

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1057MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Sterling Enamelled Wires Private Limited

[CIN: U31900DL2018PTC335693]

...Operational Creditor/Applicant

V/s

Nik-San Engineering Company Limited

[CIN: U31002MH2004PLC235017]

...Corporate Debtor/Respondent

Order Pronounced On: 03.11.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Sandeep Grover a/w Mr. Tarang
Agarwal, Advocates

For the Respondent(s) : Mr. Ruchir Tolat a/w Mr. Raj Adhia,
Advocates

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1057/MB/C-IV/2021 filed by Sterling Enamelled Wires Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Nik-San Engineering Company Limited,

Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor is a Company incorporated under the provisions of Companies Act, 2013 and is engaged in the business of manufacturing and selling of aluminium winding wires, aluminium and copper enamelled wires, copper strips etc. The Application is filed by Mr. Sumit Agarwal, Director of Operational Creditor vide its Board Resolution dated 10.08.2020, claiming total default of Rs.2,20,42,190/- (Rupees Two-Crore, Twenty Lakh, Fourty Two Thousand, One Hundred and Ninety only).
3. The Corporate Debtor is an entity incorporated on 21.01.2004 under the Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai having its registered office at 102, Saral Apartment, Vanshree Compound, Marve Road, Malad (W), Mumbai. Therefore, this Bench has Jurisdiction to deal with the present petition.
4. The Date of Default as mentioned in the Petition is 29.02.2020. The Petition is filed on 21.10.2021.
5. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is engaged in the business of manufacturing and selling of aluminium winding wires, aluminium and copper enamelled wires, copper strips etc. The Corporate Debtor is engaged in manufacturing all kinds of transformers in the power industry.
 - b) The Operational Creditor has supplied various materials/goods, including aluminium wires, strips etc. to the Corporate Debtor, as

per the agreed terms and as per the requirements of the Corporate Debtor. As per the established business practices, the goods were supplied to the Corporate Debtor on credit and the Corporate Debtor was liable to make payment for the same immediately upon receipt of the invoice.

- c) The Operational raised several invoices upon the Corporate Debtor in the month of February 2020. Despite receipt of the same, the Corporate Debtor failed to clear the outstanding dues. The list of invoices is reproduced hereinunder: -

Invoice No.	Invoice Date	Invoice Amount (In INR)	Interest Rate (per annum till 30.09.2021)	Total Amount due (In INR)
0497/19-20	01.02.2020	1430626	18%	428247.00
0551/19-20	05.02.2020	770106	18%	229006.00
0552/19-20	05.02.2020	1929034	18%	573637.00
0691/19-20	14.02.2020	71014	18%	20802.00
0692/19-20	14.02.2020	1326536	18%	388584.00
0693/19-20	14.02.2020	1779754	18%	521346.00
0748/19-20	18.02.2020	560477	18%	163076.00
0749/19-20	18.02.2020	2909366	18%	846506.00
0827/19-20	22.02.2020	564613	18%	163165.00
0828/19-20	22.02.2020	840837	18%	242990.00
0885/19-20	26.02.2020	296475	18%	85092.00
0886/19-20	26.02.2020	68867	18%	19766.00
0887/19-20	26.02.2020	164369	18%	47176.00
0888/19-20	26.02.2020	2011769	18%	577405.00
0948/19-20	29.02.2020	748650	18%	213765.00
0949/19-20	29.02.2020	1593994	18%	455140.00

- d) It is pertinent to mention here that in view of Insolvency and Bankruptcy Code (Amendment) Ordinance 2020, promulgated by the Hon'ble President of India on 05th June 2020, which came in

effect from 25th March 2020, the Operational Creditor has not included herein the two invoices dated 20th May, 2021 numbered 0058/20-21 and 0059/20-21 amounting to Rs.1,99,690/- and Rs. 34,45,032 (amounting to Rs.36,44,722/-) respectively raised by the Operational Creditor upon the Corporate Debtor.

- e) It is an admitted fact that the Corporate Debtor has duly received the goods delivered by the Operational Creditor in a timely manner and despite receiving the goods and invoices to its satisfaction, the Corporate Debtor has deliberately failed to release payment of Rs.1,70,66,487/- against such invoices to the Operational Creditor, till date.
- f) The Corporate Debtor by way of letter dated 23.07.2021 addressed to Citi Commercial Bank (Which is Citi Bank) has categorically and unequivocally admitted that an amount of Rs.2,07,11,209/- (which is inclusive of the amount of Rs.1,70,66,487/-) is outstanding as per its books and it will clear the same at the earliest. A bare reading of the letter dated 23.07.2021 makes it manifest that the outstanding debt has been "*admitted*" and there is "no pre-existing dispute" pertaining to the outstanding debt which admittedly remains outstanding as per the books of account of the Corporate Debtor as well.
- g) The goods supplied to the Operational Creditor in lieu of the outstanding invoices do not suffer from any quality issues. This stems from the fact that the Corporate Debtor has admitted his liability to pay the outstanding dues to the Operational Creditor by way of letter dated 23.07.2021 addressed to Citi Commercial Bank.

- h) Seeing no result in pursuing the Corporate Debtor to clear the outstanding dues, the Operational Creditor issued a Demand Notice u/s 8 of the Code in Form-3 dated 14.08.2021 demanding and recalling for outstanding dues alongwith interest to the extent of Rs.2,07,11,209.00 towards 18 outstanding invoices.
- i) Despite receipt of aforesaid Demand Notice dated 14.08.2021, the Corporate Debtor failed to: -
- a. Respond to the Demand Notice;
 - b. Raise any “*pre-existing dispute*” as per terms of the code; and
 - c. pay the outstanding amount due.

Reply of the Corporate Debtor

6. The Corporate Debtor has filed Affidavit in Reply dated 20.01.2022 thereby vehemently stated that the Company Petition is not maintainable and the same is liable to be rejected with compensatory costs. The Corporate Debtor raised contentions through its affidavit in reply which are as under: -
- a) The invoices issued by the Operational Creditor show that the same were issued subject to Jurisdiction of “Uttar Pradesh”;
 - b) The Corporate Debtor by its various letters/emails raised certain disputes, which were purportedly pending on the date of filing of the Application;
 - c) The letter dated 23.07.2021, addressed to the Bank only confirms the fact of the invoices raised by the Operational Creditor. The said letter cannot be taken as admission of liabilities as per invoices issued and for which disputes are raised and pending.

- d) In view of disputes under provision 8(2) of the Code, the Application is not maintainable and also not have jurisdiction to try and entertain this company Petition.
7. The Corporate Debtor contented that the submission of the Operational Creditor that no notice of disputes has been received by the Operational Creditor within 10 days of service of Demand Notice and there is no record of dispute information, is false and frivolous. The Corporate Debtor through its Advocate Letter sent on 25th August 2021 under Speed Post Consignment No. RG095038202IN in terms after setting out the true and correct facts as regard the various disputes in respect of the material supplied as aforesaid gave the notice of disputes under Section 8 (2) of the Code.
8. In respect of the defective materials supplied by the Operational Creditor, correspondence through their letters dated 24.06.2020, 20.07.2020, 18.08.2020 and 17.09.2020 was exchanged in which the Corporate Debtor have pointed out the problems which they found pertaining to the poor insulation, aluminium conductivity which has been found poor as not as per IS standard, enamelling is not done universally on the wire and there were more enamelled on some places and very less coating on some places, variation in thickness and 3 KVA test is conducted on majority of Bobbin and they are not confirming to IS standard. Despite repeated request and reminders to the Operational Creditor, none was deputed to verify the product supplied by them Operational Creditor in view the them Lockdown and Covid-19.
9. The Corporate Debtor further submits that the Operational Creditor vide its email dated 17.09.2020 (*Exhibit-6*), in terms of acknowledged

the said disputes raised by the Corporate Debtor, however, expressed its inability to sort out the same.

Rejoinder of the Operational Creditor

10. The Operational creditor filed affidavit in rejoinder thereby denying all the allegations, contentions levelled in affidavit in reply.
11. The Operational Creditor submits that the issue with regard to Jurisdiction of Invoices, he states that pursuant to section 408 of the Companies Act, 2013, this Tribunal has been constituted in different states. In this regard, the Adjudicating Authority, in relation to insolvency resolution and liquidation of corporate persons including corporate debtors and personal guarantor thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the Corporate Person is located. In this case, the registered office of the Corporate Debtor is located in Mumbai, therefore, this Hon'ble Tribunal has jurisdiction to entertain this Petition.
12. To support the aforesaid contentions, the Operational Creditor placed reliance of Hon'ble NCLAT in the case of *Famous Innovations Digital Creative Private Limited Vs. Mode Advertising and Marketing Private Limited, Excel Metal Processors Limited Vs. Benteler Trading International GmbH & Anr.* wherein it has held that the territorial jurisdiction has to be decided according to the location of the registered office of the Corporate Debtor, irrespective of the agreement between the parties.
13. The Corporate Debtor submits that the issue regarding alleged pre-existing dispute sought to be raised by the Corporate Debtor is completely false and vexatious and is being raised to somehow come

out of the admissions made by the Corporate Debtor to clear the outstanding debt. The Operational Creditor also states that as on the day of issuance of Demand Notice and/or filing of Insolvency Application, no dispute existed between the Operational Creditor and Corporate Debtor and by way of communication dated 24.06.2020, 20.07.2020, 23.07.2020, 18.08.2020 and 17.09.2020, the Corporate Debtor deliberately raised certain concerns regarding the quality of the products supplied, with the sole intention to not pay the outstanding amount for supplying the goods. The concerns sought to be raised by the Corporate Debtor were absolutely sham and bogus.

14. It is submitted that there were no pre-existing dispute(s) between the parties in the year 2021, which is evident from the email dated 12.05.2021 and 13.05.2021 sent by the Corporate Debtor wherein he assured the Operational Creditor that to clear the outstanding dues. The Corporate Debtor vide email dated 17.07.2021 (*Annexure-1 of rejoinder*) addressed to the Operational Creditor, assured and promised that they shall be making 15% extra payment on the outstanding amount due to the Operational Creditor, which shall be over and above the amount towards the new purchase orders. It is pertinent to mention herein that purchases of Rs.3,13,83,249/- were made by the Corporate Debtor to the Operational Creditor in the year 2021 and in lieu thereof, payment of Rs. 26,80,404/- was also done by the Operational Creditor towards the old outstanding, which was duly accepted by the Corporate Debtor. Pertinently, in the emails as well, the Corporate Debtor did not mention/specify any dispute regarding payment of outstanding amount, as sought to be alleged at this belated stage. It is submitted that the orders placed in the year 2021, payments made by the Operational Creditor towards old outstanding and communications exchanged

between the parties. Thus, reliance sought to be placed by Corporate Debtor on communications dating back to September, 2020 is merely an afterthought so as to misrepresent the facts before the Hon'ble Tribunal. Even if it is assumed that the Corporate Debtor was dissatisfied with the quality of the products/goods supplied by the Operational Creditor, it would not have continued to place orders and obtain the goods from the Operational Creditor and also pay 15% extra on new orders to reduce the outstanding debt.

15. The Operational Creditor also relied on *Mobilox Innovations Private Limited Vs. Kirusa Software (P) Limited*, wherein the Hon'ble Supreme Court of India held that a pre-existing dispute should truly exist in the fact and should not be merely spurious, hypothetical or illusory. In this case as highlighted in preceding paras, no dispute, much less pre-existing dispute existing between the parties on the date of issuance of the Demand Notice and/or filing of the petition.
16. The contention of the Corporate Debtor with regard to letter dated 23.07.2021, addressed by the Corporate Debtor to the Citi Bank only confirms the factum of the invoices issued by the Operational Creditor and amount mentioned in it are totally denied. The letter certifies that the invoices raised by the Operational Creditor upon the Corporate Debtor amounting to Rs.2,07,11,209/- were outstanding as per its books as on 23.07.2021. This makes it clear that the Corporate Debtor acknowledged the said invoices were due and paid and confirmed to clear the invoices at the earliest.
17. Furthermore, the allegations with regard to reply to the Demand Notice are completely frivolous, false and devoid of merits. The Operational Creditor submits that he has not received any response to the Demand

Notice dated 14.08.2021, till date and the alleged reply to the Demand Notice is undated. No postal receipt/tracking report has been filed by the Corporate Debtor alongwith the alleged reply to the Demand Notice.

Findings:

18. We have prudently heard the arguments of the Learned Counsel for both the parties and perused the records.
19. The Corporate Debtor approached the Operational Creditor for purchase of various products. The Operational Creditor supplied the products to the Corporate Debtor and raised certain invoices from the period from 01.02.2020 to 29.02.2020. Despite receipt of materials, Corporate Debtor not paid the due amount. The Operational Creditor issued Demand Notice u/s 8 of the Code in Form-3 on 14.08.2021, demanding and recalling for repayment of the outstanding amount. Despite receipt of the aforesaid Notice, the Corporate Debtor neither replied to the said Demand Notice, nor repaid the outstanding dues. The Corporate Debtor vide letter dated 23.07.2021, addressed to CITI Commercial Bank, acknowledged the outstanding dues.
20. The Corporate Debtor vide their letters dated 24.06.2020, 20.07.2020, 23.07.2020, 18.08.2020 and 17.09.2020 addressed to the Operational Creditor submits that the quality of materials supplied were not good and raised a contention that there is a pre-existing dispute as per section 8 (2) of the Code before filing the captioned company petition.
21. Further, the Corporate Debtor after their letters dated 24.06.2020, 20.07.2020, 23.07.2020, 18.08.2020 and 17.09.2020 regarding inferior quality of goods, sent a letter to the CITI Commercial Bank on

- 23.07.2021 thereby certified that invoices amounting to Rs.2,07,11,209/- raised by Corporate Debtor are outstanding as per their books.
22. The Corporate Debtor vehemently denied the fact that the letter sent to CITI Commercial Bank amount to acknowledgement of debt. On perusal of letter dated 23.07.2021, this Bench observed that the contents written in the letter dated 23.07.2021, clearly shows that the Corporate Debtor acknowledged the invoices as per their books of account as on 23.07.2021 and also promised/confirmed that they will clear the said invoices. Hence, the contention with regard to pre-existing dispute is not sustainable on perusal of letter dated 23.07.2021 and hence rejected.
23. The letter addressed to CITI Commercial Bank is reproduced hereinunder: -

“To,

Citi Commercial Bank

Kind Attn: Mr. Amit Khanduri,

Sub: Old Outstanding against Sterling Enamelled Wires (P) Ltd.

Dear Sir,

We certify that the following invoices amounting to Rs.2,07,11,209/- raised by Sterling Enamelled Wires (P) Ltd. upon us, are outstanding as per our books, as on today 23.07.2021. We hereby confirm that we shall clear the said invoices, at the earliest.

<i>Inv. No.</i>	<i>Invoice Date</i>	<i>Amount</i>
<i>0497</i>	<i>01.02.2020</i>	<i>1430626</i>

0551	05.02.2020	770106
0552	05.02.2020	1929034
0691	14.02.2020	71014
0692	14.02.2020	1326536
0693	14.02.2020	1779754
0748	18.02.2020	560477
0749	18.02.2020	2909366
0827	22.02.2020	564613
0828	22.02.2020	840837
0885	26.02.2020	296475
0886	26.02.2020	68867
0887	26.02.2020	164369
0888	26.02.2020	2011769
0948	29.02.2020	748650
0949	29.02.2020	1593994
58	20.05.2020	199690
59	20.05.2020	3445032
<i>Total</i>		20711209

24. Furthermore, the Corporate Debtor on 13.05.2021 also sent an email to the Operational Creditor. The email dated 13.05.2021 is as under: -

*From: NIKSAN nkc [mailto:nksan_nkc@hotmail.com]
Sent: 13 May 2017 13:47
To: accounts4@sterlingwires.co.in
CC: Accounts Sterling India; Sterling India'*

*Subject: Re Our LC No. 0676ILC000441721 Dtd. 27/04/2021 For
Rs.53,83,484/-*

Dear Santosh Jha,

As agreed with Mr. Sumit Agarwal for making 7.5% extra payment towards old outstanding which may be increased by us once the business situation improves to 15%.

We agree to make you 15% extra payment towards old outstanding and as per our books your old outstanding and as per our books your old outstanding amount is Rs.2,15,20,344/- in Nik San Engineering Company Limited and Rs.8,98,048/- in Varsha Engineers.

If you will agree than kindly give us confirmation of dispatch so that we can release you balance 7.5% payment of Rs.3,94,000/- as agreed by us.

Thanks, and regards.

Aarti

25. On perusal of the aforesaid email, this Bench observed and have the clear picture in mind that the Corporate Debtor acknowledges the amount due which is to be repaid by the Corporate Debtor to the Operational Creditor. Thus, it clearly shows that there is a clear debt and default by the Corporate Debtor in repaying the outstanding amount with respect to pending invoices (*supra*) to the Operational Creditor.
26. On perusal of the records, it is found that the Petition was filed on 21.10.2021 and the Corporate Debtor acknowledges his liability on 23.07.2021, thus Petition is filed well within the prescribed period of Limitation i.e. 3 years as provided under Section 18 of Limitation Act, 1963.
27. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.

28. On perusal of the documents submitted by the Applicant, it is clear that Operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.
29. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
30. The Operational Creditor has not proposed the name of Interim Resolution Professional (IRP) in the matter.
31. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing CP (IB) 1057/MB-IV/2021 filed by Sterling Enamelled Wires Private Limited, the Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against NIK-SAN Engineering Company Limited [CIN: U31002MH2004PLC235017], the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or

passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Rakesh Kumar Tulsyan, registration No. IBBI/IPA-001/IP-P01144/2018-2019/11970; Email: tulsyanrk@gmail.com is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Manoj Kumar Dubey
Member (Technical)

/NP/

Sd/-

Kishore Vemulapalli
Member (Judicial)