor to the corporate debtor from time to time.
5. The Corporate Debtor had duly issued Form 'C' under Section 3A of the Central Sales Tax confirming that the said sales tax was paid with regard to the seamless pipes and seamless steel tubes supplied to them, which was confirmed by the Corporate Debtor. the corresponding amount along with the tax had been issued by the Corporate Debtor to the Central Sales Tax (CST) authorities.
6. The said goods are originally manufactured and supplied by the principal manufacturer being Maharashtra Seamless Limited, which are imported in standard random length of 4-7 meters.

7. The standard random length of the pipes and the tubes is of 4 to 7 meters. Therefore, the Operational Creditor could not supply exactly according to the specification as stipulated in each purchase orders. Due to such variation in the exact ordered quantity, , there was a negligible variation in the bills raised by the Operational Creditor to the Corporate Debtor, which is in the knowledge of the Corporate Debtor.
8. That the corporate debtor and the operational creditor had business transaction from the year 2009 - 2010. However, there was no dispute for payment up till 2012. The payments with regard to the previous accounts were settled and after settling such dues and adjustments of payment made from time to time in the running and continuous accounts, and after settling all previous accounts, the balance confirmation was issued on 01.04.2016 for the financial year 01.04 .2016 to 31.03.2017. the same was re- confirmed on 01.04.2017 for the financial year 01.04.2017 to 31.03.2018 and subsequently on 01.04.2018 for the financial year 1.4.2018 to 21.02.2019. Thus, the said balance confirmation towards outstanding of the operational creditor was issued after reconciliation of the accounts.
9. The bills raised from 20 July 2013 to 10 October 2015 amount to an aggregate sum of ₹31,08,005/- (Rupees Thirty-One Lakh Eight Thousand and Five Only). After reconciliation of accounts, the total pending outstanding amount from the corporate amounts to ₹28,64,369.69 (Rupees Twenty-Eight Lakh Sixty-Four Thousand Three Hundred Sixty-Nine and Sixty-Nine Paise Only). The said corporate debtor had duly issued balance confirmation confirming that the said amount was due and payable by them to the operational creditor. The said balance confirmation was made from time to time and subsequently on 01 April 2018.
10. The said corporate debtor failed to make payment to the Operational Creditor and thus default arose. Various reminder mails dated 27 January 2018, 18 July 2018, 15 October 2018, 31 December 2018, 03 May 2019 and 14 June 2019 were issued by the Operational Creditor regarding the

outstanding dues for the supply of the said goods. The Corporate Debtor never raised any dispute after receiving the goods and even after receiving the reminder mails for payment of dues.

11. The default occurred on and from 24th July 2013. Accordingly, the Operational Creditor, on 8th July 2019, issued a demand notice dated 6th July 2019 under section 8 the Insolvency and Bankruptcy Code, 2016 and even after receiving such notice the corporate debtor neglected to make such payment.
12. The Operational Creditor is entitled to the amount of ₹59,32,644.69 (Rupees Fifty-Nine Lakh Thirty-Two Thousand Six Hundred Forty-Four and Sixty-Nine Paise Only) including principal amount of ₹28,64,368.69 and interest @18% per annum amounting to ₹30,68,276/ (Rupees Thirty Lakh Sixty-Eight Thousand Two Hundred and Seventy-Six Only).

Submissions on behalf of the Corporate Debtor:

13. The Corporate Debtor submits that there is no debt outstanding much less any admitted debt payable to the Operational Creditor. There is also no default on the part of the Corporate Debtor. The account claimed the Operational Creditor was mutually settled and as such the Section 9 petition filed by the Operational Creditor is an afterthought for some ulterior motive. It is apparent from the records that the said claims are otherwise ex-facie barred by limitation.
14. Further, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by order dated on 20 April 2017. The Resolution Plan was approved by this Adjudicating Authority on 17 October 2017. It is trite law that any outstanding amount prior to the period of CIRP cannot be entertained, if the Operational Creditor has not filed its claim during the CIRP. The Operational Creditor herein has issued demand notice on 08/07/2019 and the claims in the said demand notice relates to period from 2013 to 2015 i.e. much prior to the period of CIRP. In the said circumstances, the present application is liable to be and should be dismissed with costs.

15. It is denied that the total sum of Rs 28,64,368.69/- or any sum is due or payable by the Corporate Debtor. The Corporate Debtor states that the Purchase Order relates to the period from 2013 till 2015 and the last tax invoice was raised by the Operational Creditor on 10th October, 2015 as admitted by the Operational Creditor in the instant petition. As such, the said claims are barred by limitation. It is denied that any balance confirmation was issued or that any reconfirmation was given by the Corporate Debtor after reconciliation of the accounts.
16. The balance confirmation annexed as Annexure-D (Ledger Copy) in the main petition is a forged document. The Corporate Debtor states that the stamp of the Corporate Debtor and the sign of one Mr. Sumit Kumar have been forged by the Operational Creditor. The Corporate Debtor states further that no such person named Mr. Sumit Kumar is or was ever in the employment with the Corporate Debtor. The forgery committed by the Operational Creditor is a testimony to the mala fide conduct of the Operational Creditor.
17. There have been a series of mails sent by the Operational Creditor with mala fide motive starting from 27 January 2018 (whereas the last payment after settlement was paid by the Corporate Debtor on 10 October 2015 itself) which have never been answered in view of final settlement of their accounts and as such there was no question of admitting any such purported claim by some employee of the Corporate Debtor or at all.

Rejoinder on behalf of the Operational Creditor:

18. The Operational Creditor issued a statutory demand notice dated 06.07.2019 to the Corporate Debtor, calling upon it to make payment of sum of ₹28,64,368.69/- along with interest at the rate of 18% till 06 July 2019. The Corporate Debtor did not issue any reply to the said notice, therefore the contentions made therein were duly admitted by the Corporate Debtor.

19. The Corporate Debtor is not paying the legitimate demands of the Financial Creditor and are killing time and also disposing of the assets of the said Corporate Debtor Company. They had made an application to eye wash the said creditors of the Company by creating artificial inter-se disputes between the directors of the said corporate debtors. The said Corporate Debtor had created an inter se dispute between themselves and filed an application for oppression and mismanagement before this Tribunal.
20. The Corporate Debtor is trying to evade payment by concocted false stories. Operational Creditor came to know recently that the Corporate Debtor is removing the assets of the company from the said factory and trying to evade payments not only of the Operational Creditor but to all of the creditors. Thus the operational creditor had lodged a complaint before the Officer-in-Charge, police Station Adityapur, Adityapur, Saraikela, Jharkhand- 832109.
21. The Corporate Debtor is further killing time and removing all the assets of the said Company and as such it is prayed that the Adjudicating Authority immediately appoints an Interim Resolution Professional to stop the removing of the assets from the said factory premises of the Corporate Debtor.
22. There is no resolution plan pending under the Insolvency & Bankruptcy Code, 2016. Since the Corporate Debtor was issuing balance confirmation continuously on and from 01 April, 2016 till 1st April, 2018, therefore, the Operational Creditor was of the impression that the said payments will be done by the said Corporate Debtor in due course of time and as such according to a man of ordinary prudence no one will step into the web net of litigation, if there is even of little apprehension for repayment. After 21st February, 2019 when the Corporate Debtor refused to issue any balance confirmation in favour of the Operational Creditor and also failed to make payments, the Operational Creditor had no other alternative but

to institute proceedings before this Adjudicating Authority for the ends of justice.

23. In spite of several E-mails issued to the Corporate Debtor 27 January 2018 and 14 June 2018, the Corporate Debtor did not even spell a word with regard to any of the proceedings with regard to the Corporate Insolvency Resolution Process which at all was initiated against the Corporate Debtor by an order dated 20th April, 2017.

Analysis and Findings:

24. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
25. The date of default mentioned by the Operational Creditor is 24 July 2013, and the instant petition was filed on 09 August 2019. It is to be noted that the Corporate Debtor had been admitted into CIRP *vide* order dated 20 April 2017 in Company Petition 150/2017. Subsequently, a resolution plan also been approved by this Adjudicating Authority *vide* order dated 17 October 2017. The Operational creditor had not filed any claim with the Resolution Professional after the Corporate Debtor was admitted into CIRP and has filed the instant petition after the approval of the resolution plan. The same indicates gross negligence on part of the Operational Creditor.
26. The Hon'ble National Company Law Appellate Tribunal, in the matter of ***Sanjay Chemicals (India) Private Limited vs. Sharon Bio-Medicine Limited***¹, held that since the outstanding dues were prior to the period of initiation of 'Corporate Insolvency Resolution Process' and the creditor had not filed the claim at that stage, the application under Section 9 of the Code after completion of the 'Corporate Insolvency Resolution Process' against 'Corporate Debtor' was not maintainable [Para 3].

¹ Company Appeal (AT) (Insolvency) No. 1190 of 2019 decided on 11.11.2019

27. Further, the judgment of the Hon'ble Supreme Court in ***Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.***² lays down that when the resolution plan is approved by the Adjudicating Authority, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor, and its employees, members, creditors, including the central and state government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims which are not a part of resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan. [Para 95]
28. In light of the said legal precedents, this Adjudicating Authority is satisfied that the right of the Operational Creditor to seek remedy under section 9 of the Code has been extinguished and as such, the instant petition being **CP(IB) 1337/KB/2019** shall stand dismissed.
29. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
30. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
31. File to be consigned to the record.

BALRAJ
JOSHI

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Date: 2022.06.13 15:42:11 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V
K

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Rajasekhar V.K.
Member (Judicial)

Signed this the 13th day of June, 2022

SM[LRA]

² 2021 SCC Online SC 313 decided on 13.04.2021.