



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-III**

**Item No.101**

IB-582(ND)/2021

**IN THE MATTER OF:**

M/s. Redamancy World ..... Operational Creditor/Applicant

**Versus**

M/s. Sarika Industries Industries Ltd. .... Corporate Debtor/Respondent

**SECTION**

**U/s 9 IBC code 2016**

**Order pronounced on 25.07.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**  
**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets.

IB-582/ND/2021 stands ***admitted.***

**SD/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**SD/-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**



**THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IB-582/ND/2021**

U/S. 9 of the IBC, 2016 and Rule 6 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority), Rule, 2016

**IN THE MATTER OF:**

**M/s REDAMANCY WORLD**

**Through Mr. Sanjay Kumar Goel,**

**Registered Office: -**

**109, 1<sup>st</sup> Floor, Pocket – 14,**

**Rohini Sector - 24, New Delhi - 110085**

*.....Operational Creditor*

**Versus**

**M/s SARIKA INDUSTRIES PRIVATE LIMITED**

**Registered Office: -**

**M-11, Kala Road, Raja Puri**

**Uttam Nagar, New Delhi – 110059**

*..... Corporate Debtor*

*Delivered on: 25.07.2023*

**Coram:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Shri Atul Chaturvedi**

Hon'ble Member (Technical)

**Appearances:**

Operational Creditor : Ms. Bhavya Jain, Advocate

Corporate Debtor : Mr. Arjun Sehgal, Advocate

**ORDER**

**Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The instant application bearing IB-582/ND/2021 has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s Redamancy World is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Sarika Industries Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Operational Creditor is engaged in the business of producing Remelted Lead Ingots and the Corporate Debtor is engaged in the business of manufacturing of brake set, lead alloy and paper folder.

b) It is further submitted that, Operational Creditor has raised invoices towards the sale of Remelted Lead Ingots upon the Corporate Debtor. However, the Corporate Debtor has failed to clear the payment of 38 invoices.



c) It is averred that, in the books of account maintained by the Operational Creditor, in the ordinary course of business, a total amount of Rs. 1,24,95,015 /- (Rupees One Crore twenty four lakh ninety five thousand and fifteen only) is outstanding upon the Corporate Debtor. It is further submitted that, since 16.03.2018, the Corporate Debtor has failed to clear the outstanding amount.

d) It is further averred that, the Operational Creditor herein issued a demand notice dated 19.09.2020 under section 8 of the Insolvency and Bankruptcy Code, 2016 through speed post which was duly served upon the Corporate Debtor and the Corporate Debtor vide letter dated 22.10.2020 replied to the demand notice.

3. In response to the same Corporate debtor has raised various contentions:-

I. There are pre-existing disputes between the parties, and the issue of pre-existing dispute was raised by the Corporate Debtor before the issuance of Form 3 demand notice. The applicant has deliberately and malafidely not filed the complete documents, letters, and communication on record. It is further submitted by the Corporate Debtor that, the Applicant has forged and interpolated bills, transport bills and other invoices from its supplier who were not existing in order to wrongly claim ITC under GST rules. It has been further submitted that there was a ban imposed on the Corporate Debtor by DGGI to not to release any payment to the Operational Creditor

II. The Applicant has unilaterally and exorbitantly claimed interest to the tune of Rs. 45,12,158/- on the principal amount.

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.



5. The Operational Creditor's claim is based on the facts that the Applicant had supplied goods to the Corporate Debtor and raised invoices on the Corporate Debtor. However, as on date, the payments towards the remaining invoices stands due. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 19.09.2020 under section – 8 of IBC, 2016 served at the registered office of the Corporate Debtor. The Corporate Debtor vide letter dated 22.10.2020 also replied to the demand notice.

6. As regards to the first issue raised by the Corporate Debtor is on the basis of a pre-existing dispute. While perusing the records we found that, The Corporate Debtor vide its reply dated 22.10.2020 to the Demand Notice 19.09.2020 admitted that the materials supplied by the Applicant was up to the mark and also admitted that there is outstanding of Rs. 79,82,857/- . The relevant extracts of the said reply is reproduced below for reference: -

***4. That M/s Sarika Industries Private Limited through its director relied upon the representations made by you through Sh. Sanajy Kumar Goel and placed order for the supply of lead which you supplied. As the quality of the material supplied was upto the mark, therefore, M/s Sarika Industrial Private Limited showed faith upon you and continued the business dealings /transactions with you.***

***5. That admittedly you supplied the goods and there is an outstanding of Rs. 79,82,857/- towards M/s Sarika Industries Private Limited which is not released to you because of initiation of the investigation/proceedings by Directorate General of GST intelligence.***

***7. M/s Sarika Industries Private Limited is always ready to make payment towards outstanding liability to you to issuance of no***



***objection from the authorities under the GST Act for making a payment to you towards outstanding liability.***

Thus, on the proof of the above mentioned reply dated 22.10.2020 it is amply clear that the Corporate Debtor itself has admitted that a payment of Rs. 79,82,857/- is due and the Corporate Debtor is ready to pay the disputed amount only subject to the issuance of no objection from the GST department.

7. While perusing the record, we found that the Applicant has placed on record Letter dated 24.12.2020 wherein the Directorate General of GST intelligence (Chandigarh unit) vide reply dated 24.12.2020 categorically confirmed that they have issued Letter dated 03.05.2019 to the Corporate Debtor and directed to pay the dues directly to the bank account of Sh. Sanjay Goel, Proprietor of M/s Redamancy World / Applicant. The relevant excerpts are reproduced below for reference: -

***2. In March, 2019, again a request was received from DGGI, Gurugram Zonal Unit to direct M/s Gravitas Metal Inc, M/s Sarika Industries to pay the dues directly to pay the dues directly to the bank account of Sh. Sanjay Goel, Proprietor of M/s Redamancy World. At both the occasions, this office wrote letters to M/s Sarika Industries to take necessary actions as directed in the communications from DGGI, Gurugram Zonal Unit.***

Thus, on the proof the letter issued by the Directorate General of GST intelligence (Chandigarh unit) it is proved that the Corporate Debtor has failed to highlight the issue of 'pre-existing' dispute. It is amply clear from the above mentioned letter that DGGI has already directed the respondent to clear the dues of the Applicant. We are of the considered view that the Corporate Debtor was fully aware of the fact that the GST department has lifted the ban on making the outstanding payments, but the corporate debtor intentionally did not pay the outstanding dues.



8. As regards the second issue raised by the Corporate debtor, it relates to the fact that the Applicant has unilaterally and exorbitantly claimed interest to the tune of Rs. 45,12,158/-. In response to that, the Applicant has placed on record invoices raised against the Corporate debtor, which clearly entails that interest at the rate of 18% p.a. will be levied on delayed payment. In the light of the above findings we are of the considered view that, the total amount for maintainability of claim will include both principal debt as well as interest on delayed payment which was clearly stipulated in the invoices.

9. It is pertinent at this stage to refer the decision of Hon'ble NCLAT given in ***Prashant Agarwal Vs. Vikash Parasrampur & Anr. Company Appeal (AT) (Ins.) No. 690 of 2022.*** The relevant para is reproduced below for reference: -

*(v) Before coming to any conclusion, it will also be pertinent to go through legal definition of debt. The definition of debt as per section 3(11) of IBC is as under:*

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*3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt."*

*Since, the word "claim" is mention in definition of debt in Section 3(11) we need to refer to definition of claim under Section 3(6) of IBC which is as follows:-*

*"3.(6) "claim" means (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*



*Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for “right to payment” (Section 3(6) IBC) and therefore will form part of “debt” (Section 3(11) (IBC)*

10. In the light of findings of the present petition, when we consider the submissions of the Operational Creditor for the claims towards the goods supplied to the Corporate debtor, it appears to us that the same shall also fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. The averments of the applicant stating that there is a ‘debt’ which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate Debtor by placing suitable evidence. Therefore, this Adjudicating Authority admit the Corporate Debtor into CIRP under the provisions of the Code.

11. The Operational Creditor has not proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Vivek Sharma having Regn. No. IBBI/PA-002/IP-N01077/2020-2021/13442 as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor’s management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

12. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:



- a. 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;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor's assets or any legal right or beneficial interest therein;
- c. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d. 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. The explanation below section - 14 (1) also stipulates "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".

13. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

14. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person



associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

15. The Operational Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

16. The Operational Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

17. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

**18. The application bearing IB – 582/(ND)/2021 is *admitted*.**

**SD/-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**SD/-**

**BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**